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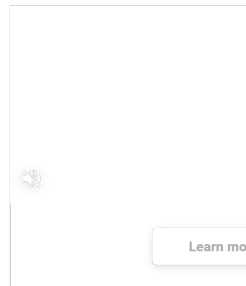
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REPUBLIC ACT NO. 386

REPUBLIC ACT NO. 386 - AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES

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Obligations

CHAPTER 1

General Provisions

ARTICLE 1156. An obligation is a juridical necessity to give, to do or not to do. (n)

ARTICLE 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts. (1089a)

ARTICLE 1158. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. (1090) [Buy bestselling books online](#)

ARTICLE 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (1091a)

ARTICLE 1160. Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book. (n)

ARTICLE 1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages. (1092a)

ARTICLE 1162. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws. (1093a)

CHAPTER 2

Nature and Effect of Obligations

ARTICLE 1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care. (1094a)

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ARTICLE 1164. The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him. (1095)

ARTICLE 1165. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1170, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery. (1096)

ARTICLE 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. (1098)

ARTICLE 1168. When the obligation consists in not doing, and the obligor does what has been forbidden him, it shall also be undone at his expense. (1099a)

ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declare; or
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

ARTICLE 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. (1101)

ARTICLE 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void. (1102a)

ARTICLE 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. (1103)

ARTICLE 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (1104a)

ARTICLE 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable. (1105a)

ARTICLE 1175. Usurious transactions shall be governed by special laws. (n)

ARTICLE 1176. The receipt of the principal by the creditor without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.

the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them. (1111)

ARTICLE 1178. Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary. (1112)

CHAPTER 3

Different Kinds of Obligations

Section 1

Pure and Conditional Obligations

ARTICLE 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutive condition shall also be demandable, without prejudice to the effects of the happening of the event. (1113)

ARTICLE 1180. When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of article 1197. (n)

ARTICLE 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (1114)

ARTICLE 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code. (1115)

ARTICLE 1183. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

The condition not to do an impossible thing shall be considered as not having been agreed upon. (1116a)

ARTICLE 1184. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place. (1117)

ARTICLE 1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation. (1118)

ARTICLE 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment. (1119)

ARTICLE 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall

retroactive effect of the condition that has been complied with. (1120)

ARTICLE 1188. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition. (1121a)

ARTICLE 1189. When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary. (1122)

ARTICLE 1190. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for the obligations to do and not to do, the provisions of the second paragraph of article 1187 shall be observed as regards the effect of the extinguishment of the obligation. (1123)

ARTICLE 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law. (1124)

ARTICLE 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be

Obligations with a Period

ARTICLE 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutive period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section . (1125a)

ARTICLE 1194. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1189 shall be observed. (n)

ARTICLE 1195. Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests. (1126a)

ARTICLE 1196. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other. (1127)

ARTICLE 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them. (1128a)

ARTICLE 1198. The debtor shall lose every right to make use of the period:

- (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
- (2) When he does not furnish to the creditor the guaranties or securities which he has promised;
- (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;
- (4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;
- (5) When the debtor attempts to abscond. (1129a)

Sec. 3

Alternative Obligations

ARTICLE 1199. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation. (1132)

ARTICLE 1201. The choice shall produce no effect except from the time it has been communicated. (1133)

ARTICLE 1202. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable. (1134)

ARTICLE 1203. If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages. (n)

ARTICLE 1204. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared, or that of the service which last became impossible.

Damages other than the value of the last thing or service may also be awarded. (1135a)

ARTICLE 1205. When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.

Until then the responsibility of the debtor shall be governed by the following rules:

- (1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;
- (2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;
- (3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible. (1136a)

ARTICLE 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud. (n)

Sec. 4

Joint and Solidary Obligations

ARTICLE 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. (1137a)

Court governing the multiplicity of suits. (1138a)

ARTICLE 1209. If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share. (1139)

ARTICLE 1210. The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility. (n)

ARTICLE 1211. Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions. (1140)

ARTICLE 1212. Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter. (1141a)

ARTICLE 1213. A solidary creditor cannot assign his rights without the consent of the others. (n)

ARTICLE 1214. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him. (1142a)

ARTICLE 1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. (1143)

ARTICLE 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (1144a)

ARTICLE 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (1145a)

ARTICLE 1218. Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment is made after the obligation has prescribed or become illegal. (n)

ARTICLE 1219. The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the co-debtors, in case the debt had been totally paid by anyone of them before the remission was effected. (1146a)

ARTICLE 1220. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors. (n)

ARTICLE 1221. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply. (1147a)

ARTICLE 1222. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (1148a)

Sec. 5

Divisible and Indivisible Obligations

ARTICLE 1223. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title. (1149)

ARTICLE 1224. A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (1150)

ARTICLE 1225. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case. (1151a)

Sec. 6

Obligations with a Penal Clause

ARTICLE 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

ARTICLE 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced. (1153a)

ARTICLE 1228. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (n)

ARTICLE 1230. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause. (1155)

CHAPTER 4
Extinguishment of Obligations
General Provisions

ARTICLE 1231. Obligations are extinguished:

- (1) By payment or performance;
- (2) By the loss of the thing due;
- (3) By the condonation or remission of the debt;
- (4) By the confusion or merger of the rights of creditor and debtor;
- (5) By compensation;
- (6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutive condition, and prescription, are governed elsewhere in this Code. (1156a)

Section 1
Payment or Performance

ARTICLE 1232. Payment means not only the delivery of money but also the performance, in any other manner, of an obligation. (n)

ARTICLE 1233. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. (1157)

ARTICLE 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee. (n)

ARTICLE 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. (n)

ARTICLE 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (1158a)

ARTICLE 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty. (1159a)

ARTICLE 1238. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.

(1160a)

ARTICLE 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it. (1162a)

ARTICLE 1241. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

- (1) If after the payment, the third person acquires the creditor's rights;
- (2) If the creditor ratifies the payment to the third person;
- (3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (1163a)

ARTICLE 1242. Payment made in good faith to any person in possession of the credit shall release the debtor. (1164)

ARTICLE 1243. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid. (1165)

ARTICLE 1244. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (1166a)

ARTICLE 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales. (n)

ARTICLE 1246. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (1167a)

ARTICLE 1247. Unless it is otherwise stipulated, the extrajudicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern. (1168a)

ARTICLE 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

ARTICLE 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (n)

ARTICLE 1251. Payment shall be made in the place designated in the obligation.

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court. (1171a)

Sub-Section 1

Application of Payments

ARTICLE 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract. (1172a)

ARTICLE 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. (1173)

ARTICLE 1254. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately. (1174a)

Sub-Sec. 2

Payment by Cession

ARTICLE 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws. (1175a)

Sub-Sec. 3

Tender of Payment and Consignation

ARTICLE 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

- (3) When, without just cause, he refuses to give a receipt;
- (4) When two or more persons claim the same right to collect;
- (5) When the title of the obligation has been lost. (1176a)

ARTICLE 1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment. (1177)

ARTICLE 1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (1178)

ARTICLE 1259. The expenses of consignation, when properly made, shall be charged against the creditor. (1179)

ARTICLE 1260. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force. (1180)

ARTICLE 1261. If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The co-debtors, guarantors and sureties shall be released. (1181a)

Sec. 2 *Loss of the Thing Due*

ARTICLE 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk. (1182a)

ARTICLE 1263. In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation. (n)

ARTICLE 1264. The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation. (n)

ARTICLE 1265. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity. (1183a)

ARTICLE 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor. (1184a)

ARTICLE 1268. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it. (1185)

ARTICLE 1269. The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss. (1186)

Sec. 3

Condonation or Remission of the Debt

ARTICLE 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation. (1187)

ARTICLE 1271. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (1188)

ARTICLE 1272. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (1189)

ARTICLE 1273. The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force. (1190)

ARTICLE 1274. It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing. (1191a)

Sec. 4

Confusion or Merger of Rights

ARTICLE 1275. The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person. (1192a)

ARTICLE 1276. Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation. (1193)

ARTICLE 1277. Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur. (1194)

Sec. 5

Compensation

ARTICLE 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (1195)

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (1196)

ARTICLE 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor. (1197)

ARTICLE 1281. Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation. (n)

ARTICLE 1282. The parties may agree upon the compensation of debts which are not yet due. (n)

ARTICLE 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof. (n)

ARTICLE 1284. When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially rescinded or avoided. (n)

ARTICLE 1285. The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment. (1198a)

ARTICLE 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment. (1199a)

ARTICLE 1287. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 301. (1200a)

ARTICLE 1288. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense. (n)

ARTICLE 1289. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation. (1201)

Sec. 6
Novation

ARTICLE 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor. (1203)

ARTICLE 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (1204)

ARTICLE 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237. (1205a)

ARTICLE 1294. If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligations shall not give rise to any liability on the part of the original debtor. (n)

ARTICLE 1295. The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except when said insolvency was already existing and of public knowledge, or known to the debtor, when the delegated his debt. (1206a)

ARTICLE 1296. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent. (1207)

ARTICLE 1297. If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event. (n)

ARTICLE 1298. The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor or when ratification validates acts which are voidable. (1208a)

ARTICLE 1299. If the original obligation was subject to a suspensive or resolutive condition, the new obligation shall be under the same condition, unless it is otherwise stipulated. (n)

ARTICLE 1300. Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in order that it may take effect. (1209a)

ARTICLE 1301. Conventional subrogation of a third person requires the consent of the original parties and of the third person. (n)

ARTICLE 1302. It is presumed that there is legal subrogation:

- (1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
- (2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

ARTICLE 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation. (1212a)

ARTICLE 1304. A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit. (1213)

TITLE II

Contracts

CHAPTER 1

General Provisions

ARTICLE 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. (1254a)

ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)

ARTICLE 1307. Innominate contracts shall be regulated by the stipulations of the parties, by the provisions of Titles I and II of this Book, by the rules governing the most analogous nominate contracts, and by the customs of the place. (n)

ARTICLE 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. (1256a)

ARTICLE 1309. The determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties. (n)

ARTICLE 1310. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances. (n)

ARTICLE 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (1257a)

ARTICLE 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration Laws. (n)

ARTICLE 1313. Creditors are protected in cases of contracts intended to defraud them. (n)

ARTICLE 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. (n)

ARTICLE 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping

ARTICLE 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)

CHAPTER 2
Essential Requisites of Contracts
General Provisions

ARTICLE 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established. (1261)

Section 1
Consent

ARTICLE 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (1262a)

ARTICLE 1320. An acceptance may be express or implied. (n)

ARTICLE 1321. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with. (n)

ARTICLE 1322. An offer made through an agent is accepted from the time acceptance is communicated to him. (n)

ARTICLE 1323. An offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. (n)

ARTICLE 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. (n)

ARTICLE 1325. Unless it appears otherwise, business advertisements of things for sale are not definite offers, but mere invitations to make an offer. (n)

ARTICLE 1326. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears. (n)

ARTICLE 1327. The following cannot give consent to a contract:

- (1) Unemancipated minors;
- (2) Insane or demented persons, and deaf-mutes who do not know how to

ARTICLE 1329. The incapacity declared in article 1327 is subject to the modifications determined by law, and is understood to be without prejudice to special disqualifications established in the laws. (1264)

ARTICLE 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ARTICLE 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

A simple mistake of account shall give rise to its correction. (1266a)

ARTICLE 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n)

ARTICLE 1333. There is no mistake if the party alleging it knew the doubt, contingency or risk affecting the object of the contract. (n)

ARTICLE 1334. Mutual error as to the legal effect of an agreement when the real purpose of the parties is frustrated, may vitiate consent. (n)

ARTICLE 1335. There is violence when in order to wrest consent, serious or irresistible force is employed.

There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

To determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind.

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (1267a)

ARTICLE 1336. Violence or intimidation shall annul the obligation, although it may have been employed by a third person who did not take part in the contract. (1268)

ARTICLE 1337. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress. (n)

ARTICLE 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (1269)

ARTICLE 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

ARTICLE 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

ARTICLE 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge.

ARTICLE 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

ARTICLE 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages. (1270)

ARTICLE 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. (n)

ARTICLE 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (n)

Sec. 2

Object of Contracts

ARTICLE 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract. (1271a)

ARTICLE 1348. Impossible things or services cannot be the object of contracts. (1272)

ARTICLE 1349. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties. (1273)

Sec. 3

Cause of Contracts

ARTICLE 1350. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor. (1274)

ARTICLE 1351. The particular motives of the parties in entering into a contract are different from the cause thereof. (n)

ARTICLE 1352. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy. (1275a)

ARTICLE 1353. The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful. (1276)

ARTICLE 1354. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary. (1277)

ARTICLE 1355. Except in cases specified by law, lesion or inadequacy of cause shall

Form of Contracts

ARTICLE 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised. (1278a)

ARTICLE 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

ARTICLE 1358. The following must appear in a public document:

- (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;
- (2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;
- (3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;
- (4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles, 1403, No. 2 and 1405. (1280a)

CHAPTER 4 *Reformation of Instruments (n)*

ARTICLE 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

ARTICLE 1360. The principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code.

ARTICLE 1361. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.

ARTICLE 1362. If one party was mistaken and the other acted fraudulently or inequitably in such a way that the instrument does not show their true intention, the former may ask for the reformation of the instrument.

ARTICLE 1363. When one party was mistaken and the other knew or believed that the instrument did not state their real agreement, but concealed that fact from the former, the instrument may be reformed.

ARTICLE 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.

ARTICLE 1366. There shall be no reformation in the following cases:

- (1) Simple donations inter vivos wherein no condition is imposed;
- (2) Wills;
- (3) When the real agreement is void.

ARTICLE 1367. When one of the parties has brought an action to enforce the instrument, he cannot subsequently ask for its reformation.

ARTICLE 1368. Reformation may be ordered at the instance of either party or his successors in interest, if the mistake was mutual; otherwise, upon petition of the injured party, or his heirs and assigns.

ARTICLE 1369. The procedure for the reformation of instrument shall be governed by rules of court to be promulgated by the Supreme Court.

CHAPTER 5 *Interpretation of Contracts*

ARTICLE 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (1281)

ARTICLE 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

ARTICLE 1372. However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree. (1283)

ARTICLE 1373. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual. (1284)

ARTICLE 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (1285)

ARTICLE 1375. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract. (1286)

ARTICLE 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established. (1287)

ARTICLE 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity. (1288)

ARTICLE 1378. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If

shall be null and void. (1289)

ARTICLE 1379. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts. (n)

CHAPTER 6 *Rescissible Contracts*

ARTICLE 1380. Contracts validly agreed upon may be rescinded in the cases established by law. (1290)

ARTICLE 1381. The following contracts are rescissible:

- (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
- (2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
- (3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
- (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
- (5) All other contracts specially declared by law to be subject to rescission. (1291a)

ARTICLE 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

ARTICLE 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. (1294)

ARTICLE 1384. Rescission shall be only to the extent necessary to cover the damages caused. (n)

ARTICLE 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss. (1295)

ARTICLE 1386. Rescission referred to in Nos. 1 and 2 of article 1381 shall not take place with respect to contracts approved by the courts. (1296a)

ARTICLE 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence. (1297a)

ARTICLE 1388. Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.

If there are two or more alienations, the first acquirer shall be liable first, and so on successively. (1298a)

ARTICLE 1389. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known. (1299)

CHAPTER 7

Voidable Contracts

ARTICLE 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification. (n)

ARTICLE 1391. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases. (1301a)

ARTICLE 1392. Ratification extinguishes the action to annul a voidable contract. (1309a)

ARTICLE 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right. (1311a)

ARTICLE 1394. Ratification may be effected by the guardian of the incapacitated person. (n)

ARTICLE 1395. Ratification does not require the conformity of the contracting party who has no right to bring the action for annulment. (1312)

who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract. (1302a)

ARTICLE 1398. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages. (1303a)

ARTICLE 1399. When the defect of the contract consists in the incapacity of one of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him. (1304)

ARTICLE 1400. Whenever the person obliged by the decree of annulment to return the thing can not do so because it has been lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interest from the same date. (1307a)

ARTICLE 1401. The action for annulment of contracts shall be extinguished when the thing which is the object thereof is lost through the fraud or fault of the person who has a right to institute the proceedings.

If the right of action is based upon the incapacity of any one of the contracting parties, the loss of the thing shall not be an obstacle to the success of the action, unless said loss took place through the fraud or fault of the plaintiff. (1314a)

ARTICLE 1402. As long as one of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him. (1308)

CHAPTER 8

Unenforceable Contracts (n)

ARTICLE 1403. The following contracts are unenforceable, unless they are ratified:

- (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;
- (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:
 - (a) An agreement that by its terms is not to be performed within a year from the making thereof;
 - (b) A special promise to answer for the debt, default, or miscarriage of another;
 - (c) An agreement made in consideration of marriage, other than a mutual promise to marry;
 - (d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action or pay at the time some part of the purchase money; but when a sale is

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

ARTICLE 1404. Unauthorized contracts are governed by article 1317 and the principles of agency in Title X of this Book.

ARTICLE 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.

ARTICLE 1406. When a contract is enforceable under the Statute of Frauds, and a public document is necessary for its registration in the Registry of Deeds, the parties may avail themselves of the right under Article 1357.

ARTICLE 1407. In a contract where both parties are incapable of giving consent, express or implied ratification by the parent, or guardian, as the case may be, of one of the contracting parties shall give the contract the same effect as if only one of them were incapacitated.

If ratification is made by the parents or guardians, as the case may be, of both contracting parties, the contract shall be validated from the inception.

ARTICLE 1408. Unenforceable contracts cannot be assailed by third persons.

CHAPTER 9

Void and Inexistent Contracts

ARTICLE 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

ARTICLE 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

ARTICLE 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

ARTICLE 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

- (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
- (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply his promise. (1306)

ARTICLE 1413. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

ARTICLE 1414. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property.

ARTICLE 1415. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands allow recovery of money or property delivered by the incapacitated person.

ARTICLE 1416. When the agreement is not illegal per se but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

ARTICLE 1417. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess.

ARTICLE 1418. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit.

ARTICLE 1419. When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

ARTICLE 1420. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

ARTICLE 1421. The defense of illegality of contract is not available to third persons whose interests are not directly affected.

ARTICLE 1422. A contract which is the direct result of a previous illegal contract, is also void and inexistent.

TITLE III *Natural Obligations*

ARTICLE 1423. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles.

third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later voluntarily reimburses the third person, the obligor cannot recover what he has paid.

ARTICLE 1426. When a minor between eighteen and twenty-one years of age who has entered into a contract without the consent of the parent or guardian, after the annulment of the contract voluntarily returns the whole thing or price received, notwithstanding the fact that he has not been benefited thereby, there is no right to demand the thing or price thus returned.

ARTICLE 1427. When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a fungible thing in fulfillment of the obligation, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith. (1160A)

ARTICLE 1428. When, after an action to enforce a civil obligation has failed the defendant voluntarily performs the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered.

ARTICLE 1429. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.

ARTICLE 1430. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.

TITLE IV *Estoppel (n)*

ARTICLE 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

ARTICLE 1432. The principles of estoppel are hereby adopted insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws.

ARTICLE 1433. Estoppel may in pais or by deed.

ARTICLE 1434. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

ARTICLE 1435. If a person in representation of another sells or alienates a thing, the former cannot subsequently set up his own title as against the buyer or grantee.

ARTICLE 1436. A lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

ARTICLE 1437. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

(1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;

(2) The party precluded must intend that the other should act upon the facts

misrepresentation.

ARTICLE 1438. One who has allowed another to assume apparent ownership of personal property for the purpose of making any transfer of it, cannot, if he received the sum for which a pledge has been constituted, set up his own title to defeat the pledge of the property, made by the other to a pledgee who received the same in good faith and for value.

ARTICLE 1439. Estoppel is effective only as between the parties thereto or their successors in interest.

TITLE V
Trusts (n)

CHAPTER 1
General Provisions

ARTICLE 1440. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

ARTICLE 1441. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

ARTICLE 1442. The principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, the Rules of Court and special laws are hereby adopted.

CHAPTER 2
Express Trusts

ARTICLE 1443. No express trusts concerning an immovable or any interest therein may be proved by parol evidence.

ARTICLE 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

ARTICLE 1445. No trust shall fail because the trustee appointed declines the designation, unless the contrary should appear in the instrument constituting the trust.

ARTICLE 1446. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary.

CHAPTER 3
Implied Trusts

ARTICLE 1447. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in article 1442 shall be applicable.

ARTICLE 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it

ARTICLE 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom its is paid. The latter may redeem the property and compel a conveyance thereof to him.

ARTICLE 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

ARTICLE 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

ARTICLE 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

ARTICLE 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

ARTICLE 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

ARTICLE 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

ARTICLE 1457. An implied trust may be proved by oral evidence.

TITLE VI

Sales

CHAPTER 1

Nature and Form of the Contract

ARTICLE 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional. (1445a)

ARTICLE 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. (n)

ARTICLE 1460. A thing is determinate when it is particularly designated or physical segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties. (n)

ARTICLE 1461. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

raised, or acquired by the seller after the perfection of the contract of sale, in this Title called "future goods."

There may be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen. (n)

ARTICLE 1463. The sole owner of a thing may sell an undivided interest therein. (n)

ARTICLE 1464. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from goods of the same kind and quality, unless a contrary intent appears. (n)

ARTICLE 1465. Things subject to a resolutive condition may be the object of the contract of sale. (n)

ARTICLE 1466. In construing a contract containing provisions characteristic of both the contract of sale and of the contract of agency to sell, the essential clauses of the whole instrument shall be considered. (n)

ARTICLE 1467. A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work. (n)

ARTICLE 1468. If the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of the money or its equivalent; otherwise, it is a sale. (1446a)

ARTICLE 1469. In order that the price may be considered certain, it shall be sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a special person or persons.

Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.

If the third person or persons acted in bad faith or by mistake, the courts may fix the price.

Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be. (1447a)

ARTICLE 1470. Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. (n)

ARTICLE 1471. If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract. (n)

ARTICLE 1472. The price of securities, grain, liquids, and other things shall also be considered certain, when the price fixed is that which the thing sold would have on a definite day, or in a particular exchange or market, or when an amount is fixed above or below the price on such day, or in such exchange or market, provided said amount

ARTICLE 1474. Where the price cannot be determined in accordance with the preceding articles, or in any other manner, the contract is inefficacious. However, if the thing or any part thereof has been delivered to and appropriated by the buyer he must pay a reasonable price therefor. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (n)

ARTICLE 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

ARTICLE 1476. In the case of a sale by auction:

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller, unless otherwise provided by law or by stipulation.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf or for the auctioneer, to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (n)

ARTICLE 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. (n)

ARTICLE 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price. (n)

ARTICLE 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price. (1451a)

ARTICLE 1480. Any injury to or benefit from the thing sold, after the contract has been perfected, from the moment of the perfection of the contract to the time of delivery, shall be governed by articles 1163 to 1165, and 1262.

This rule shall apply to the sale of fungible things, made independently and for a single price, or without consideration of their weight, number, or measure.

Should fungible things be sold for a price fixed according to weight, number, or measure, the risk shall not be imputed to the vendee until they have been weighed, counted, or measured and delivered, unless the latter has incurred in delay. (1452a)

ARTICLE 1481. In the contract of sale of goods by description or by sample, the contract may be rescinded if the bulk of the goods delivered do not correspond with the description or the sample, and if the contract be by sample as well as description,

ARTICLE 1482. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract. (1454a)

ARTICLE 1483. Subject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. (n)

ARTICLE 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (1454-A-a)

ARTICLE 1485. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing. (1454-A-a)

ARTICLE 1486. In the case referred to in the two preceding articles, a stipulation that the installments or rents paid shall not be returned to the vendee or lessee shall be valid insofar as the same may not be unconscionable under the circumstances. (n)

ARTICLE 1487. The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary. (1455a)

ARTICLE 1488. The expropriation of property for public use is governed by special laws. (1456)

CHAPTER 2 *Capacity to Buy or Sell*

ARTICLE 1489. All persons who are authorized in this Code to obligate themselves, may enter into a contract of sale, saving the modifications contained in the following articles.

Where necessities are those sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefor. Necessaries are those referred to in article 290. (1457a)

ARTICLE 1490. The husband and the wife cannot sell property to each other, except:

- (1) When a separation of property was agreed upon in the marriage settlements; or
- (2) When there has been a judicial separation of property under article 191. (1458a)

ARTICLE 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(3) Executors and administrators, the property of the estate under administration;

(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government-owned or controlled corporation, or institution, the administration of which has been intrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession;

(6) Any others specially disqualified by law. (1459a)

ARTICLE 1492. The prohibitions in the two preceding articles are applicable to sales in legal redemption, compromises and renunciations. (n)

CHAPTER 3

Effects of the Contract When the Thing Sold Has Been Lost

ARTICLE 1493. If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost, the contract shall be without any effect.

But if the thing should have been lost in part only, the vendee may choose between withdrawing from the contract and demanding the remaining part, paying its price in proportion to the total sum agreed upon. (1460a)

ARTICLE 1494. Where the parties purport a sale of specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(1) As avoided; or

(2) As valid in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the agreed price for the goods in which the ownership will pass, if the sale was divisible. (n)

CHAPTER 4

Obligations of the Vendor

Section 1

General Provisions

ARTICLE 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (1461a)

ARTICLE 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. (n)

the control and possession of the vendee. (1462a)

ARTICLE 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. (1463a)

ARTICLE 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

ARTICLE 1500. There may also be tradition constitutum possessorium. (n)

ARTICLE 1501. With respect to incorporeal property, the provisions of the first paragraph of article 1498 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery. (1464)

ARTICLE 1502. When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revest the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time. (n)

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact. (n)

ARTICLE 1503. When there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are

the goods, without notice of the facts making the transfer wrongful. (n)

ARTICLE 1504. Unless otherwise agreed, the goods remain at the seller's risk until the ownership therein is transferred to the buyer, but when the ownership therein is transferred to the buyer the goods are at the buyer's risk whether actual delivery has been made or not, except that:

(1) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery;

(2) Where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. (n)

ARTICLE 1505. Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Nothing in this Title, however, shall affect:

(1) The provisions of any factors' act, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(2) The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction;

(3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws. (n)

ARTICLE 1506. Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (n)

ARTICLE 1507. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. (n)

ARTICLE 1508. A negotiable document of title may be negotiated by delivery:

(1) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer; or

(2) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. (n)

Subsequent negotiations may be made in like manner. (n)

ARTICLE 1510. If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to bearer, to a specified person or order of a specified person or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this Title. But nothing in this Title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or placing thereon the words "not negotiable," "non-negotiable," or the like. (n)

ARTICLE 1511. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. (n)

ARTICLE 1512. A negotiable document of title may be negotiated:

- (1) By the owner thereof; or
- (2) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. (n)

ARTICLE 1513. A person to whom a negotiable document of title has been duly negotiated acquires thereby:

- (1) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and
- (2) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (n)

ARTICLE 1514. A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification to such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment of execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. (n)

ARTICLE 1515. Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of

- (1) That the document is genuine;
- (2) That he has a legal right to negotiate or transfer it;
- (3) That he has knowledge of no fact which would impair the validity or worth of the document; and
- (4) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (n)

ARTICLE 1517. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. (n)

ARTICLE 1518. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion. (n)

ARTICLE 1519. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in possession of such bailee, be attached by garnishment or otherwise or be levied under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (n)

ARTICLE 1520. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to suchd from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (n)

ARTICLE 1521. Whether it is for the buyer to take possession of the goods or of the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he has one, and if not his residence; but in case of a contract of sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

Where by a contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf.

Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (n)

disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest.

In the preceding two paragraphs, if the subject matter is indivisible, the buyer may reject the whole of the goods.

The provisions of this article are subject to any usage of trade, special agreement, or course of dealing between the parties. (n)

ARTICLE 1523. Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in article 1503, first, second and third paragraphs, or unless a contrary intent appears.

Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (n)

ARTICLE 1524. The vendor shall not be bound to deliver the thing sold, if the vendee has not paid him the price, or if no period for the payment has been fixed in the contract. (1466)

ARTICLE 1525. The seller of goods is deemed to be an unpaid seller within the meaning of this Title:

- (1) When the whole of the price has not been paid or tendered;
- (2) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

In articles 1525 to 1535 the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller. (n)

ARTICLE 1526. Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

- (3) A right of resale as limited by this Title;
- (4) A right to rescind the sale as likewise limited by this Title.

Where the ownership in the goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the ownership has passed to the buyer. (n)

ARTICLE 1527. Subject to the provisions of this Title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

- (1) Where the goods have been sold without any stipulation as to credit;
- (2) Where the goods have been sold on credit, but the term of credit has expired;
- (3) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (n)

ARTICLE 1528. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (n)

ARTICLE 1529. The unpaid seller of goods loses his lien thereon:

- (1) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the ownership in the goods or the right to the possession thereof;
- (2) When the buyer or his agent lawfully obtains possession of the goods;
- (3) By waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (n)

ARTICLE 1530. Subject to the provisions of this Title, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (n)

ARTICLE 1531. Goods are in transit within the meaning of the preceding article:

- (1) From the time when they are delivered to a carrier by land, water, or, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;
- (2) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that further destination for the goods may have been indicated by the buyer;

(3) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

If the goods are delivered to a ship, freight train, truck, or airplane chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the carrier as such or as agent of the buyer.

If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (n)

ARTICLE 1532. The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. (n)

ARTICLE 1533. Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract of sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract of sale.

Where a resale is made, as authorized in this article, the buyer acquires a good title as against the original buyer.

It is not essential to the validity of resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract of sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the resale was made.

It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. He cannot, however, directly or indirectly buy the goods. (n)

ARTICLE 1534. An unpaid seller having the right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the ownership in the goods, where he expressly reserved the right to do so in case the buyer should make

The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the right of rescission was asserted. (n)

ARTICLE 1535. Subject to the provisions of this Title, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. (n)

ARTICLE 1536. The vendor is not bound to deliver the thing sold in case the vendee should lose the right to make use of the terms as provided in article 1198. (1467a)

ARTICLE 1537. The vendor is bound to deliver the thing sold and its accessions and accessories in the condition in which they were upon the perfection of the contract.

All the fruits shall pertain to the vendee from the day on which the contract was perfected. (1468a)

ARTICLE 1538. In case of loss, deterioration or improvement of the thing before its delivery, the rules in article 1189 shall be observed, the vendor being considered the debtor. (n)

ARTICLE 1539. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area of inferior quality, he may rescind the sale. (1469a)

ARTICLE 1540. If, in the case of the preceding article, there is a greater area or number in the immovable than that stated in the contract, the vendee may accept the area included in the contract and reject the rest. If he accepts the whole area, he must pay for the same at the contract rate. (1470a)

ARTICLE 1541. The provisions of the two preceding articles shall apply to judicial sales. (n)

ARTICLE 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)

ARTICLE 1543. The actions arising from articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery. (1472a)

ARTICLE 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473)

Sec. 3

Conditions and Warranties

ARTICLE 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing. (n)

ARTICLE 1546. Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer. (n)

ARTICLE 1547. In a contract of sale, unless a contrary intention appears, there is:

- (1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;
- (2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest. (n)

Sub-Section 1

Warranty in Case of Eviction

ARTICLE 1548. Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

ARTICLE 1549. The vendee need not appeal from the decision in order that the vendor may become liable for eviction. (n)

ARTICLE 1550. When adverse possession had been commenced before the sale but the prescriptive period is completed after the transfer, the vendor shall not be liable for eviction. (n)

ARTICLE 1551. If the property is sold for nonpayment of taxes due and not made known to the vendee before the sale, the vendor is liable for eviction. (n)

ARTICLE 1552. The judgment debtor is also responsible for eviction in judicial sales, unless it is otherwise decreed in the judgment. (n)

ARTICLE 1553. Any stipulation exempting the vendor from the obligation to answer for eviction shall be void, if he acted in bad faith. (1476)

ARTICLE 1554. If the vendee has renounced the right to warranty in case of eviction, and eviction should take place, the vendor shall only pay the value which the thing sold had at the time of the eviction. Should the vendee have made the waiver with knowledge of the risks of eviction and assumed its consequences, the vendor shall not be liable. (1477)

ARTICLE 1555. When the warranty has been agreed upon or nothing has been stipulated on this point, in case eviction occurs, the vendee shall have the right to demand of the vendor:

- (1) The return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale;
- (2) The income or fruits, if he has been ordered to deliver them to the party who won the suit against him;
- (3) The costs of the suit which caused the eviction, and, in a proper case, those of the suit brought against the vendor for the warranty;
- (4) The expenses of the contract, if the vendee has paid them;
- (5) The damages and interests, and ornamental expenses, if the sale was made in bad faith. (1478)

ARTICLE 1556. Should the vendee lose, by reason of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would not have bought it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other encumbrances than those which it had when he acquired it.

He may exercise this right of action, instead of enforcing the vendor's liability for eviction.

The same rule shall be observed when two or more things have been jointly sold for a lump sum, or for a separate price for each of them, if it should clearly appear that the vendee would not have purchased one without the other. (1479a)

ARTICLE 1557. The warranty cannot be enforced until a final judgment has been rendered, whereby the vendee loses the thing acquired or a part thereof. (1480)

ARTICLE 1558. The vendor shall not be obliged to make good the proper warranty, unless he is summoned in the suit for eviction at the instance of the vendee. (1481a)

ARTICLE 1559. The defendant vendee shall ask, within the time fixed in the Rules of Court for answering the complaint, that the vendor be made a co-defendant.

may ask for the rescission of the contract, unless he should prefer the appropriate indemnity. Neither right can be exercised if the non-apparent burden or servitude is recorded in the Registry of Property, unless there is an express warranty that the thing is free from all burdens and encumbrances.

Within one year, to be computed from the execution of the deed, the vendee may bring the action for rescission, or sue for damages.

One year having elapsed, he may only bring an action for damages within an equal period, to be counted from the date on which he discovered the burden or servitude. (1483a)

Sub-Sec. 2

Warranty Against Hidden Defects of or Encumbrances Upon the Thing Sold

ARTICLE 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them. (1484a)

ARTICLE 1562. In a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods, as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) Where the goods are brought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality. (n)

ARTICLE 1563. In the case of contract of sale of a specified article under its patent or other trade name, there is no warranty as to its fitness for any particular purpose, unless there is a stipulation to the contrary. (n)

ARTICLE 1564. An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade. (n)

ARTICLE 1565. In the case of a contract of sale by sample, if the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (n)

ARTICLE 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold. (1485)

ARTICLE 1567. In the cases of articles 1561, 1562, 1564, 1565 and 1566, the vendee may elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case. (1486a)

ARTICLE 1568. If the thing sold should be lost in consequence of the hidden faults, and the vendor was aware of them, he shall bear the loss, and shall be obliged to return the price and refund the expenses of the contract, with damages. If he was not

latter may demand of the vendor the price which he paid, less the value which the thing had when it was lost.

If the vendor acted in bad faith, he shall pay damages to the vendee. (1488a)

ARTICLE 1570. The preceding articles of this Sub-Section shall be applicable to judicial sales, except that the judgment debtor shall not be liable for damages. (1489a)

ARTICLE 1571. Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold. (1490)

ARTICLE 1572. If two or more animals are sold together, whether for a lump sum or for a separate price for each of them, the redhibitory defect of one shall only give rise to its redhibition, and not that of the others; unless it should appear that the vendee would not have purchased the sound animal or animals without the defective one.

The latter case shall be presumed when a team, yoke pair, or set is bought, even if a separate price has been fixed for each one of the animals composing the same. (1491)

ARTICLE 1573. The provisions of the preceding article with respect to the sale of animals shall in like manner be applicable to the sale of other things. (1492)

ARTICLE 1574. There is no warranty against hidden defects of animals sold at fairs or at public auctions, or of live stock sold as condemned. (1493a)

ARTICLE 1575. The sale of animals suffering from contagious diseases shall be void.

A contract of sale of animals shall also be void if the use or service for which they are acquired has been stated in the contract, and they are found to be unfit therefor. (1494a)

ARTICLE 1576. If the hidden defect of animals, even in case a professional inspection has been made, should be of such a nature that expert knowledge is not sufficient to discover it, the defect shall be considered as redhibitory.

But if the veterinarian, through ignorance or bad faith should fail to discover or disclose it, he shall be liable for damages. (1495)

ARTICLE 1577. The redhibitory action, based on the faults or defects of animals, must be brought within forty days from the date of their delivery to the vendee.

This action can only be exercised with respect to faults and defects which are determined by law or by local customs. (1496a)

ARTICLE 1578. If the animal should die within three days after its purchase, the vendor shall be liable if the disease which cause the death existed at the time of the contract. (1497a)

ARTICLE 1579. If the sale be rescinded, the animal shall be returned in the condition in which it was sold and delivered, the vendee being answerable for any injury due to his negligence, and not arising from the redhibitory fault or defect. (1498)

ARTICLE 1580. In the sale of animals with redhibitory defects, the vendee shall also enjoy the right mentioned in article 1567; but he must make use thereof within the same period which has been fixed for the exercise of the redhibitory action. (1499)

ARTICLE 1581. The form of sale of large cattle shall be governed by special laws. (n)

thing sold at the time and place stipulated in the contract.

If the time and place should not have been stipulated, the payment must be made at the time and place of the delivery of the thing sold. (1500a)

ARTICLE 1583. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

Where there is a contract of sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses without just cause to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. (n)

ARTICLE 1584. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract if there is no stipulation to the contrary.

Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before the payment of the price, in the absence of agreement or usage of trade permitting such examination. (n)

ARTICLE 1585. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (n)

ARTICLE 1586. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract of sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach in any promise of warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. (n)

ARTICLE 1587. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. If he voluntarily constitutes himself a depositary thereof, he shall be liable as such. (n)

ARTICLE 1588. If there is no stipulation as specified in the first paragraph of article 1523, when the buyer's refusal to accept the goods is without just cause, the title thereto passes to him from the moment they are placed at his disposal. (n)

ARTICLE 1589. The vendee shall owe interest for the period between the delivery of the thing and the payment of the price, in the following three cases:

for the payment of the price. (1501a)

ARTICLE 1590. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should he have reasonable grounds to fear such disturbance, by a vindicatory action or a foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment. A mere act of trespass shall not authorize the suspension of the payment of the price. (1502a)

ARTICLE 1591. Should the vendor have reasonable grounds to fear the loss of immovable property sold and its price, he may immediately sue for the rescission of the sale.

Should such ground not exist, the provisions of article 1191 shall be observed. (1503)

ARTICLE 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term. (1504a)

ARTICLE 1593. With respect to movable property, the rescission of the sale shall of right take place in the interest of the vendor, if the vendee, upon the expiration of the period fixed for the delivery of the thing, should not have appeared to receive it, or, having appeared, he should not have tendered the price at the same time, unless a longer period has been stipulated for its payment. (1505)

CHAPTER 6

Actions for Breach of Contract of Sale of Goods

ARTICLE 1594. Actions for breach of the contract of sale of goods shall be governed particularly by the provisions of this Chapter, and as to matters not specifically provided for herein, by other applicable provisions of this Title. (n)

ARTICLE 1595. Where, under a contract of sale, the ownership of the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods.

Where, under a contract of sale, the price is payable on a certain day, irrespective of delivery or of transfer of title and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price although the ownership in the goods has not passed. But it shall be a defense to such an action that the seller at any time before the judgment in such action has manifested an inability to perform the contract of sale on his part or an intention not to perform it.

Although the ownership in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of article 1596, fourth paragraph, are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. (n)

ARTICLE 1596. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

fixed for acceptance, then at the time of the refusal to accept.

If, while labor or expense of material amount is necessary on the part of the seller to enable him to fulfill his obligations under the contract of sale, the buyer repudiates the contract or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for labor performed or expenses made before receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in awarding the damages. (n)

ARTICLE 1597. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract of sale, or has manifested his inability to perform his obligations thereunder, or has committed a breach thereof, the seller may totally rescind the contract of sale by giving notice of his election so to do to the buyer. (n)

ARTICLE 1598. Where the seller has broken a contract to deliver specific or ascertained goods, a court may, on the application of the buyer, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may deem just. (n)

ARTICLE 1599. Where there is a breach of warranty by the seller, the buyer may, at his election:

- (1) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;
- (2) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;
- (3) Refuse to accept the goods, and maintain an action against the seller for damages for the breach of warranty;
- (4) Rescind the contract of sale and refuse to receive the goods or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

When the buyer has claimed and been granted a remedy in anyone of these ways, no other remedy can thereafter be granted, without prejudice to the provisions of the second paragraph of article 1191.

Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods without protest, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the ownership was transferred to the buyer. But if deterioration or injury of the goods is due to the breach or warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

Where the buyer is entitled to rescind the sale and elects to do so, he shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the payment of any portion of the price which has been paid, and

difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (n)

CHAPTER 7
Extinguishment of Sale

ARTICLE 1600. Sales are extinguished by the same causes as all other obligations, by those stated in the preceding articles of this Title, and by conventional or legal redemption. (1506)

Section 1
Conventional Redemption

ARTICLE 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of article 1616 and other stipulations which may have been agreed upon. (1507)

ARTICLE 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

- (1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) When the vendor remains in possession as lessee or otherwise;
- (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (4) When the purchaser retains for himself a part of the purchase price;
- (5) When the vendor binds himself to pay the taxes on the thing sold;
- (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. (n)

ARTICLE 1603. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage. (n)

ARTICLE 1604. The provisions of article 1602 shall also apply to a contract purporting to be an absolute sale. (n)

ARTICLE 1605. In the cases referred to in articles 1602 and 1604, the apparent vendor may ask for the reformation of the instrument. (n)

ARTICLE 1606. The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase. (1508a)

ARTICLE 1608. The vendor may bring his action against every possessor whose right is derived from the vendee, even if in the second contract no mention should have been made of the right to repurchase, without prejudice to the provisions of the Mortgage Law and the Land Registration Law with respect to third persons. (1510)

ARTICLE 1609. The vendee is subrogated to the vendor's rights and actions. (1511)

ARTICLE 1610. The creditors of the vendor cannot make use of the right of redemption against the vendee, until after they have exhausted the property of the vendor. (1512)

ARTICLE 1611. In a sale with a right to repurchase, the vendee of a part of an undivided immovable who acquires the whole thereof in the case of article 498, may compel the vendor to redeem the whole property, if the latter wishes to make use of the right of redemption. (1513)

ARTICLE 1612. If several persons, jointly and in the same contract, should sell an undivided immovable with a right of repurchase, none of them may exercise this right for more than his respective share.

The same rule shall apply if the person who sold an immovable alone has left several heirs, in which case each of the latter may only redeem the part which he may have acquired. (1514)

ARTICLE 1613. In the case of the preceding article, the vendee may demand of all the vendors or co-heirs that they come to an agreement upon the repurchase of the whole thing sold; and should they fail to do so, the vendee cannot be compelled to consent to a partial redemption. (1515)

ARTICLE 1614. Each one of the co-owners of an undivided immovable who may have sold his share separately, may independently exercise the right of repurchase as regards his own share, and the vendee cannot compel him to redeem the whole property. (1516)

ARTICLE 1615. If the vendee should leave several heirs, the action for redemption cannot be brought against each of them except for his own share, whether the thing be undivided, or it has been partitioned among them.

But if the inheritance has been divided, and the thing sold has been awarded to one of the heirs, the action for redemption may be instituted against him for the whole. (1517)

ARTICLE 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale;

(2) The necessary and useful expenses made on the thing sold. (1518)

ARTICLE 1617. If at the time of the execution of the sale there should be on the land, visible or growing fruits, there shall be no reimbursement for or prorating of those existing at the time of redemption, if no indemnity was paid by the purchaser when the sale was executed.

Should there have been no fruits at the time of the sale and some exist at the time of redemption, they shall be prorated between the redemptioner and the vendee, giving the latter the part corresponding to the time he possessed the land in the last year, counted from the anniversary of the date of the sale. (1519a)

ARTICLE 1618. The vendor who recovers the thing sold shall receive it free from all

Sec. 2
Legal Redemption

ARTICLE 1619. Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other transaction whereby ownership is transmitted by onerous title. (1521a)

ARTICLE 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common. (1522a)

ARTICLE 1621. The owners of adjoining lands shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land.

This right is not applicable to adjacent lands which are separated by brooks, drains, ravines, roads and other apparent servitudes for the benefit of other estates.

If two or more adjoining owners desire to exercise the right of redemption at the same time, the owner of the adjoining land of smaller area shall be preferred; and should both lands have the same area, the one who first requested the redemption. (1523a)

ARTICLE 1622. Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.

If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred. (n)

ARTICLE 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners. (1524a)

CHAPTER 8
Assignment of Credits and Other Incorporeal Rights

ARTICLE 1624. An assignment of creditors and other incorporeal rights shall be perfected in accordance with the provisions of article 1475. (n)

ARTICLE 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property. (1526)

ARTICLE 1626. The debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation. (1527)

doubtful; but not for the solvency of the debtor, unless it has been so expressly stipulated or unless the insolvency was prior to the sale and of common knowledge.

Even in these cases he shall only be liable for the price received and for the expenses specified in No. 1 of article 1616.

The vendor in bad faith shall always be answerable for the payment of all expenses, and for damages. (1529)

ARTICLE 1629. In case the assignor in good faith should have made himself responsible for the solvency of the debtor, and the contracting parties should not have agreed upon the duration of the liability, it shall last for one year only, from the time of the assignment if the period had already expired.

If the credit should be payable within a term or period which has not yet expired, the liability shall cease one year after the maturity. (1530a)

ARTICLE 1630. One who sells an inheritance without enumerating the things of which it is composed, shall only be answerable for his character as an heir. (1531)

ARTICLE 1631. One who sells for a lump sum the whole of certain rights, rents, or products, shall comply by answering for the legitimacy of the whole in general; but he shall not be obliged to warrant each of the various parts of which it may be composed, except in the case of eviction from the whole or the part of greater value. (1532a)

ARTICLE 1632. Should the vendor have profited by some of the fruits or received anything from the inheritance sold, he shall pay the vendee thereof, if the contrary has not been stipulated. (1533)

ARTICLE 1633. The vendee shall, on his part, reimburse the vendor for all that the latter may have paid for the debts of and charges on the estate and satisfy the credits he may have against the same, unless there is an agreement to the contrary. (1534)

ARTICLE 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him. (1535)

ARTICLE 1635. From the provisions of the preceding article shall be excepted the assignments or sales made:

- (1) To a co-heir or co-owner of the right assigned;
- (2) To a creditor in payment of his credit;
- (3) To the possessor of a tenement or piece of land which is subject to the right in litigation assigned. (1536)

CHAPTER 9 *General Provisions*

ARTICLE 1636. In the preceding articles in this Title governing the sale of goods, unless the context or subject matter otherwise requires:

- (1) "Document of title to goods" includes any bill of lading, dock warrant, "quedan," or warehouse receipt or order for the delivery of goods, or any other

"Goods" includes all chattels personal but not things in action or money of legal tender in the Philippines. The term includes growing fruits or crops.

"Order" relating to documents of title means an order by indorsement on the documents.

"Quality of goods" includes their state or condition.

"Specific goods" means goods identified and agreed upon at the time a contract of sale is made.

An antecedent or pre-existing claim, whether for money or not, constitutes "value" where goods or documents of title are taken either in satisfaction thereof or as security therefor.

(2) A person is insolvent within the meaning of this Title who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether insolvency proceedings have been commenced or not.

(3) Goods are in a "deliverable state" within the meaning of this Title when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. (n)

ARTICLE 1637. The provisions of this Title are subject to the rules laid down by the Mortgage Law and the Land Registration Law with regard to immovable property. (1537a)

TITLE VII *Barter or Exchange*

ARTICLE 1638. By the contract of barter or exchange one of the parties binds himself to give one thing in consideration of the other's promise to give another thing. (1538a)

ARTICLE 1639. If one of the contracting parties, having received the thing promised him in barter, should prove that it did not belong to the person who gave it, he cannot be compelled to deliver that which he offered in exchange, but he shall be entitled to damages. (1539a)

ARTICLE 1640. One who loses by eviction the thing received in barter may recover that which he gave in exchange with a right to damages, or he may only demand an indemnity for damages. However, he can only make use of the right to recover the thing which he has delivered while the same remains in the possession of the other party, and without prejudice to the rights acquired in good faith in the meantime by a third person. (1540a)

ARTICLE 1641. As to all matters not specifically provided for in this Title, barter shall be governed by the provisions of the preceding Title relating to sales. (1541a)

TITLE VIII *Lease*

CHAPTER 1 *General Provisions*

ARTICLE 1642. The contract of lease may be of things, or of work and service. (1542)

ARTICLE 1643. In the lease of things, one of the parties binds himself to give to

execute a piece of work or to render to the other some service for a price certain, but the relation of principal and agent does not exist between them. (1544a)

ARTICLE 1645. Consumable goods cannot be the subject matter of a contract of lease, except when they are merely to be exhibited or when they are accessory to an industrial establishment. (1545a)

CHAPTER 2

Lease of Rural and Urban Lands

Section 1

General Provisions

ARTICLE 1646. The persons disqualified to buy referred to in articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein. (n)

ARTICLE 1647. If a lease is to be recorded in the Registry of Property, the following persons cannot constitute the same without proper authority: the husband with respect to the wife's paraphernal real estate, the father or guardian as to the property of the minor or ward, and the manager without special power. (1548a)

ARTICLE 1648. Every lease of real estate may be recorded in the Registry of Property. Unless a lease is recorded, it shall not be binding upon third persons. (1549a)

ARTICLE 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary. (n)

ARTICLE 1650. When in the contract of lease of things there is no express prohibition, the lessee may sublet the thing leased, in whole or in part, without prejudice to his responsibility for the performance of the contract toward the lessor. (1550)

ARTICLE 1651. Without prejudice to his obligation toward the sublessor, the sublessee is bound to the lessor for all acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee. (1551)

ARTICLE 1652. The sublessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sublessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sublease, at the time of the extra-judicial demand by the lessor.

Payments of rent in advance by the sublessee shall be deemed not to have been made, so far as the lessor's claim is concerned, unless said payments were effected in virtue of the custom of the place. (1552a)

ARTICLE 1653. The provisions governing warranty, contained in the Title on Sales, shall be applicable to the contract of lease.

In the cases where the return of the price is required, reduction shall be made in proportion to the time during which the lessee enjoyed the thing. (1553)

Sec. 2

Rights and Obligations of the Lessor and the Lessee

ARTICLE 1654. The lessor is obliged:

- (1) To deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended;

(3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract. (1554a)

ARTICLE 1655. If the thing leased is totally destroyed by a fortuitous event, the lease is extinguished. If the destruction is partial, the lessee may choose between a proportional reduction of the rent and a rescission of the lease. (n)

ARTICLE 1656. The lessor of a business or industrial establishment may continue engaging in the same business or industry to which the lessee devotes the thing leased, unless there is a stipulation to the contrary. (n)

ARTICLE 1657. The lessee is obliged:

- (1) To pay the price of the lease according to the terms stipulated;
- (2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;
- (3) To pay expenses for the deed of lease. (1555)

ARTICLE 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased. (n)

ARTICLE 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force. (1556)

ARTICLE 1660. If a dwelling place or any other building intended for human habitation is in such a condition that its use brings imminent and serious danger to life or health, the lessee may terminate the lease at once by notifying the lessor, even if at the time the contract was perfected the former knew of the dangerous condition or waived the right to rescind the lease on account of this condition. (n)

ARTICLE 1661. The lessor cannot alter the form of the thing leased in such a way as to impair the use to which the thing is devoted under the terms of the lease. (1557a)

ARTICLE 1662. If during the lease it should become necessary to make some urgent repairs upon the thing leased, which cannot be deferred until the termination of the lease, the lessee is obliged to tolerate the work, although it may be very annoying to him, and although during the same, he may be deprived of a part of the premises.

If the repairs last more than forty days the rent shall be reduced in proportion to the time — including the first forty days — and the part of the property of which the lessee has been deprived.

When the work is of such a nature that the portion which the lessee and his family need for their dwelling becomes uninhabitable, he may rescind the contract if the main purpose of the lease is to provide a dwelling place for the lessee. (1558a)

ARTICLE 1663. The lessee is obliged to bring to the knowledge of the proprietor, within the shortest possible time, every usurpation or untoward act which any third person may have committed or may be openly preparing to carry out upon the thing leased.

He is also obliged to advise the owner, with the same urgency, of the need of all repairs included in No. 2 of article 1654.

ARTICLE 1664. The lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; but the lessee shall have a direct action against the intruder.

There is a mere act of trespass when the third person claims no right whatever. (1560a)

ARTICLE 1665. The lessee shall return the thing leased, upon the termination of the lease, as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause. (1561a)

ARTICLE 1666. In the absence of a statement concerning the condition of the thing at the time the lease was constituted, the law presumes that the lessee received it in good condition, unless there is proof to the contrary. (1562)

ARTICLE 1667. The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity. (1563a)

ARTICLE 1668. The lessee is liable for any deterioration caused by members of his household and by guests and visitors. (1564a)

ARTICLE 1669. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand. (1565)

ARTICLE 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in articles 1682 and 1687. The other terms of the original contract shall be revived. (1566a)

ARTICLE 1671. If the lessee continues enjoying the thing after the expiration of the contract, over the lessor's objection, the former shall be subject to the responsibilities of a possessor in bad faith. (n)

ARTICLE 1672. In case of an implied new lease, the obligations contracted by a third person for the security of the principal contract shall cease with respect to the new lease. (1567)

ARTICLE 1673. The lessor may judicially eject the lessee for any of the following causes:

- (1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687, has expired;
- (2) Lack of payment of the price stipulated;
- (3) Violation of any of the conditions agreed upon in the contract;
- (4) When the lessee devotes the thing leased to any use or service not stipulated which causes the deterioration thereof; or if he does not observe the requirement in No. 2 of article 1657, as regards the use thereof.

The ejectment of tenants of agricultural lands is governed by special laws. (1569a)

ARTICLE 1674. In ejectment cases where an appeal is taken the remedy granted in article 539, second paragraph, shall also apply, if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is prima facie meritorious. The period of ten days referred to in said article shall be counted from the

ARTICLE 1676. The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

If the buyer makes use of this right, the lessee may demand that he be allowed to gather the fruits of the harvest which corresponds to the current agricultural year and that the vendor indemnify him for damages suffered.

If the sale is fictitious, for the purpose of extinguishing the lease, the supposed vendee cannot make use of the right granted in the first paragraph of this article. The sale is presumed to be fictitious if at the time the supposed vendee demands the termination of the lease, the sale is not recorded in the Registry of Property. (1571a)

ARTICLE 1677. The purchaser in a sale with the right of redemption cannot make use of the power to eject the lessee until the end of the period for the redemption. (1572)

ARTICLE 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished. (n)

ARTICLE 1679. If nothing has been stipulated concerning the place and the time for the payment of the lease, the provisions of article 1251 shall be observed as regards the place; and with respect to the time, the custom of the place shall be followed. (1574)

Sec. 3

Special Provisions for Leases of Rural Lands

ARTICLE 1680. The lessee shall have no right to a reduction of the rent on account of the sterility of the land leased, or by reason of the loss of fruits due to ordinary fortuitous events; but he shall have such right in case of the loss of more than one-half of the fruits through extraordinary and unforeseen fortuitous events, save always when there is a specific stipulation to the contrary.

Extraordinary fortuitous events are understood to be: fire, war, pestilence, unusual flood, locusts, earthquake, or others which are uncommon, and which the contracting parties could not have reasonably foreseen. (1575)

ARTICLE 1681. Neither does the lessee have any right to a reduction of the rent if the fruits are lost after they have been separated from their stalk, root or trunk. (1576)

ARTICLE 1682. The lease of a piece of rural land, when its duration has not been fixed, is understood to have been for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years have to elapse for the purpose. (1577a)

ARTICLE 1683. The outgoing lessee shall allow the incoming lessee or the lessor the use of the premises and other means necessary for the preparatory labor for the following year; and, reciprocally, the incoming lessee or the lessor is under obligation to permit the outgoing lessee to do whatever may be necessary for the gathering or

place. (1579a)

ARTICLE 1685. The tenant on shares cannot be ejected except in cases specified by law. (n)

Sec. 4

Special Provisions for the Lease of Urban Lands

ARTICLE 1686. In default of a special stipulation, the custom of the place shall be observed with regard to the kind of repairs on urban property for which the lessor shall be liable. In case of doubt it is understood that the repairs are chargeable against him. (1580a)

ARTICLE 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. (1581a)

ARTICLE 1688. When the lessor of a house, or part thereof, used as a dwelling for a family, or when the lessor of a store, or industrial establishment, also leases the furniture, the lease of the latter shall be deemed to be for the duration of the lease of the premises. (1582)

CHAPTER 3

Work and Labor

Section 1

Household Service (n)

ARTICLE 1689. Household service shall always be reasonably compensated. Any stipulation that household service is without compensation shall be void. Such compensation shall be in addition to the house helper's lodging, food, and medical attendance.

ARTICLE 1690. The head of the family shall furnish, free of charge, to the house helper, suitable and sanitary quarters as well as adequate food and medical attendance.

ARTICLE 1691. If the house helper is under the age of eighteen years, the head of the family shall give an opportunity to the house helper for at least elementary education. The cost of such education shall be a part of the house helper's compensation, unless there is a stipulation to the contrary.

ARTICLE 1692. No contract for household service shall last for more than two years. However, such contract may be renewed from year to year.

ARTICLE 1693. The house helper's clothes shall be subject to stipulation. However, any contract for household service shall be void if thereby the house helper cannot afford to acquire suitable clothing.

ARTICLE 1694. The head of the family shall treat the house helper in a just and humane manner. In no case shall physical violence be used upon the house helper.

ARTICLE 1695. House helpers shall not be required to work more than ten hours a day. Every house helper shall be allowed four days' vacation each month, with pay.

ARTICLE 1697. If the period for household service is fixed neither the head of the family nor the house helper may terminate the contract before the expiration of the term, except for a just cause. If the house helper is unjustly dismissed, he shall be paid the compensation already earned plus that for fifteen days by way of indemnity. If the house helper leaves without justifiable reason, he shall forfeit any salary due him and unpaid, for not exceeding fifteen days.

ARTICLE 1698. If the duration of the household service is not determined either by stipulation or by the nature of the service, the head of the family or the house helper may give notice to put an end to the service relation, according to the following rules:

- (1) If the compensation is paid by the day, notice may be given on any day that the service shall end at the close of the following day;
- (2) If the compensation is paid by the week, notice may be given, at the latest on the first business day of the week, that the service shall be terminated at the end of the seventh day from the beginning of the week;
- (3) If the compensation is paid by the month, notice may be given, at the latest, on the fifth day of the month, that the service shall cease at the end of the month.

ARTICLE 1699. Upon the extinguishment of the service relation, the house helper may demand from the head of the family a written statement on the nature and duration of the service and the efficiency and conduct of the house helper.

Sec. 2
Contract of Labor (n)

ARTICLE 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

ARTICLE 1701. Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.

ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

ARTICLE 1703. No contract which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.

ARTICLE 1704. In collective bargaining, the labor union or members of the board or committee signing the contract shall be liable for non-fulfillment thereof.

ARTICLE 1705. The laborer's wages shall be paid in legal currency.

ARTICLE 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.

ARTICLE 1707. The laborer's wages shall be a lien on the goods manufactured or the work done.

ARTICLE 1708. The laborer's wages shall not be subject to execution or attachment, except for debts incurred for food, shelter, clothing and medical attendance.

ARTICLE 1709. The employer shall neither seize nor retain any tool or other articles belonging to the laborer.

compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of the employment. The employer is also liable for compensation if the employee contracts any illness or disease caused by such employment or as the result of the nature of the employment. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.

ARTICLE 1712. If the death or injury is due to the negligence of a fellow worker, the latter and the employer shall be solidarily liable for compensation. If a fellow worker's intentional or malicious act is the only cause of the death or injury, the employer shall not be answerable, unless it should be shown that the latter did not exercise due diligence in the selection or supervision of the plaintiff's fellow worker.

Sec. 3

Contract for a Piece of Work

ARTICLE 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material. (1588a)

ARTICLE 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale. (n)

ARTICLE 1715. The contract shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contract fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost. (n)

ARTICLE 1716. An agreement waiving or limiting the contractor's liability for any defect in the work is void if the contractor acted fraudulently. (n)

ARTICLE 1717. If the contractor bound himself to furnish the material, he shall suffer the loss if the work should be destroyed before its delivery, save when there has been delay in receiving it. (1589)

ARTICLE 1718. The contractor who has undertaken to put only his work or skill, cannot claim any compensation if the work should be destroyed before its delivery, unless there has been delay in receiving it, or if the destruction was caused by the poor quality of the material, provided this fact was communicated in due time to the owner. If the material is lost through a fortuitous event, the contract is extinguished. (1590a)

ARTICLE 1719. Acceptance of the work by the employer relieves the contractor of liability for any defect in the work, unless:

- (1) The defect is hidden and the employer is not, by his special knowledge, expected to recognize the same; or
- (2) The employer expressly reserves his rights against the contractor by reason of the defect. (n)

ARTICLE 1720. The price or compensation shall be paid at the time and place of

and he incurs in delay or fails to perform the act, the contractor is entitled to a reasonable compensation.

The amount of the compensation is computed, on the one hand, by the duration of the delay and the amount of the compensation stipulated, and on the other hand, by what the contractor has saved in expenses by reason of the delay or is able to earn by a different employment of his time and industry. (n)

ARTICLE 1722. If the work cannot be completed on account of a defect in the material furnished by the employer, or because of orders from the employer, without any fault on the part of the contractor, the latter has a right to an equitable part of the compensation proportionally to the work done, and reimbursement for proper expenses made. (n)

ARTICLE 1723. The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damages if the edifice falls, within the same period, on account of defects in the construction or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor.

Acceptance of the building, after completion, does not imply waiver of any of the cause of action by reason of any defect mentioned in the preceding paragraph.

The action must be brought within ten years following the collapse of the building. (n)

ARTICLE 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties. (1593a)

ARTICLE 1725. The owner may withdraw at will from the construction of the work, although it may have been commenced, indemnifying the contractor for all the latter's expenses, work, and the usefulness which the owner may obtain therefrom, and damages. (1594a)

ARTICLE 1726. When a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death.

In this case the proprietor shall pay the heirs of the contractor in proportion to the price agreed upon, the value of the part of the work done, and of the materials prepared, provided the latter yield him some benefit.

The same rule shall apply if the contractor cannot finish the work due to circumstances beyond his control. (1595)

ARTICLE 1727. The contractor is responsible for the work done by persons employed by him. (1596)

ARTICLE 1728. The contractor is liable for all the claims of laborers and others employed by him, and of third persons for death or physical injuries during the construction. (n)

ARTICLE 1729. Those who put their labor upon or furnish materials for a piece of

- (1) Payments made by the owner to the contractor before they are due;
- (2) Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws. (1597a)

ARTICLE 1730. If it is agreed that the work shall be accomplished to the satisfaction of the proprietor, it is understood that in case of disagreement the question shall be subject to expert judgment.

If the work is subject to the approval of a third person, his decision shall be final, except in case of fraud or manifest error. (1598a)

ARTICLE 1731. He who has executed work upon a movable has a right to retain it by way of pledge until he is paid. (1600)

Sec. 4 *Common Carriers (n)*

Sub-Section 1 *General Provisions*

ARTICLE 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or, for compensation, offering their services to the public.

ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

Sub-Sec. 2 *Vigilance Over Goods*

ARTICLE 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

- (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act or omission of the shipper or owner of the goods;
- (4) The character of the goods or defects in the packing or in the containers;
- (5) Order or act of competent public authority.

ARTICLE 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in article 1733.

ARTICLE 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by

the goods remains in full force and effect even when they are temporarily unloaded or stored in transit, unless the shipper or owner has made use of the right of stoppage in transitu.

ARTICLE 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

ARTICLE 1739. In order that the common carrier may be exempted from responsibility, the natural disaster must have been the proximate and only cause of the loss. However, the common carrier must exercise due diligence to prevent or minimize loss before, during and after the occurrence of flood, storm or other natural disaster in order that the common carrier may be exempted from liability for the loss, destruction, or deterioration of the goods. The same duty is incumbent upon the common carrier in case of an act of the public enemy referred to in article 1734, No. 2.

ARTICLE 1740. If the common carrier negligently incurs in delay in transporting the goods, a natural disaster shall not free such carrier from responsibility.

ARTICLE 1741. If the shipper or owner merely contributed to the loss, destruction or deterioration of the goods, the proximate cause thereof being the negligence of the common carrier, the latter shall be liable in damages, which however, shall be equitably reduced.

ARTICLE 1742. Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or the faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.

ARTICLE 1743. If through the order of public authority the goods are seized or destroyed, the common carrier is not responsible, provided said public authority had power to issue the order.

ARTICLE 1744. A stipulation between the common carrier and the shipper or owner limiting the liability of the former for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence shall be valid, provided it be:

- (1) In writing, signed by the shipper or owner;
- (2) Supported by a valuable consideration other than the service rendered by the common carrier; and
- (3) Reasonable, just and not contrary to public policy.

ARTICLE 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

- (1) That the goods are transported at the risk of the owner or shipper;
- (2) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;
- (3) That the common carrier need not observe any diligence in the custody of the goods;
- (4) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the movables transported;

robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished;

(7) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the car, vehicle, ship, rplane or other equipment used in the contract of carriage.

ARTICLE 1746. An agreement limiting the common carrier's liability may be annulled by the shipper or owner if the common carrier refused to carry the goods unless the former agreed to such stipulation.

ARTICLE 1747. If the common carrier, without just cause, delays the transportation of the goods or changes the stipulated or usual route, the contract limiting the common carrier's liability cannot be availed of in case of the loss, destruction, or deterioration of the goods.

ARTICLE 1748. An agreement limiting the common carrier's liability for delay on account of strikes or riots is valid.

ARTICLE 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.

ARTICLE 1750. A contract fixing the sum that may be recovered. by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.

ARTICLE 1751. The fact that the common carrier has no competitor along the line or route, or a part thereof, to which the contract refers shall be taken into consideration on the question of whether or not a stipulation limiting the common carrier's liability is reasonable, just and in consonance with public policy.

ARTICLE 1752. Even when there is an agreement limiting the liability of the common carrier in the vigilance over the goods, the common carrier is disputably presumed to have been negligent in case of their loss, destruction or deterioration.

ARTICLE 1753. The law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration.

ARTICLE 1754. The provisions of articles 1733 to 1753 shall apply to the passenger's baggage which is not in his personal custody or in that of his employee. As to other baggage, the rules in articles 1998 and 2000 to 2003 concerning the responsibility of hotel-keepers shall be applicable.

Sub-Sec. 3

Safety of Passengers

ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

ARTICLE 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

ARTICLE 1757. The responsibility of a common carrier for the safety of passengers as required in articles 1733 and 1755 cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise.

ARTICLE 1758. When a passenger is carried gratuitously, a stipulation limiting the

ARTICLE 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

ARTICLE 1760. The common carrier's responsibility prescribed in the preceding article cannot be eliminated or limited by stipulation, by the posting of notices, by statements on the tickets or otherwise.

ARTICLE 1761. The passenger must observe the diligence of a good father of a family to avoid injury to himself.

ARTICLE 1762. The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced.

ARTICLE 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission.

Sub-Sec. 4
Common Provisions

ARTICLE 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

ARTICLE 1765. The Public Service Commission may, on its own motion or on petition of any interested party, after due hearing, cancel the certificate of public convenience granted to any common carrier that repeatedly fails to comply with his or its duty to observe extraordinary diligence as prescribed in this Section .

ARTICLE 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.

TITLE IX
Partnership

CHAPTER 1
General Provisions

ARTICLE 1767. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

Two or more persons may also form a partnership for the exercise of a profession.
(1665a)

ARTICLE 1768. The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of article 1772, first paragraph. (n)

ARTICLE 1769. In determining whether a partnership exists, these rules shall apply:

by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise;

(b) As wages of an employee or rent to a landlord;

(c) As an annuity to a widow or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment vary with the profits of the business;

(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise. (n)

ARTICLE 1770. A partnership must have a lawful object or purpose, and must be established for the common benefit or interest of the partners.

When an unlawful partnership is dissolved by a judicial decree, the profits shall be confiscated in favor of the State, without prejudice to the provisions of the Penal Code governing the confiscation of the instruments and effects of a crime. (1666a)

ARTICLE 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary. (1667a)

ARTICLE 1772. Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.

Failure to comply with the requirements of the preceding paragraph shall not affect the liability of the partnership and the members thereof to third persons. (n)

ARTICLE 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties, and attached to the public instrument. (1668a)

ARTICLE 1774. Any immovable property or an interest therein may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name. (n)

ARTICLE 1775. Associations and societies, whose articles are kept secret among the members, and wherein any one of the members may contract in his own name with third persons, shall have no juridical personality, and shall be governed by the provisions relating to co-ownership. (1669)

ARTICLE 1776. As to its object, a partnership is either universal or particular.

As regards the liability of the partners, a partnership may be general or limited. (1671a)

ARTICLE 1777. A universal partnership may refer to all the present property or to all the profits. (1672)

ARTICLE 1778. A partnership of all present property is that in which the partners

which belonged to each of the partners at the time of the constitution of the partnership, becomes the common property of all the partners, as well as all the profits which they may acquire therewith.

A stipulation for the common enjoyment of any other profits may also be made; but the property which the partners may acquire subsequently by inheritance, legacy, or donation cannot be included in such stipulation, except the fruits thereof. (1674a)

ARTICLE 1780. A universal partnership of profits comprises all that the partners may acquire by their industry or work during the existence of the partnership.

Movable or immovable property which each of the partners may possess at the time of the celebration of the contract shall continue to pertain exclusively to each, only the usufruct passing to the partnership. (1675)

ARTICLE 1781. Articles of universal partnership, entered into without specification of its nature, only constitute a universal partnership of profits. (1676)

ARTICLE 1782. Persons who are prohibited from giving each other any donation or advantage cannot enter into universal partnership. (1677)

ARTICLE 1783. A particular partnership has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation. (1678)

CHAPTER 2

Obligations of the Partners

Section 1

Obligations of the Partners Among Themselves

ARTICLE 1784. A partnership begins from the moment of the execution of the contract, unless it is otherwise stipulated. (1679)

ARTICLE 1785. When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (n)

ARTICLE 1786. Every partner is a debtor of the partnership for whatever he may have promised to contribute thereto.

He shall also be bound for warranty in case of eviction with regard to specific and determinate things which he may have contributed to the partnership, in the same cases and in the same manner as the vendor is bound with respect to the vendee. He shall also be liable for the fruits thereof from the time they should have been delivered, without the need of any demand. (1681a)

ARTICLE 1787. When the capital or a part thereof which a partner is bound to contribute consists of goods, their appraisal must be made in the manner prescribed in the contract of partnership, and in the absence of stipulation, it shall be made by experts chosen by the partners, and according to current prices, the subsequent changes thereof being for account of the partnership. (n)

ARTICLE 1788. A partner who has undertaken to contribute a sum of money and fails to do so becomes a debtor for the interest and damages from the time he should have complied with his obligation.

ARTICLE 1789. An industrial partner cannot engage in business for himself, unless the partnership expressly permits him to do so; and if he should do so, the capitalist partners may either exclude him from the firm or avail themselves of the benefits which he may have obtained in violation of this provision, with a right to damages in either case. (n)

ARTICLE 1790. Unless there is a stipulation to the contrary, the partners shall contribute equal shares to the capital of the partnership. (n)

ARTICLE 1791. If there is no agreement to the contrary, in case of an imminent loss of the business of the partnership, any partner who refuses to contribute an additional share to the capital, except an industrial partner, to save the venture, shall be obliged to sell his interest to the other partners. (n)

ARTICLE 1792. If a partner authorized to manage collects a demandable sum which was owed to him in his own name, from a person who owed the partnership another sum also demandable, the sum thus collected shall be applied to the two credits in proportion to their amounts, even though he may have given a receipt for his own credit only; but should he have given it for the account of the partnership credit, the amount shall be fully applied to the latter.

The provisions of this article are understood to be without prejudice to the right granted to the other debtor by article 1252, but only if the personal credit of the partner should be more onerous to him. (1684)

ARTICLE 1793. A partner who has received, in whole or in part, his share of a partnership credit, when the other partners have not collected theirs, shall be obliged, if the debtor should thereafter become insolvent, to bring to the partnership capital what he received even though he may have given receipt for his share only. (1685a)

ARTICLE 1794. Every partner is responsible to the partnership for damages suffered by it through his fault, and he cannot compensate them with the profits and benefits which he may have earned for the partnership by his industry. However, the courts may equitably lessen this responsibility if through the partner's extraordinary efforts in other activities of the partnership, unusual profits have been realized. (1686a)

ARTICLE 1795. The risk of specific and determinate things, which are not fungible, contributed to the partnership so that only their use and fruits may be for the common benefit, shall be borne by the partner who owns them.

If the things contribute are fungible, or cannot be kept without deteriorating, or if they were contributed to be sold, the risk shall be borne by the partnership. In the absence of stipulation, the risk of the things brought and appraised in the inventory, shall also be borne by the partnership, and in such case the claim shall be limited to the value at which they were appraised. (1687)

ARTICLE 1796. The partnership shall be responsible to every partner for the amounts he may have disbursed on behalf of the partnership and for the corresponding interest, from the time the expense are made; it shall also answer to each partner for the obligations he may have contracted in good faith in the interest of the partnership business, and for risks in consequence of its management. (1688a)

ARTICLE 1797. The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.

In the absence of stipulation, the share of each partner in the profits and losses shall be in proportion to what he may have contributed, but the industrial partner shall not be liable for the losses. As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances. If besides his services he has contributed capital, he shall also receive a share in the profits in proportion to his capital. (1689a)

within a period of three months from the time he had knowledge thereof, complain of such decision.

The designation of losses and profits cannot be intrusted to one of the partners.
(1690)

ARTICLE 1799. A stipulation which excludes one or more partners from any share in the profits or losses is void. (1691)

ARTICLE 1800. The partner who has been appointed manager in the articles of partnership may execute all acts of administration despite the opposition of his partners, unless he should act in bad faith; and his power is irrevocable without just or lawful cause. The vote of the partners representing the controlling interest shall be necessary for such revocation of power.

A power granted after the partnership has been constituted may be revoked at any time. (1692a)

ARTICLE 1801. If two or more partners have been intrusted with the management of the partnership without specification of their respective duties, or without a stipulation that one of them shall not act without the consent of all the others, each one may separately execute all acts of administration, but if any of them should oppose the acts of the others, the decision of the majority shall prevail. In case of a tie, the matter shall be decided by the partners owning the controlling interest.
(1693a)

ARTICLE 1802. In case it should have been stipulated that none of the managing partners shall act without the consent of the others, the concurrence of all shall be necessary for the validity of the acts, and the absence or disability of any one of them cannot be alleged, unless there is imminent danger of grave or irreparable injury to the partnership. (1694)

ARTICLE 1803. When the manner of management has not been agreed upon, the following rules shall be observed:

(1) All the partners shall be considered agents and whatever any one of them may do alone shall bind the partnership, without prejudice to the provisions of article 1801.

(2) None of the partners may, without the consent of the others, make any important alteration in the immovable property of the partnership, even if it may be useful to the partnership. But if the refusal of consent by the other partners is manifestly prejudicial to the interest of the partnership, the court's intervention may be sought. (1695a)

ARTICLE 1804. Every partner may associate another person with him in his share, but the associate shall not be admitted into the partnership without the consent of all the other partners, even if the partner having an associate should be a manager.
(1696)

ARTICLE 1805. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at any reasonable hour have access to and may inspect and copy any of them. (n)

ARTICLE 1806. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or of any partner under legal disability. (n)

ARTICLE 1807. Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of

Any capitalist partner violating this prohibition shall bring to the common funds any profits accruing to him from his transactions, and shall personally bear all the losses. (n)

ARTICLE 1809. Any partner shall have the right to a formal account as to partnership affairs:

- (1) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners;
- (2) If the right exists under the terms of any agreement;
- (3) As provided by article 1807;
- (4) Whenever other circumstances render it just and reasonable. (n)

Sec. 2

Property Rights of a Partner

ARTICLE 1810. The property rights of a partner are:

- (1) His rights in specific partnership property;
- (2) His interest in the partnership; and
- (3) His right to participate in the management (n)

ARTICLE 1811. A partner is co-owner with his partners of specific partnership property.

The incidents of this co-ownership are such that:

- (1) A partner, subject to the provisions of this Title and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners;
- (2) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property;
- (3) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws;
- (4) A partner's right in specific partnership property is not subject to legal support under article 291. (n)

ARTICLE 1812. A partner's interest in the partnership is his share of the profits and surplus. (n)

ARTICLE 1813. A conveyance by a partner of his whole interest in the partnership does not of itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to

In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. (n)

ARTICLE 1814. Without prejudice to the preferred rights of partnership creditors under article 1827, on due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

- (1) With separate property, by any one or more of the partners; or
- (2) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

Nothing in this Title shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (n)

Sec. 3

Obligations of the Partners with Regard to Third Persons

ARTICLE 1815. Every partnership shall operate under a firm name, which may or may not include the name of one or more of the partners.

Those who, not being members of the partnership, include their names in the firm name, shall be subject to the liability of a partner. (n)

ARTICLE 1816. All partners, including industrial ones, shall be liable pro rata with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract. (n)

ARTICLE 1817. Any stipulation against the liability laid down in the preceding article shall be void, except as among the partners. (n)

ARTICLE 1818. Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

An act of a partner which is not apparently for the carrying on of business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

Except when authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (3) Do any other act which would make it impossible to carry on the ordinary business of a partnership;
- (4) Confess a judgment;
- (5) Enter into a compromise concerning a partnership claim or liability;
- (6) Submit a partnership claim or liability to arbitration;
- (7) Renounce a claim of the partnership.

No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (n)

ARTICLE 1819. Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of the first paragraph of article 1818, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of the first paragraph of article 1818.

Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of the first paragraph of article 1818, unless the purchaser or his assignee, is a holder for value, without knowledge.

Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of the first paragraph of article 1818.

Where the title to real property is in the name of all the partners a conveyance executed by all the partners passes all their rights in such property. (n)

ARTICLE 1820. An admission or representation made by any partner concerning partnership affairs within the scope of his authority in accordance with this Title is evidence against the partnership. (n)

ARTICLE 1821. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of fraud on the partnership, committed by or with the consent of that partner. (n)

ARTICLE 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (n)

ARTICLE 1823. The partnership is bound to make good the loss:

by any partner while it is in the custody of the partnership. (n)

ARTICLE 1824. All partners are liable solidarily with the partnership for everything chargeable to the partnership under articles 1822 and 1823. (n)

ARTICLE 1825. When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such persons to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

(1) When a partnership liability results, he is liable as though he were an actual member of the partnership;

(2) When no partnership liability results, he is liable pro rata with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. When all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (n)

ARTICLE 1826. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property, unless there is a stipulation to the contrary. (n)

ARTICLE 1827. The creditors of the partnership shall be preferred to those of each partner as regards the partnership property. Without prejudice to this right, the private creditors of each partner may ask the attachment and public sale of the share of the latter in the partnership assets. (n)

CHAPTER 3 *Dissolution and Winding Up*

ARTICLE 1828. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (n)

ARTICLE 1829. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (n)

ARTICLE 1830. Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement;

interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) When a specific thing which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof;

(5) By the death of any partner;

(6) By the insolvency of any partner or of the partnership;

(7) By the civil interdiction of any partner;

(8) By decree of court under the following article. (1700a and 1701a)

ARTICLE 1831. On application by or for a partner the court shall decree a dissolution whenever:

(1) A partner has been declared insane in any judicial proceeding or is shown to be of unsound mind;

(2) A partner becomes in any other way incapable of performing his part of the partnership contract;

(3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(4) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(5) The business of the partnership can only be carried on at a loss;

(6) Other circumstances render a dissolution equitable.

On the application of the purchaser of a partner's interest under article 1813 or 1814:

(1) After the termination of the specified term or particular undertaking;

(2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. (n)

ARTICLE 1832. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all

(a) When the dissolution is not by the act, insolvency or death of a partner;
or

(b) When the dissolution is by such act, insolvency or death of a partner, in cases where article 1833 so requires;

(2) With respect to persons not partners, as declared in article 1834. (n)

ARTICLE 1833. Where the dissolution is caused by the act, death or insolvency of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) The dissolution being by the death or insolvency of a partner, the partner acting for the partnership had knowledge or notice of the death or insolvency.

ARTICLE 1834. After dissolution, a partner can bind the partnership, except as provided in the third paragraph of this article:

(1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(2) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(b) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

The liability of a partner under the first paragraph, No. 2, shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(1) Unknown as a partner to the person with whom the contract is made; and

(2) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

The partnership is in no case bound by any act of a partner after dissolution:

(1) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(2) Where the partner has become insolvent; or

(3) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who —

authority has not been advertised in the manner provided for advertising the fact of dissolution in the first paragraph, No. 2 (b).

Nothing in this article shall affect the liability under article 1825 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (n)

ARTICLE 1835. The dissolution of the partnership does not of itself discharge the existing liability of any partner.

A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner, but subject to the prior payment of his separate debts. (n)

ARTICLE 1836. Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not insolvent, has the right to wind up the partnership affairs, provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (n)

ARTICLE 1837. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under the second paragraph of article 1835, he shall receive in cash only the net amount due him from the partnership.

When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(1) Each partner who has not caused dissolution wrongfully shall have:

(a) All the rights specified in the first paragraph of this article, and

(b) The right, as against each partner who has caused the dissolution wrongfully, to damages breach of the agreement.

(2) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under the second paragraph, No. 1 (b) of this article, and in like manner indemnify him against all present or future partnership liabilities.

(3) A partner who has caused the dissolution wrongfully shall have:

(a) If the business is not continued under the provisions of the second paragraph, No. 2, all the rights of a partner under the first paragraph, subject to

the partnership, less any damage caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by a bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered. (n)

ARTICLE 1838. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

- (1) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him;
- (2) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and
- (3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (n)

ARTICLE 1839. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- (1) The assets of the partnership are:
 - (a) The partnership property,
 - (b) The contributions of the partners necessary for the payment of all the liabilities specified in No. 2.
- (2) The liabilities of the partnership shall rank in order of payment, as follows:
 - (a) Those owing to creditors other than partners,
 - (b) Those owing to partners other than for capital and profits,
 - (c) Those owing to partners in respect of capital,
 - (d) Those owing to partners in respect of profits.
- (3) The assets shall be applied in the order of their declaration in No. 1 of this article to the satisfaction of the liabilities.
- (4) The partners shall contribute, as provided by article 1797, the amount necessary to satisfy the liabilities.
- (5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in the preceding number.
- (6) Any partner or his legal representative shall have the right to enforce the contributions specified in No. 4, to the extent of the amount which he has paid in excess of his share of the liability.
- (7) The individual property of a deceased partner shall be liable for the

lien or secured creditors.

(9) Where a partner has become insolvent or his estate is insolvent, the claims against his separate property shall rank in the following order:

- (a) Those owing to separate creditors;
- (b) Those owing to partnership creditors;
- (c) Those owing to partners by way of contribution. (n)

ARTICLE 1840. In the following cases creditors of the dissolved partnership are also creditors of the person or partnership continuing the business:

- (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs;
- (2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others;
- (3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in Nos. 1 and 2 of this article, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property;
- (4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership;
- (5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of article 1837, second paragraph, No. 2, either alone or with others, and without liquidation of the partnership affairs;
- (6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs.

The liability of a third person becoming a partner in the partnership continuing the business, under this article, to the creditors of the dissolved partnership shall be satisfied out of the partnership property only, unless there is a stipulation to the contrary.

When the business of a partnership after dissolution is continued under any conditions set forth in this article the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

Nothing in this article shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

The use by the person or partnership continuing the business of the partnership

under any of the conditions set forth in the preceding article, or in article 1837, second paragraph, No. 2, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such person or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this article, as provided article 1840, third paragraph. (n)

ARTICLE 1842. The right to an account of his interest shall accrue to any partner, or his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (n)

CHAPTER 4 *Limited Partnership (n)*

ARTICLE 1843. A limited partnership is one formed by two or more persons under the provisions of the following article, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

ARTICLE 1844. Two or more persons desiring to form a limited partnership shall:

- (1) Sign and swear to a certificate, which shall state —
 - (a) The name of the partnership, adding thereto the word "Limited";
 - (b) The character of the business;
 - (c) The location of the principal place of business;
 - (d) The name and place of residence of each member, general and limited partners being respectively designated;
 - (e) The term for which the partnership is to exist;
 - (f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
 - (g) The additional contributions, if any, to be made by each limited partner and the times at which or events on the happening of which they shall be made;
 - (h) The time, if agreed upon, when the contribution of each limited partner is to be returned;
 - (i) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;
 - (j) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;
 - (k) The right, if given, of the partners to admit additional limited partners;
 - (l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

(n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the Office of the Securities and Exchange Commission.

A limited partnership is formed if there has been substantial compliance in good faith with the foregoing requirements.

ARTICLE 1845. The contributions of a limited partner may be cash or property, but not services.

ARTICLE 1846. The surname of a limited partner shall not appear in the partnership name unless:

- (1) It is also the surname of a general partner, or
- (2) Prior to the time when the limited partner became such, the business has been carried on under a name in which his surname appeared.

A limited partner whose surname appears in a partnership name contrary to the provisions of the first paragraph is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

ARTICLE 1847. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

- (1) At the time he signed the certificate, or
- (2) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in article 1865.

ARTICLE 1848. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

ARTICLE 1849. After the formation of a lifted partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of article 1865.

ARTICLE 1850. A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners. However, without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

- (1) Do any act in contravention of the certificate;
- (2) Do any act which would make it impossible to carry on the ordinary business of the partnership;
- (3) Confess a judgment against the partnership;
- (4) Possess partnership property, or assign their rights in specific partnership

the certificate;

(7) Continue the business with partnership property on the death, retirement, insanity, civil interdiction or insolvency of a general partner, unless the right so to do is given in the certificate.

ARTICLE 1851. A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at a reasonable hour to inspect and copy any of them;

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and

(3) Have dissolution and winding up by decree of court.

A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in articles 1856 and 1857.

ARTICLE 1852. Without prejudice to the provisions of article 1848, a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

ARTICLE 1853. A person may be a general partner and a limited partner in the same partnership at the same time, provided that this fact shall be stated in the certificate provided for in article 1844.

A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

ARTICLE 1854. A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

(1) Receive or hold as collateral security any partnership property, or

(2) Receive from a general partner or the partnership any payment, conveyance, or release from liability if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

The receiving of collateral security, or payment, conveyance, or release in violation of the foregoing provisions is a fraud on the creditors of the partnership.

ARTICLE 1855. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of

profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

ARTICLE 1857. A limited partner shall not receive from a general partner or out of partnership property any part of his contributions until:

- (1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;
- (2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of the second paragraph; and
- (3) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

Subject to the provisions of the first paragraph, a limited partner may rightfully demand the return of his contribution:

- (1) On the dissolution of a partnership; or
- (2) When the date specified in the certificate for its return has arrived, or
- (3) After he has six months' notice in writing to all other members, if no time is specified in the certificate, either for the return of the contribution or for the dissolution of the partnership.

In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

A limited partner may have the partnership dissolved and its affairs wound up when:

- (1) He rightfully but unsuccessfully demands the return of his contribution, or
- (2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by the first paragraph, No. 1, and the limited partner would otherwise be entitled to the return of his contribution.

ARTICLE 1858. A limited partner is liable to the partnership:

- (1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and
- (2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

A limited partner holds as trustee for the partnership:

- (1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and
- (2) Money or other property wrongfully paid or conveyed to him on account of

not affect the right of a creditor or a partnership who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

ARTICLE 1859. A limited partner's interest is assignable.

A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

An assignee shall have the right to become a substituted limited partner if all the members consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with article 1865.

The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under articles 1847 and 1858.

ARTICLE 1860. The retirement, death, insolvency, insanity or civil interdiction of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

- (1) Under a right so to do stated in the certificate, or
- (2) With the consent of all members.

ARTICLE 1861. On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of setting his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

ARTICLE 1862. On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim, and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

The remedies conferred by the first paragraph shall not be deemed exclusive of others which may exist.

Nothing in this Chapter shall be held to deprive a limited partner of his statutory

- (1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners;
- (2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;
- (3) Those to limited partners in respect to the capital of their contributions;
- (4) Those to general partners other than for capital and profits;
- (5) Those to general partners in respect to profits;
- (6) Those to general partners in respect to capital.

Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contribution respectively, in proportion to the respective amounts of such claims.

ARTICLE 1864. The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

A certificate shall be amended when:

- (1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;
- (2) A person is substituted as a limited partner;
- (3) An additional limited partner is admitted;
- (4) A person is admitted as a general partner;
- (5) A general partner retires, dies, becomes insolvent or insane, or is sentenced to civil interdiction and the business is continued under article 1860;
- (6) There is a change in the character of the business of the partnership;
- (7) There is a false or erroneous statement in the certificate;
- (8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;
- (9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or
- (10) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement among them.

ARTICLE 1865. The writing to amend a certificate shall:

- (1) Conform to the requirements of article 1844 as far as necessary to set forth clearly the change in the certificate which it is desired to make; and
- (2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

writing refuses to do so, may petition the court to order a cancellation or amendment thereof.

If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the Office of the Securities and Exchange Commission where the certificate is recorded, to record the cancellation or amendment of the certificate; and when the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

A certificate is amended or cancelled when there is filed for record in the Office of the Securities and Exchange Commission, where the certificate is recorded:

- (1) A writing in accordance with the provisions of the first or second paragraph, or
- (2) A certified copy of the order of the court in accordance with the provisions of the fourth paragraph;
- (3) After the certificate is duly amended in accordance with this article, the amended certified shall thereafter be for all purposes the certificate provided for in this Chapter.

ARTICLE 1866. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

ARTICLE 1867. A limited partnership formed under the law prior to the effectivity of this Code, may become a limited partnership under this Chapter by complying with the provisions of article 1844, provided the certificate sets forth:

- (1) The amount of the original contribution of each limited partner, and the time when the contribution was made; and
- (2) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

A limited partnership formed under the law prior to the effectivity of this Code, until or unless it becomes a limited partnership under this Chapter, shall continue to be governed by the provisions of the old law.

TITLE X *Agency*

CHAPTER 1 *Nature, Form and Kinds of Agency*

ARTICLE 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. (1709a)

ARTICLE 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form. (1710a)

may also be implied if the principal delivers his power of attorney to the agent and the latter receives it without any objection. (n)

ARTICLE 1872. Between persons who are absent, the acceptance of the agency cannot be implied from the silence of the agent, except:

- (1) When the principal transmits his power of attorney to the agent, who receives it without any objection;
- (2) When the principal entrusts to him by letter or telegram a power of attorney with respect to the business in which he is habitually engaged as an agent, and he did not reply to the letter or telegram. (n)

ARTICLE 1873. If a person specially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the person who received the special information, and in the latter case with regard to any person.

The power shall continue to be in full force until the notice is rescinded in the same manner in which it was given. (n)

ARTICLE 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. (n)

ARTICLE 1875. Agency is presumed to be for a compensation, unless there is proof to the contrary. (n)

ARTICLE 1876. An agency is either general or special.

The former comprises all the business of the principal. The latter, one or more specific transactions. (1712)

ARTICLE 1877. An agency couched in general terms comprises only acts of administration, even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management. (n)

ARTICLE 1878. Special powers of attorney are necessary in the following cases:

- (1) To make such payments as are not usually considered as acts of administration;
- (2) To effect novations which put an end to obligations already in existence at the time the agency was constituted;
- (3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;
- (4) To waive any obligation gratuitously;
- (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;
- (6) To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;
- (7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;

- (11) To obligate the principal as a guarantor or surety;
- (12) To create or convey real rights over immovable property;
- (13) To accept or repudiate an inheritance;
- (14) To ratify or recognize obligations contracted before the agency;
- (15) Any other act of strict dominion. (n)

ARTICLE 1879. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. (n)

ARTICLE 1880. A special power to compromise does not authorize submission to arbitration. (1713a)

ARTICLE 1881. The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. (1714a)

ARTICLE 1882. The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him. (1715)

ARTICLE 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent. (1717)

CHAPTER 2

Obligations of the Agent

ARTICLE 1884. The agent is bound by his acceptance to carry out the agency, and is liable for the damages which, through his non-performance, the principal may suffer.

He must also finish the business already begun on the death of the principal, should delay entail any danger. (1718)

ARTICLE 1885. In case a person declines an agency, he is bound to observe the diligence of a good father of a family in the custody and preservation of the goods forwarded to him by the owner until the latter should appoint an agent or take charge of the goods. (n)

ARTICLE 1886. Should there be a stipulation that the agent shall advance the necessary funds, he shall be bound to do so except when the principal is insolvent. (n)

ARTICLE 1887. In the execution of the agency, the agent shall act in accordance with the instructions of the principal.

In default thereof, he shall do all that a good father of a family would do, as required by the nature of the business. (1719)

ARTICLE 1888. An agent shall not carry out an agency if its execution would manifestly result in loss or damage to the principal. (n)

be the lender at the current rate of interest. If he has been authorized to lend money at interest, he cannot borrow it without the consent of the principal. (n)

ARTICLE 1891. Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.

Every stipulation exempting the agent from the obligation to render an account shall be void. (1720a)

ARTICLE 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;

(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)

ARTICLE 1893. In the cases mentioned in Nos. 1 and 2 of the preceding article, the principal may furthermore bring an action against the substitute with respect to the obligations which the latter has contracted under the substitution. (1722a)

ARTICLE 1894. The responsibility of two or more agents, even though they have been appointed simultaneously, is not solidary, if solidarity has not been expressly stipulated. (1723)

ARTICLE 1895. If solidarity has been agreed upon, each of the agents is responsible for the non-fulfillment of agency, and for the fault or negligence of his fellows agents, except in the latter case when the fellow agents acted beyond the scope of their authority. (n)

ARTICLE 1896. The agent owes interest on the sums he has applied to his own use from the day on which he did so, and on those which he still owes after the extinguishment of the agency. (1724a)

ARTICLE 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers. (1725)

ARTICLE 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification. (n)

ARTICLE 1899. If a duly authorized agent acts in accordance with the orders of the principal, the latter cannot set up the ignorance of the agent as to circumstances whereof he himself was, or ought to have been, aware. (n)

ARTICLE 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent. (n)

ARTICLE 1901. A third person cannot set up the fact that the agent has exceeded his powers, if the principal has ratified, or has signified his willingness to ratify the agent's acts. (n)

shown them. (n)

ARTICLE 1903. The commission agent shall be responsible for the goods received by him in the terms and conditions and as described in the consignment, unless upon receiving them he should make a written statement of the damage and deterioration suffered by the same. (n)

ARTICLE 1904. The commission agent who handles goods of the same kind and mark, which belong to different owners, shall distinguish them by countermarks, and designate the merchandise respectively belonging to each principal. (n)

ARTICLE 1905. The commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale. (n)

ARTICLE 1906. Should the commission agent, with authority of the principal, sell on credit, he shall so inform the principal, with a statement of the names of the buyers. Should he fail to do so, the sale shall be deemed to have been made for cash insofar as the principal is concerned. (n)

ARTICLE 1907. Should the commission agent receive on a sale, in addition to the ordinary commission, another called a guarantee commission, he shall bear the risk of collection and shall pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser. (n)

ARTICLE 1908. The commission agent who does not collect the credits of his principal at the time when they become due and demandable shall be liable for damages, unless he proves that he exercised due diligence for that purpose. (n)

ARTICLE 1909. The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation. (1726)

CHAPTER 3 *Obligations of the Principal*

ARTICLE 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly. (1727)

ARTICLE 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers. (n)

ARTICLE 1912. The principal must advance to the agent, should the latter so request, the sums necessary for the execution of the agency.

Should the agent have advanced them, the principal must reimburse him therefor, even if the business or undertaking was not successful, provided the agent is free from all fault.

The reimbursement shall include interest on the sums advanced, from the day on which the advance was made. (1728)

ARTICLE 1913. The principal must also indemnify the agent for all the damages which the execution of the agency may have caused the latter, without fault or negligence on his part. (1729)

ARTICLE 1914. The agent may retain in pledge the things which are the object of

consequences of the agency. (1731)

ARTICLE 1916. When two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts are incompatible with each other, that of prior date shall be preferred, without prejudice to the provisions of article 1544. (n)

ARTICLE 1917. In the case referred to in the preceding article, if the agent has acted in good faith, the principal shall be liable in damages to the third person whose contract must be rejected. If the agent acted in bad faith, he alone shall be responsible. (n)

ARTICLE 1918. The principal is not liable for the expenses incurred by the agent in the following cases:

- (1) If the agent acted in contravention of the principal's instructions, unless the latter should wish to avail himself of the benefits derived from the contract;
- (2) When the expenses were due to the fault of the agent;
- (3) When the agent incurred them with knowledge that an unfavorable result would ensue, if the principal was not aware thereof;
- (4) When it was stipulated that the expenses would be borne by the agent, or that the latter would be allowed only a certain sum. (n)

CHAPTER 4 *Modes of Extinguishment of Agency*

ARTICLE 1919. Agency is extinguished:

- (1) By its revocation;
- (2) By the withdrawal of the agent;
- (3) By the death, civil interdiction, insanity or insolvency of the principal or of the agent;
- (4) By the dissolution of the firm or corporation which entrusted or accepted the agency;
- (5) By the accomplishment of the object or purpose of the agency;
- (6) By the expiration of the period for which the agency was constituted. (1732a)

ARTICLE 1920. The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied. (1733a)

ARTICLE 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof. (1734)

ARTICLE 1922. If the agent had general powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons. (n)

ARTICLE 1923. The appointment of a new agent for the same business or

entrusted to the agent, dealing directly with third persons. (n)

ARTICLE 1925. When two or more principals have granted a power of attorney for a common transaction, any one of them may revoke the same without the consent of the others. (n)

ARTICLE 1926. A general power of attorney is revoked by a special one granted to another agent, as regards the special matter involved in the latter. (n)

ARTICLE 1927. An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. (n)

ARTICLE 1928. The agent may withdraw from the agency by giving due notice to the principal. If the latter should suffer any damage by reason of the withdrawal, the agent must indemnify him therefor, unless the agent should base his withdrawal upon the impossibility of continuing the performance of the agency without grave detriment to himself. (1736a)

ARTICLE 1929. The agent, even if he should withdraw from the agency for a valid reason, must continue to act until the principal has had reasonable opportunity to take the necessary steps to meet the situation. (1737a)

ARTICLE 1930. The agency shall remain in full force and effect even after the death of the principal, if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor. (n)

ARTICLE 1931. Anything done by the agent, without knowledge of the death of the principal or of any other cause which extinguishes the agency, is valid and shall be fully effective with respect to third persons who may have contracted with him in good faith. (1738)

ARTICLE 1932. If the agent dies, his heirs must notify the principal thereof, and in the meantime adopt such measures as the circumstances may demand in the interest of the latter. (1739)

TITLE XI

Loan

General Provisions

ARTICLE 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower. (1740a)

ARTICLE 1934. An accepted promise to deliver something by way of commodatum or simple loan is binding upon parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract. (n)

CHAPTER 1

Commodatum

ARTICLE 1935. The bailee in commodatum acquires the use of the thing loaned but not its fruits; if any compensation is to be paid by him who acquires the use, the contract ceases to be a commodatum. (1941a)

ARTICLE 1936. Consumable goods may be the subject of commodatum if the purpose of the contract is not the consumption of the object, as when it is merely for exhibition. (n)

ARTICLE 1937. Movable or immovable property may be the object of commodatum. (n)

ARTICLE 1938. The bailor in commodatum need not be the owner of the thing loaned. (n)

ARTICLE 1939. Commodatum is purely personal in character. Consequently:

- (1) The death of either the bailor or the bailee extinguishes the contract;
- (2) The bailee can neither lend nor lease the object of the contract to a third person. However, the members of the bailee's household may make use of the thing loaned, unless there is a stipulation to the contrary, or unless the nature of the thing forbids such use. (n)

ARTICLE 1940. A stipulation that the bailee may make use of the fruits of the thing loaned is valid. (n)

Sec. 2
Obligations of the Bailee

ARTICLE 1941. The bailee is obliged to pay for the ordinary expenses for the use and preservation of the thing loaned. (1743a)

ARTICLE 1942. The bailee is liable for the loss of the thing, even if it should be through a fortuitous event:

- (1) If he devotes the thing to any purpose different from that for which it has been loaned;
- (2) If he keeps it longer than the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted;
- (3) If the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exempting the bailee from responsibility in case of a fortuitous event;
- (4) If he lends or leases the thing to a third person, who is not a member of his household;
- (5) If, being able to save either the thing borrowed or his own thing, he chose to save the latter. (1744a and 1745)

ARTICLE 1943. The bailee does not answer for the deterioration of the thing loaned due only to the use thereof and without his fault. (1746)

ARTICLE 1944. The bailee cannot retain the thing loaned on the ground that the bailor owes him something, even though it may be by reason of expenses. However, the bailee has a right of retention for damages mentioned in article 1951. (1747a)

ARTICLE 1945. When there are two or more bailees to whom a thing is loaned in

ARTICLE 1946. The bailor cannot demand the return of the thing loaned till after the expiration of the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted. However, if in the meantime, he should have urgent need of the thing, he may demand its return or temporary use.

In case of temporary use by the bailor, the contract of commodatum is suspended while the thing is in the possession of the bailor. (1749a)

ARTICLE 1947. The bailor may demand the thing at will, and the contractual relation is called a precarium, in the following cases:

- (1) If neither the duration of the contract nor the use to which the thing loaned should be devoted, has been stipulated; or
- (2) If the use of the thing is merely tolerated by the owner. (1750a)

ARTICLE 1948. The bailor may demand the immediate return of the thing if the bailee commits any act of ingratitude specified in article 765. (n)

ARTICLE 1949. The bailor shall refund the extraordinary expenses during the contract for the preservation of the thing loaned, provided the bailee brings the same to the knowledge of the bailor before incurring them, except when they are so urgent that the reply to the notification cannot be awaited without danger.

If the extraordinary expenses arise on the occasion of the actual use of the thing by the bailee, even though he acted without fault, they shall be borne equally by both the bailor and the bailee, unless there is a stipulation to the contrary. (1751a)

ARTICLE 1950. If, for the purpose of making use of the thing, the bailee incurs expenses other than those referred to in articles 1941 and 1949, he is not entitled to reimbursement. (n)

ARTICLE 1951. The bailor who, knowing the flaws of the thing loaned, does not advise the bailee of the same, shall be liable to the latter for the damages which he may suffer by reason thereof. (1752)

ARTICLE 1952. The bailor cannot exempt himself from the payment of expenses or damages by abandoning the thing to the bailee. (n)

CHAPTER 2

Simple Loan or Mutuum

ARTICLE 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality. (1753a)

ARTICLE 1954. A contract whereby one person transfers the ownership of non-fungible things to another with the obligation on the part of the latter to give things of the same kind, quantity, and quality shall be considered a barter. (n)

ARTICLE 1955. The obligation of a person who borrows money shall be governed by the provisions of articles 1249 and 1250 of this Code.

If what was loaned is a fungible thing other than money, the debtor owes another thing of the same kind, quantity and quality, even if it should change in value. In case it is impossible to deliver the same kind, its value at the time of the perfection of the loan shall be paid. (1754a)

ARTICLE 1956. No interest shall be due unless it has been expressly stipulated in writing. (1755a)

ARTICLE 1958. In the determination of the interest, if it is payable in kind, its value shall be appraised at the current price of the products or goods at the time and place of payment. (n)

ARTICLE 1959. Without prejudice to the provisions of article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest. (n)

ARTICLE 1960. If the borrower pays interest when there has been no stipulation therefor, the provisions of this Code concerning solutio indebiti, or natural obligations, shall be applied, as the case may be. (n)

ARTICLE 1961. Usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code. (n)

TITLE XII

Deposit

CHAPTER 1

Deposit in General and its Different Kinds

ARTICLE 1962. A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and of returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract. (1758a)

ARTICLE 1963. An agreement to constitute a deposit is binding, but the deposit itself is not perfected until the delivery of the thing. (n)

ARTICLE 1964. A deposit may be constituted judicially or extrajudicially. (1759)

ARTICLE 1965. A deposit is a gratuitous contract, except when there is an agreement to the contrary, or unless the depositary is engaged in the business of storing goods. (1760a)

ARTICLE 1966. Only movable things may be the object of a deposit. (1761)

ARTICLE 1967. An extrajudicial deposit is either voluntary or necessary. (1762)

CHAPTER 2

Voluntary Deposit

Section 1

General Provisions

ARTICLE 1968. A voluntary deposit is that wherein the delivery is made by the will of the depositor. A deposit may also be made by two or more persons each of whom believes himself entitled to the thing deposited with a third person, who shall deliver it in a proper case to the one to whom it belongs. (1763)

ARTICLE 1969. A contract of deposit may be entered into orally or in writing. (n)

ARTICLE 1970. If a person having capacity to contract accepts a deposit made by one who is incapacitated, the former shall be subject to all the obligations of a depositary, and may be compelled to return the thing by the guardian, or administrator, of the person who made the deposit, or by the latter himself if he should acquire capacity. (1764)

ARTICLE 1971. If the deposit has been made by a capacitated person with another

Sec. 2
Obligations of the Depositary

ARTICLE 1972. The depositary is obliged to keep the thing safely and to return it, when required, to the depositor, or to his heirs and successors, or to the person who may have been designated in the contract. His responsibility, with regard to the safekeeping and the loss of the thing, shall be governed by the provisions of Title I of this Book.

If the deposit is gratuitous, this fact shall be taken into account in determining the degree of care that the depositary must observe. (1766a)

ARTICLE 1973. Unless there is a stipulation to the contrary, the depositary cannot deposit the thing with a third person. If deposit with a third person is allowed, the depositary is liable for the loss if he deposited the thing with a person who is manifestly careless or unfit. The depositary is responsible for the negligence of his employees. (n)

ARTICLE 1974. The depositary may change the way of the deposit if under the circumstances he may reasonably presume that the depositor would consent to the change if he knew of the facts of the situation. However, before the depositary may make such change, he shall notify the depositor thereof and wait for his decision, unless delay would cause danger. (n)

ARTICLE 1975. The depositary holding certificates, bonds, securities or instruments which earn interest shall be bound to collect the latter when it becomes due, and to take such steps as may be necessary in order that the securities may preserve their value and the rights corresponding to them according to law.

The above provision shall not apply to contracts for the rent of safety deposit boxes. (n)

ARTICLE 1976. Unless there is a stipulation to the contrary, the depositary may commingle grain or other articles of the same kind and quality, in which case the various depositors shall own or have a proportionate interest in the mass. (n)

ARTICLE 1977. The depositary cannot make use of the thing deposited without the express permission of the depositor.

Otherwise, he shall be liable for damages.

However, when the preservation of the thing deposited requires its use, it must be used but only for that purpose. (1767a)

ARTICLE 1978. When the depositary has permission to use the thing deposited, the contract loses the concept of a deposit and becomes a loan or commodatum, except where safekeeping is still the principal purpose of the contract.

The permission shall not be presumed, and its existence must be proved. (1768a)

ARTICLE 1979. The depositary is liable for the loss of the thing through a fortuitous event:

- (1) If it is so stipulated;
- (2) If he uses the thing without the depositor's permission;
- (3) If he delays its return;
- (4) If he allows others to use it, even though he himself may have been

ARTICLE 1981. When the thing deposited is delivered closed and sealed, the depositary must return it in the same condition, and he shall be liable for damages should the seal or lock be broken through his fault.

Fault on the part of the depositary is presumed, unless there is proof to the contrary.

As regards the value of the thing deposited, the statement of the depositor shall be accepted, when the forcible opening is imputable to the depositary, should there be no proof to the contrary. However, the courts may pass upon the credibility of the depositor with respect to the value claimed by him.

When the seal or lock is broken, with or without the depositary's fault, he shall keep the secret of the deposit. (1769a)

ARTICLE 1982. When it becomes necessary to open a locked box or receptacle, the depositary is presumed authorized to do so, if the key has been delivered to him; or when the instructions of the depositor as regards the deposit cannot be executed without opening the box or receptacle. (n)

ARTICLE 1983. The thing deposited shall be returned with all its products, accessories and accessions.

Should the deposit consist of money, the provisions relative to agents in article 1896 shall be applied to the depositary. (1770)

ARTICLE 1984. The depositary cannot demand that the depositor prove his ownership of the thing deposited.

Nevertheless, should he discover that the thing has been stolen and who its true owner is, he must advise the latter of the deposit.

If the owner, in spite of such information, does not claim it within the period of one month, the depositary shall be relieved of all responsibility by returning the thing deposited to the depositor.

If the depositary has reasonable grounds to believe that the thing has not been lawfully acquired by the depositor, the former may return the same. (1771a)

ARTICLE 1985. When there are two or more depositors, if they are not solidary, and the thing admits of division, each one cannot demand more than his share.

When there is solidarity or the thing does not admit of division, the provisions of articles 1212 and 1214 shall govern. However, if there is a stipulation that the thing should be returned to one of the depositors, the depositary shall return it only to the person designated. (1772a)

ARTICLE 1986. If the depositor should lose his capacity to contract after having made the deposit, the thing cannot be returned except to the persons who may have the administration of his property and rights. (1773)

ARTICLE 1987. If at the time the deposit was made a place was designated for the return of the thing, the depositary must take the thing deposited to such place; but the expenses for transportation shall be borne by the depositor.

If no place has been designated for the return, it shall be made where the thing deposited may be, even if it should not be the same place where the deposit was made, provided that there was no malice on the part of the depositary. (1774)

ARTICLE 1988. The thing deposited must be returned to the depositor upon demand, even though a specified period or time for such return may have been fixed.

This provision shall not apply when the thing is judicially attached while in the depositary's possession, or should he have been notified of the opposition of a third

who may have justifiable reasons for not keeping the thing deposited may, even before the time designated, return it to the depositor; and if the latter should refuse to receive it, the depositary may secure its consignment from the court. (1776a)

ARTICLE 1990. If the depositary by force majeure or government order loses the thing and receives money or another thing in its place, he shall deliver the sum or other thing to the depositor. (1777a)

ARTICLE 1991. The depositor's heir who in good faith may have sold the thing which he did not know was deposited, shall only be bound to return the price he may have received or to assign his right of action against the buyer in case the price has not been paid him. (1778)

Sec. 3

Obligations of the Depositor

ARTICLE 1992. If the deposit is gratuitous, the depositor is obliged to reimburse the depositary for the expenses he may have incurred for the preservation of the thing deposited. (1779a)

ARTICLE 1993. The depositor shall reimburse the depositary for any loss arising from the character of the thing deposited, unless at the time of the constitution of the deposit the former was not aware of, or was not expected to know the dangerous character of the thing, or unless he notified the depositary of the same, or the latter was aware of it without advice from the depositor. (n)

ARTICLE 1994. The depositary may retain the thing in pledge until the full payment of what may be due him by reason of the deposit. (1780)

ARTICLE 1995. A deposit is extinguished:

- (1) Upon the loss or destruction of the thing deposited;
- (2) In case of a gratuitous deposit, upon the death of either the depositor or the depositary. (n)

CHAPTER 3

Necessary Deposit

ARTICLE 1996. A deposit is necessary:

- (1) When it is made in compliance with a legal obligation;
- (2) When it takes place on the occasion of any calamity, such as fire, storm, flood, pillage, shipwreck, or other similar events. (1781a)

ARTICLE 1997. The deposit referred to in No. 1 of the preceding article shall be governed by the provisions of the law establishing it, and in case of its deficiency, by the rules on voluntary deposit.

The deposit mentioned in No. 2 of the preceding article shall be regulated by the provisions concerning voluntary deposit and by article 2168. (1782)

ARTICLE 1998. The deposit of effects made by travellers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects. (1783)

include the loss of, or injury to the personal property of the guests caused by the servants or employees of the keepers of hotels or inns as well as strangers; but not that which may proceed from any force majeure. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotels or inns shall be considered in determining the degree of care required of him. (1784a)

ARTICLE 2001. The act of a thief or robber, who has entered the hotel is not deemed force majeure, unless it is done with the use of arms or through an irresistible force. (n)

ARTICLE 2002. The hotel-keeper is not liable for compensation if the loss is due to the acts of the guest, his family, servants or visitors, or if the loss arises from the character of the things brought into the hotel. (n)

ARTICLE 2003. The hotel-keeper cannot free himself from responsibility by posting notices to the effect that he is not liable for the articles brought by the guest. Any stipulation between the hotel-keeper and the guest whereby the responsibility of the former as set forth in articles 1998 to 2001 is suppressed or diminished shall be void. (n)

ARTICLE 2004. The hotel-keeper has a right to retain the things brought into the hotel by the guest, as a security for credits on account of lodging, and supplies usually furnished to hotel guests. (n)

CHAPTER 4

Sequestration or Judicial Deposit

ARTICLE 2005. A judicial deposit or sequestration takes place when an attachment or seizure of property in litigation is ordered. (1785)

ARTICLE 2006. Movable as well as immovable property may be the object of sequestration. (1786)

ARTICLE 2007. The depositary of property or objects sequestered cannot be relieved of his responsibility until the controversy which gave rise thereto has come to an end, unless the court so orders. (1787a)

ARTICLE 2008. The depositary of property sequestered is bound to comply, with respect to the same, with all the obligations of a good father of a family. (1788)

ARTICLE 2009. As to matters not provided for in this Code, judicial sequestration shall be governed by the Rules of Court. (1789a)

TITLE XIII

Aleatory Contracts

General Provision

ARTICLE 2010. By an aleatory contract, one of the parties or both reciprocally bind themselves to give or to do something in consideration of what the other shall give or do upon the happening of an event which is uncertain, or which is to occur at an indeterminate time. (1790)

CHAPTER 1

Insurance

ARTICLE 2011. The contract of insurance is governed by special laws. Matters not expressly provided for in such special laws shall be regulated by this Code. (n)

ARTICLE 2012. Any person who is forbidden from receiving any donation under article 739 cannot be named beneficiary of a life insurance policy by the person who

ARTICLE 2013. A game of chance is that which depends more on chance or hazard than on skill or ability. For the purposes of the following articles, in case of doubt a game is deemed to be one of chance. (n)

ARTICLE 2014. No action can be maintained by the winner for the collection of what he has won in a game of chance. But any loser in a game of chance may recover his loss from the winner, with legal interest from the time he paid the amount lost, and subsidiarily from the operator or manager of the gambling house. (1799a)

ARTICLE 2015. If cheating or deceit is committed by the winner, he, and subsidiarily the operator or manager of the gambling house, shall pay by way of exemplary damages, not less than the equivalent of the sum lost, in addition to the latter amount. If both the winner and the loser have perpetrated fraud, no action for recovery can be brought by either. (n)

ARTICLE 2016. If the loser refuses or neglects to bring an action to recover what has been lost, his or her creditors, spouse, descendants or other persons entitled to be supported by the loser may institute the action. The sum thereby obtained shall be applied to the creditors' claims, or to the support of the spouse or relatives, as the case may be. (n)

ARTICLE 2017. The provisions of article 2014 and 2016 apply when two or more persons bet in a game of chance, although they take no active part in the game itself. (1799a)

ARTICLE 2018. If a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void. The loser may recover what he has paid. (n)

ARTICLE 2019. Betting on the result of sports, athletic competitions, or games of skill may be prohibited by local ordinances. (n)

ARTICLE 2020. The loser in any game which is not one of chance, when there is no local ordinance which prohibits betting therein, is under obligation to pay his loss, unless the amount thereof is excessive under the circumstances. In the latter case, the court shall reduce the loss to the proper sum. (1801a)

CHAPTER 3

Life Annuity

ARTICLE 2021. The aleatory contract of life annuity binds the debtor to pay an annual pension or income during the life of one or more determinate persons in consideration of a capital consisting of money or other property, whose ownership is transferred to him at once with the burden of the income. (1802a)

ARTICLE 2022. The annuity may be constituted upon the life of the person who gives the capital, upon that of a third person, or upon the lives of various persons, all of whom must be living at the time the annuity is established.

It may also be constituted in favor of the person or persons upon whose life or lives the contract is entered into, or in favor of another or other persons. (1803a)

ARTICLE 2023. Life annuity shall be void if constituted upon the life of a person who was already dead at the time the contract was entered into, or who was at that time suffering from an illness which caused his death within twenty days following said date. (1804)

ARTICLE 2024. The lack of payment of the income due does not authorize the recipient of the life annuity to demand the reimbursement of the capital or to retake

ARTICLE 2025. The income corresponding to the year in which the person enjoying it dies shall be paid in proportion to the days during which he lived; if the income should be paid by installments in advance, the whole amount of the installment which began to run during his life shall be paid. (1806)

ARTICLE 2026. He who constitutes an annuity by gratuitous title upon his property, may provide at the time the annuity is established that the same shall not be subject to execution or attachment on account of the obligations of the recipient of the annuity. If the annuity was constituted in fraud of creditors, the latter may ask for the execution or attachment of the property. (1807a)

ARTICLE 2027. No annuity shall be claimed without first proving the existence of the person upon whose life the annuity is constituted. (1808)

TITLE XIV *Compromises and Arbitrations*

CHAPTER 1 *Compromises*

ARTICLE 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. (1809a)

ARTICLE 2029. The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise. (n)

ARTICLE 2030. Every civil action or proceeding shall be suspended:

- (1) If willingness to discuss a possible compromise is expressed by one or both parties; or
- (2) If it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

The duration and terms of the suspension of the civil action or proceeding and similar matters shall be governed by such provisions of the rules of court as the Supreme Court shall promulgate. Said rules of court shall likewise provide for the appointment and duties of amicable compounders. (n)

ARTICLE 2031. The courts may mitigate the damages to be paid by the losing party who has shown a sincere desire for a compromise. (n)

ARTICLE 2032. The court's approval is necessary in compromises entered into by guardians, parents, absentee's representatives, and administrators or executors of decedent's estates. (1810a)

ARTICLE 2033. Juridical persons may compromise only in the form and with the requisites which may be necessary to alienate their property. (1812a)

ARTICLE 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. (1813)

ARTICLE 2035. No compromise upon the following questions shall be valid:

- (1) The civil status of persons;

(5) The jurisdiction of courts;

(6) Future legitime. (1814a)

ARTICLE 2036. A compromise comprises only those objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same.

A general renunciation of rights is understood to refer only to those that are connected with the dispute which was the subject of the compromise. (1815)

ARTICLE 2037. A compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise. (1816)

ARTICLE 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

However, one of parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced. (1817a)

ARTICLE 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents. (n)

ARTICLE 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise. (1819a)

ARTICLE 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand. (n)

CHAPTER 2

Arbitrations

ARTICLE 2042. The same persons who may enter into a compromise may submit their controversies to one or more arbitrators for decision. (1820a)

ARTICLE 2043. The provisions of the preceding Chapter upon compromises shall also be applicable to arbitrations. (1821a)

ARTICLE 2044. Any stipulation that the arbitrators' award or decision shall be final, is valid, without prejudice to articles 2038, 2039, and 2040. (n)

ARTICLE 2045. Any clause giving one of the parties power to choose more arbitrators than the other is void and of no effect. (n)

ARTICLE 2046. The appointment of arbitrators and the procedure for arbitration shall be governed by the provisions of such rules of court as the Supreme Court shall

CHAPTER 1
Nature and Extent of Guaranty

ARTICLE 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Sec. 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship. (1822a)

ARTICLE 2048. A guaranty is gratuitous, unless there is a stipulation to the contrary. (n)

ARTICLE 2049. A married woman may guarantee an obligation without the husband's consent, but shall not thereby bind the conjugal partnership, except in cases provided by law. (n)

ARTICLE 2050. If a guaranty is entered into without the knowledge or consent, or against the will of the principal debtor, the provisions of articles 1236 and 1237 shall apply. (n)

ARTICLE 2051. A guaranty may be conventional, legal or judicial, gratuitous, or by onerous title.

It may also be constituted, not only in favor of the principal debtor, but also in favor of the other guarantor, with the latter's consent, or without his knowledge, or even over his objection. (1823)

ARTICLE 2052. A guaranty cannot exist without a valid obligation.

Nevertheless, a guaranty may be constituted to guarantee the performance of a voidable or an unenforceable contract. It may also guarantee a natural obligation. (1824a)

ARTICLE 2053. A guaranty may also be given as security for future debts, the amount of which is not yet known; there can be no claim against the guarantor until the debt is liquidated. A conditional obligation may also be secured. (1825a)

ARTICLE 2054. A guarantor may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions.

Should he have bound himself for more, his obligations shall be reduced to the limits of that of the debtor. (1826)

ARTICLE 2055. A guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein.

If it be simple or indefinite, it shall compromise not only the principal obligation, but also all its accessories, including the judicial costs, provided with respect to the latter, that the guarantor shall only be liable for those costs incurred after he has been judicially required to pay. (1827a)

ARTICLE 2056. One who is obliged to furnish a guarantor shall present a person who possesses integrity, capacity to bind himself, and sufficient property to answer for the obligation which he guarantees. The guarantor shall be subject to the jurisdiction of the court of the place where this obligation is to be complied with. (1828a)

ARTICLE 2057. If the guarantor should be convicted in first instance of a crime involving dishonesty or should become insolvent, the creditor may demand another who has all the qualifications required in the preceding article. The case is excepted where the creditor has required and stipulated that a specified person should be the

Section 1
Effects of Guaranty Between the Guarantor and the Creditor

ARTICLE 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor. (1830a)

ARTICLE 2059. The excussion shall not take place:

- (1) If the guarantor has expressly renounced it;
- (2) If he has bound himself solidarily with the debtor;
- (3) In case of insolvency of the debtor;
- (4) When he has absconded, or cannot be sued within the Philippines unless he has left a manager or representative;
- (5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation. (1831a)

ARTICLE 2060. In order that the guarantor may make use of the benefit of exclusion, he must set it up against the creditor upon the latter's demand for payment from him, and point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt. (1832)

ARTICLE 2061. The guarantor having fulfilled all the conditions required in the preceding article, the creditor who is negligent in exhausting the property pointed out shall suffer the loss, to the extent of said property, for the insolvency of the debtor resulting from such negligence. (1833a)

ARTICLE 2062. In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter. (1834a)

ARTICLE 2063. A compromise between the creditor and the principal debtor benefits the guarantor but does not prejudice him. That which is entered into between the guarantor and the creditor benefits but does not prejudice the principal debtor. (1835a)

ARTICLE 2064. The guarantor of a guarantor shall enjoy the benefit of excussion, both with respect to the guarantor and to the principal debtor. (1836)

ARTICLE 2065. Should there be several guarantors of only one debtor and for the same debt, the obligation to answer for the same is divided among all. The creditor cannot claim from the guarantors except the shares which they are respectively bound to pay, unless solidarity has been expressly stipulated.

The benefit of division against the co-guarantors ceases in the same cases and for the same reasons as the benefit of excussion against the principal debtor. (1837)

Sec. 2
Effects of Guaranty Between the Debtor and the Guarantor

- (1) The total amount of the debt;
- (2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;
- (3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;
- (4) Damages, if they are due. (1838a)

ARTICLE 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid. (1839)

ARTICLE 2068. If the guarantor should pay without notifying the debtor, the latter may enforce against him all the defenses which he could have set up against the creditor at the time the payment was made. (1840)

ARTICLE 2069. If the debt was for a period and the guarantor paid it before it became due, he cannot demand reimbursement of the debtor until the expiration of the period unless the payment has been ratified by the debtor. (1841a)

ARTICLE 2070. If the guarantor has paid without notifying the debtor, and the latter not being aware of the payment, repeats the payment, the former has no remedy whatever against the debtor, but only against the creditor. Nevertheless, in case of a gratuitous guaranty, if the guarantor was prevented by a fortuitous event from advising the debtor of the payment, and the creditor becomes insolvent, the debtor shall reimburse the guarantor for the amount paid. (1842a)

ARTICLE 2071. The guarantor, even before having paid, may proceed against the principal debtor:

- (1) When he is sued for the payment;
- (2) In case of insolvency of the principal debtor;
- (3) When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
- (4) When the debt has become demandable, by reason of the expiration of the period for payment;
- (5) After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;
- (6) If there are reasonable grounds to fear that the principal debtor intends to abscond;
- (7) If the principal debtor is in imminent danger of becoming insolvent.

In all these cases, the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor. (1834a)

ARTICLE 2072. If one, at the request of another, becomes a guarantor for the debt of a third person who is not present, the guarantor who satisfies the debt may sue either the person so requesting or the debtor for reimbursement. (n)

the same debt, the one among them who has paid may demand of each of the others the share which is proportionally owing from him.

If any of the guarantors should be insolvent, his share shall be borne by the others, including the payer, in the same proportion.

The provisions of this article shall not be applicable, unless the payment has been made by virtue of a judicial demand or unless the principal debtor is insolvent. (1844a)

ARTICLE 2074. In the case of the preceding article, the co-guarantors may set up against the one who paid, the same defenses which would have pertained to the principal debtor against the creditor, and which are not purely personal to the debtor. (1845)

ARTICLE 2075. A sub-guarantor, in case of the insolvency of the guarantor for whom he bound himself, is responsible to the co-guarantors in the same terms as the guarantor. (1846)

CHAPTER 3 *Extinguishment of Guaranty*

ARTICLE 2076. The obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations. (1847)

ARTICLE 2077. If the creditor voluntarily accepts immovable or other property in payment of the debt, even if he should afterwards lose the same through eviction, the guarantor is released. (1849)

ARTICLE 2078. A release made by the creditor in favor of one of the guarantors, without the consent of the others, benefits all to the extent of the share of the guarantor to whom it has been granted. (1850)

ARTICLE 2079. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein. (1851a)

ARTICLE 2080. The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preference of the latter. (1852)

ARTICLE 2081. The guarantor may set up against the creditor all the defenses which pertain to the principal debtor and are inherent in the debt; but not those that are personal to the debtor. (1853)

CHAPTER 4 *Legal and Judicial Bonds*

ARTICLE 2082. The bondsman who is to be offered in virtue of a provision of law or of a judicial order shall have the qualifications prescribed in article 2056 and in special laws. (1854a)

ARTICLE 2083. If the person bound to give a bond in the cases of the preceding article, should not be able to do so, a pledge or mortgage considered sufficient to cover his obligation shall be admitted in lieu thereof. (1855)

ARTICLE 2084. A judicial bondsman cannot demand the exhaustion of the property of the principal debtor.

A sub-surety in the same case, cannot demand the exhaustion of the property of the

CHAPTER 1
Provisions Common to Pledge and Mortgage

ARTICLE 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. (1857)

ARTICLE 2086. The provisions of article 2052 are applicable to a pledge or mortgage. (n)

ARTICLE 2087. It is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor. (1858)

ARTICLE 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void. (1859a)

ARTICLE 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied. (1860)

ARTICLE 2090. The indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidarily liable. (n)

ARTICLE 2091. The contract of pledge or mortgage may secure all kinds of obligations, be they pure or subject to a suspensive or resolutive condition. (1861)

ARTICLE 2092. A promise to constitute a pledge or mortgage gives rise only to a personal action between the contracting parties, without prejudice to the criminal responsibility incurred by him who defrauds another, by offering in pledge or mortgage as unencumbered, things which he knew were subject to some burden, or by misrepresenting himself to be the owner of the same. (1862)

necessary, in order to constitute the contract or pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement. (1863)

ARTICLE 2094. All movables which are within commerce may be pledged, provided they are susceptible of possession. (1864)

ARTICLE 2095. Incorporeal rights, evidenced by negotiable instruments, bills of lading, shares of stock, bonds, warehouse receipts and similar documents may also be pledged. The instrument proving the right pledged shall be delivered to the creditor, and if negotiable, must be indorsed. (n)

ARTICLE 2096. A pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument. (1865a)

ARTICLE 2097. With the consent of the pledgee, the thing pledged may be alienated by the pledgor or owner, subject to the pledge. The ownership of the thing pledged is transmitted to the vendee or transferee as soon as the pledgee consents to the alienation, but the latter shall continue in possession. (n)

ARTICLE 2098. The contract of pledge gives a right to the creditor to retain the thing in his possession or in that of a third person to whom it has been delivered, until the debt is paid. (1866a)

ARTICLE 2099. The creditor shall take care of the thing pledged with the diligence of a good father of a family; he has a right to the reimbursement of the expenses made for its preservation, and is liable for its loss or deterioration, in conformity with the provisions of this Code. (1867)

ARTICLE 2100. The pledgee cannot deposit the thing pledged with a third person, unless there is a stipulation authorizing him to do so.

The pledgee is responsible for the acts of his agents or employees with respect to the thing pledged. (n)

ARTICLE 2101. The pledgor has the same responsibility as a bailor in commodatum in the case under article 1951. (n)

ARTICLE 2102. If the pledge earns or produces fruits, income, dividends, or interests, the creditor shall compensate what he receives with those which are owing him; but if none are owing him, or insofar as the amount may exceed that which is due, he shall apply it to the principal. Unless there is a stipulation to the contrary, the pledge shall extend to the interest and earnings of the right pledged.

In case of a pledge of animals, their offspring shall pertain to the pledgor or owner of animals pledged, but shall be subject to the pledge, if there is no stipulation to the contrary. (1868a)

ARTICLE 2103. Unless the thing pledged is expropriated, the debtor continues to be the owner thereof.

Nevertheless, the creditor may bring the actions which pertain to the owner of the thing pledged in order to recover it from, or defend it against a third person. (1869)

ARTICLE 2104. The creditor cannot use the thing pledged, without the authority of the owner, and if he should do so, or should misuse the thing in any other way, the owner may ask that it be judicially or extrajudicially deposited. When the preservation of the thing pledged requires its use, it must be used by the creditor but only for that purpose. (1870a)

ARTICLE 2105. The debtor cannot ask for the return of the thing pledged against the will of the creditor, unless and until he has paid the debt and its interest, with expenses in a proper case. (1871)

ARTICLE 2107. If there are reasonable grounds to fear the destruction or impairment of the thing pledged, without the fault of the pledgee, the pledgor may demand the return of the thing, upon offering another thing in pledge, provided the latter is of the same kind as the former and not of inferior quality, and without prejudice to the right of the pledgee under the provisions of the following article.

The pledgee is bound to advise the pledgor, without delay, of any danger to the thing pledged. (n)

ARTICLE 2108. If, without the fault of the pledgee, there is danger of destruction, impairment, or diminution in value of the thing pledged, he may cause the same to be sold at a public sale. The proceeds of the auction shall be a security for the principal obligation in the same manner as the thing originally pledged. (n)

ARTICLE 2109. If the creditor is deceived on the substance or quality of the thing pledged, he may either claim another thing in its stead, or demand immediate payment of the principal obligation. (n)

ARTICLE 2110. If the thing pledged is returned by the pledgee to the pledgor or owner, the pledge is extinguished. Any stipulation to the contrary shall be void.

If subsequent to the perfection of the pledge, the thing is in the possession of the pledgor or owner, there is a prima facie presumption that the same has been returned by the pledgee. This same presumption exists if the thing pledged is in the possession of a third person who has received it from the pledgor or owner after the constitution of the pledge. (n)

ARTICLE 2111. A statement in writing by the pledgee that he renounces or abandons the pledge is sufficient to extinguish the pledge. For this purpose, neither the acceptance by the pledgor or owner, nor the return of the thing pledged is necessary, the pledgee becoming a depositary. (n)

ARTICLE 2112. The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim. (1872a)

ARTICLE 2113. At the public auction, the pledgor or owner may bid. He shall, moreover, have a better right if he should offer the same terms as the highest bidder.

The pledgee may also bid, but his offer shall not be valid if he is the only bidder. (n)

ARTICLE 2114. All bids at the public auction shall offer to pay the purchase price at once. If any other bid is accepted, the pledgee is deemed to have been received the purchase price, as far as the pledgor or owner is concerned. (n)

ARTICLE 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary. (n)

ARTICLE 2116. After the public auction, the pledgee shall promptly advise the pledgor or owner of the result thereof. (n)

ARTICLE 2117. Any third person who has any right in or to the thing pledged may satisfy the principal obligation as soon as the latter becomes due and demandable. (n)

ARTICLE 2119. If two or more things are pledged, the pledgee may choose which he will cause to be sold, unless there is a stipulation to the contrary. He may demand the sale of only as many of the things as are necessary for the payment of the debt. (n)

ARTICLE 2120. If a third party secures an obligation by pledging his own movable property under the provisions of article 2085 he shall have the same rights as a guarantor under articles 2066 to 2070, and articles 2077 to 2081. He is not prejudiced by any waiver of defense by the principal obligor. (n)

ARTICLE 2121. Pledges created by operation of law, such as those referred to in articles 546, 1731, and 1994, are governed by the foregoing articles on the possession, care and sale of the thing as well as on the termination of the pledge. However, after payment of the debt and expenses, the remainder of the price of the sale shall be delivered to the obligor. (n)

ARTICLE 2122. A thing under a pledge by operation of law may be sold only after demand of the amount for which the thing is retained. The public auction shall take place within one month after such demand. If, without just grounds, the creditor does not cause the public sale to be held within such period, the debtor may require the return of the thing. (n)

ARTICLE 2123. With regard to pawnshops and other establishments, which are engaged in making loans secured by pledges, the special laws and regulations concerning them shall be observed, and subsidiarily, the provisions of this Title. (1873a)

CHAPTER 3

Mortgage

ARTICLE 2124. Only the following property may be the object of a contract of mortgage:

- (1) Immovables;
- (2) Alienable real rights in accordance with the laws, imposed upon immovables.

Nevertheless, movables may be the object of a chattel mortgage. (1874a)

ARTICLE 2125. In addition to the requisites stated in article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized. (1875a)

ARTICLE 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. (1876)

ARTICLE 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person. (1877)

mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in the terms and with the formalities which the law establishes. (1879)

ARTICLE 2130. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void. (n)

ARTICLE 2131. The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law. (1880a)

CHAPTER 4

Antichresis

ARTICLE 2132. By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit. (1881)

ARTICLE 2133. The actual market value of the fruits at the time of the application thereof to the interest and principal shall be the measure of such application. (n)

ARTICLE 2134. The amount of the principal and of the interest shall be specified in writing; otherwise, the contract of antichresis shall be void. (n)

ARTICLE 2135. The creditor, unless there is a stipulation to the contrary, is obliged to pay the taxes and charges upon the estate.

He is also bound to bear the expenses necessary for its preservation and repair.

The sums spent for the purposes stated in this article shall be deducted from the fruits. (1882)

ARTICLE 2136. The debtor cannot reacquire the enjoyment of the immovable without first having totally paid what he owes the creditor.

But the latter, in order to exempt himself from the obligations imposed upon him by the preceding article, may always compel the debtor to enter again upon the enjoyment of the property, except when there is a stipulation to the contrary. (1883)

ARTICLE 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt or the sale of the real property. In this case, the Rules of Court on the foreclosure of mortgages shall apply. (1884a)

ARTICLE 2138. The contracting parties may stipulate that the interest upon the debt be compensated with the fruits of the property which is the object of the antichresis, provided that if the value of the fruits should exceed the amount of interest allowed by the laws against usury, the excess shall be applied to the principal. (1885a)

ARTICLE 2139. The last paragraph of article 2085, and articles 2089 to 2091 are applicable to this contract. (1886a)

CHAPTER 5

Chattel Mortgage

ARTICLE 2140. By a chattel mortgage, personal property is recorded in the Chattel

conflict with the Chattel Mortgage Law shall be applicable to chattel mortgages. (n)

TITLE XVII
Extra-contractual Obligations

CHAPTER 1
Quasi-contracts

ARTICLE 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another. (n)

ARTICLE 2143. The provisions for quasi-contracts in this Chapter do not exclude other quasi-contracts which may come within the purview of the preceding article. (n)

Section 1
Negotiorum Gestio

ARTICLE 2144. Whoever voluntarily takes charge of the agency or management of the business or property of another, without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so. This juridical relation does not arise in either of these instances:

- (1) When the property or business is not neglected or abandoned;
- (2) If in fact the manager has been tacitly authorized by the owner.

In the first case, the provisions of articles 1317, 1403, No. 1, and 1404 regarding unauthorized contracts shall govern.

In the second case, the rules on agency in Title X of this Book shall be applicable. (1888a)

ARTICLE 2145. The officious manager shall perform his duties with all the diligence of a good father of a family, and pay the damages which through his fault or negligence may be suffered by the owner of the property or business under management.

The courts may, however, increase or moderate the indemnity according to the circumstances of each case. (1889a)

ARTICLE 2146. If the officious manager delegates to another person all or some of his duties, he shall be liable for the acts of the delegate, without prejudice to the direct obligation of the latter toward the owner of the business.

The responsibility of two or more officious managers shall be solidary, unless the management was assumed to save the thing or business from imminent danger. (1890a)

ARTICLE 2147. The officious manager shall be liable for any fortuitous event:

- (1) If he undertakes risky operations which the owner was not accustomed to embark upon;
- (2) If he has preferred his own interest to that of the owner;
- (3) If he fails to return the property or business after demand by the owner;

business from imminent danger, the officious manager shall be liable for tortuitous events:

- (1) If he is manifestly unfit to carry on the management;
- (2) If by his intervention he prevented a more competent person from taking up the management. (n)

ARTICLE 2149. The ratification of the management by the owner of the business produces the effects of an express agency, even if the business may not have been successful. (1892a)

ARTICLE 2150. Although the officious management may not have been expressly ratified, the owner of the property or business who enjoys the advantages of the same shall be liable for obligations incurred in his interest, and shall reimburse the officious manager for the necessary and useful expenses and for the damages which the latter may have suffered in the performance of his duties.

The same obligation shall be incumbent upon him when the management had for its purpose the prevention of an imminent and manifest loss, although no benefit may have been derived. (1893)

ARTICLE 2151. Even though the owner did not derive any benefit and there has been no imminent and manifest danger to the property or business, the owner is liable as under the first paragraph of the preceding article, provided:

- (1) The officious manager has acted in good faith, and
- (2) The property or business is intact, ready to be returned to the owner. (n)

ARTICLE 2152. The officious manager is personally liable for contracts which he has entered into with third persons, even though he acted in the name of the owner, and there shall be no right of action between the owner and third persons. These provisions shall not apply:

- (1) If the owner has expressly or tacitly ratified the management, or
- (2) When the contract refers to things pertaining to the owner of the business. (n)

ARTICLE 2153. The management is extinguished:

- (1) When the owner repudiates it or puts an end thereto;
- (2) When the officious manager withdraws from the management, subject to the provisions of article 2144;
- (3) By the death, civil interdiction, insanity or insolvency of the owner or the officious manager. (n)

Sec. 2 *Solutio Indebiti*

ARTICLE 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. (1895)

ARTICLE 2155. Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article. (n)

payment of what is not due, is solidary. (n)

ARTICLE 2158. When the property delivered or money paid belongs to a third person, the payee shall comply with the provisions of article 1984. (n)

ARTICLE 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered. (1896a)

ARTICLE 2160. He who in good faith accepts an undue payment of a thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum. (1897)

ARTICLE 2161. As regards the reimbursement for improvements and expenses incurred by him who unduly received the thing, the provisions of Title V of Book II shall govern. (1898)

ARTICLE 2162. He shall be exempt from the obligation to restore who, believing in good faith that the payment was being made of a legitimate and subsisting claim, destroyed the document, or allowed the action to prescribe, or gave up the pledges, or cancelled the guaranties for his right. He who paid unduly may proceed only against the true debtor or the guarantors with regard to whom the action is still effective. (1899)

ARTICLE 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause. (1901)

Sec. 3

*Other Quasi-Contracts **

ARTICLE 2164. When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it out of piety and without intention of being repaid. (1894a)

ARTICLE 2165. When funeral expenses are borne by a third person, without the knowledge of those relatives who were obliged to give support to the deceased, said relatives shall reimburse the third person, should the latter claim reimbursement. (1894a)

ARTICLE 2166. When the person obliged to support an orphan, or an insane or other indigent person unjustly refuses to give support to the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. The provisions of this article apply when the father or mother of a child under eighteen years of age unjustly refuses to support him.

ARTICLE 2167. When through an accident or other cause a person is injured or becomes seriously ill, and he is treated or helped while he is not in a condition to give consent to a contract, he shall be liable to pay for the services of the physician or other personing him, unless the service has been rendered out of pure generosity.

ARTICLE 2168. When during a fire, flood, storm, or other calamity, property is saved from destruction by another person without the knowledge of the owner, the latter is bound to pay the former just compensation.

pertaining to two or more persons are commingled or confused, the rules on co-ownership shall be applicable.

ARTICLE 2171. The rights and obligations of the finder of lost personal property shall be governed by articles 719 and 720.

ARTICLE 2172. The right of every possessor in good faith to reimbursement for necessary and useful expenses is governed by article 546.

ARTICLE 2173. When a third person, without the knowledge of the debtor, pays the debt, the rights of the former are governed by articles 1236 and 1237.

ARTICLE 2174. When in a small community a majority of the inhabitants of age decide upon a measure for protection against lawlessness, fire, flood, storm or other calamity, any one who objects to the plan and refuses to contribute to the expenses but is benefited by the project as executed shall be liable to pay his share of said expenses.

ARTICLE 2175. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter.

CHAPTER 2

Quasi-delicts

ARTICLE 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

ARTICLE 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.(n)

ARTICLE 2178. The provisions of articles 1172 to 1174 are also applicable to a quasi-delict. (n)

ARTICLE 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. (n)

ARTICLE 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not

their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)

ARTICLE 2181. Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim. (1904)

ARTICLE 2182. If the minor or insane person causing damage has no parents or guardian, the minor or insane person shall be answerable with his own property in an action against him where a guardian ad litem shall be appointed. (n)

ARTICLE 2183. The possessor of an animal or whoever may make use of the same is responsible for the damage which it may cause, although it may escape or be lost. This responsibility shall cease only in case the damage should come from force majeure or from the fault of the person who has suffered damage. (1905)

ARTICLE 2184. In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of the due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of article 2180 are applicable. (n)

ARTICLE 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. (n)

ARTICLE 2186. Every owner of a motor vehicle shall file with the proper government office a bond executed by a government-controlled corporation or office, to answer for damages to third persons. The amount of the bond and other terms shall be fixed by the competent public official. (n)

ARTICLE 2187. Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers. (n)

ARTICLE 2188. There is prima facie presumption of negligence on the part of the defendant if the death or injury results from his possession of dangerous weapons or substances, such as firearms and poison, except when the possession or use thereof is indispensable in his occupation or business. (n)

ARTICLE 2189. Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. (n)

ARTICLE 2190. The proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse, if it should be due to the lack of necessary repairs. (1907)

ARTICLE 2191. Proprietors shall also be responsible for damages caused:

(1) By the explosion of machinery which has not been taken care of with due diligence, and the inflammation of explosive substances which have not been kept in a safe and adequate place;

(2) By excessive smoke, which may be harmful to persons or property;

constructed without precautions suitable to the place. (1908)

ARTICLE 2192. If damage referred to in the two preceding articles should be the result of any defect in the construction mentioned in article 1723, the third person suffering damages may proceed only against the engineer or architect or contractor in accordance with said article, within the period therein fixed. (1909)

ARTICLE 2193. The head of a family that lives in a building or a part thereof, is responsible for damages caused by things thrown or falling from the same. (1910)

ARTICLE 2194. The responsibility of two or more persons who are liable for quasi-delict is solidary. (n)

TITLE XVIII

Damages 1

CHAPTER 1

General Provisions

ARTICLE 2195. The provisions of this Title shall be respectively applicable to all obligations mentioned in article 1157.

ARTICLE 2196. The rules under this Title are without prejudice to special provisions on damages formulated elsewhere in this Code. Compensation for workmen and other employees in case of death, injury or illness is regulated by special laws. Rules governing damages laid down in other laws shall be observed insofar as they are not in conflict with this Code.

ARTICLE 2197. Damages may be:

- (1) Actual or compensatory;
- (2) Moral;
- (3) Nominal;
- (4) Temperate or moderate;
- (5) Liquidated; or
- (6) Exemplary or corrective.

ARTICLE 2198. The principles of the general law on damages are hereby adopted insofar as they are not inconsistent with this Code.

CHAPTER 2

Actual or Compensatory Damages

ARTICLE 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

ARTICLE 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain. (1106)

ARTICLE 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

ARTICLE 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

ARTICLE 2203. The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.

ARTICLE 2204. In crimes, the damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances.

ARTICLE 2205. Damages may be recovered:

- (1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;
- (2) For injury to the plaintiff's business standing or commercial credit.

ARTICLE 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

- (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
- (2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;
- (3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

ARTICLE 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

ARTICLE 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (1108)

ARTICLE 2210. Interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract.

ARTICLE 2211. In crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.

ARTICLE 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

ARTICLE 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

ARTICLE 2214. In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover.

ARTICLE 2215. In contracts, quasi-contracts, and quasi-delicts, the court may equitably mitigate the damages under circumstances other than the case referred to in the preceding article, as in the following instances:

- (1) That the plaintiff himself has contravened the terms of the contract;
- (2) That the plaintiff has derived some benefit as a result of the contract;
- (3) In cases where exemplary damages are to be awarded, that the defendant acted upon the advice of counsel;
- (4) That the loss would have resulted in any event;
- (5) That since the filing of the action, the defendant has done his best to lessen the plaintiff's loss or injury.

CHAPTER 3 *Other Kinds of Damages*

ARTICLE 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

ARTICLE 2218. In the adjudication of moral damages, the sentimental value of property, real or personal, may be considered.

ARTICLE 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

ARTICLE 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Sec. 2

Nominal Damages

ARTICLE 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

ARTICLE 2222. The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded.

ARTICLE 2223. The adjudication of nominal damages shall preclude further contest upon the right involved and all accessory questions, as between the parties to the suit, or their respective heirs and assigns.

Sec. 3

Temperate or Moderate Damages

ARTICLE 2225. Temperate damages must be reasonable under the circumstances.

Sec. 4

Liquidated Damages

ARTICLE 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

ARTICLE 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

ARTICLE 2228. When the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

Sec. 5

Exemplary or Corrective Damages

ARTICLE 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ARTICLE 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

ARTICLE 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

ARTICLE 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

ARTICLE 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

ARTICLE 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

ARTICLE 2235. A stipulation whereby exemplary damages are renounced in advance shall be null and void.

TITLE XII

Concurrence and Preference of Credits

CHAPTER 1

General Provisions

ARTICLE 2236. The debtor is liable with all his property, present and future, for the fulfillment of his obligations, subject to the exemptions provided by law. (1911a)

assignee for the payment of the insolvent debtor's obligations, except insofar as the latter have redounded to the benefit of the family. If it is the husband who is insolvent, the administration of the conjugal partnership or absolute community may, by order of the court, be transferred to the wife or to a third person other than the assignee. (n)

ARTICLE 2239. If there is property, other than that mentioned in the preceding article, owned by two or more persons, one of whom is the insolvent debtor, his undivided share or interest therein shall be among the assets to be taken possession of by the assignee for the payment of the insolvent debtor's obligations. (n)

ARTICLE 2240. Property held by the insolvent debtor as a trustee of an express or implied trust, shall be excluded from the insolvency proceedings. (n)

CHAPTER 2

Classification of Credits

ARTICLE 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

- (1) Duties, taxes and fees due thereon to the State or any subdivision thereof;
- (2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
- (3) Claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;
- (4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;
- (5) Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed;
- (6) Claims for laborers' wages, on the goods manufactured or the work done;
- (7) For expenses of salvage, upon the goods salvaged;
- (8) Credits between the landlord and the tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;
- (9) Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;
- (10) Credits for lodging and supplies usually furnished to travellers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;
- (11) Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested;
- (12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on

In the foregoing cases, if the movables to which the lien or preference attaches have been wrongfully taken, the creditor may demand them from any possessor, within thirty days from the unlawful seizure. (1922a)

ARTICLE 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

- (1) Taxes due upon the land or building;
- (2) For the unpaid price of real property sold, upon the immovable sold;
- (3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;
- (4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;
- (5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;
- (6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;
- (7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;
- (8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;
- (9) Claims of donors or real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;
- (10) Credits of insurers, upon the property insured, for the insurance premium for two years. (1923a)

ARTICLE 2243. The claims or credits enumerated in the two preceding articles shall be considered as mortgages or pledges of real or personal property, or liens within the purview of legal provisions governing insolvency. Taxes mentioned in No. 1, article 2241, and No. 1, article 2242, shall first be satisfied. (n)

ARTICLE 2244. With reference to other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

- (1) Proper funeral expenses for the debtor, or children under his or her parental authority who have no property of their own, when approved by the court;
- (2) Credits for services rendered the insolvent by employees, laborers, or household helpers for one year preceding the commencement of the proceedings in insolvency;
- (3) Expenses during the last illness of the debtor or of his or her spouse and children under his or her parental authority, if they have no property of their own;
- (4) Compensation due the laborers or their dependents under laws providing

(6) Support during the insolvency proceedings, and for three months thereafter;

(7) Fines and civil indemnification arising from a criminal offense;

(8) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;

(9) Taxes and assessments due the national government, other than those mentioned in articles 2241, No. 1, and 2242, No. 1;

(10) Taxes and assessments due any province, other than those referred to in articles 2241, No. 1, and 2242, No. 1;

(11) Taxes and assessments due any city or municipality, other than those indicated in articles 2241, No. 1, and 2242, No. 1;

(12) Damages for death or personal injuries caused by a quasi-delict;

(13) Gifts due to public and private institutions of charity or beneficence;

(14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively. (1924a)

ARTICLE 2245. Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference. (1925)

CHAPTER 3

Order of Preference of Credits

ARTICLE 2246. Those credits which enjoy preference with respect to specific movables, exclude all others to the extent of the value of the personal property to which the preference refers.

ARTICLE 2247. If there are two or more credits with respect to the same specific movable property, they shall be satisfied pro rata, after the payment of duties, taxes and fees due the State or any subdivision thereof. (1926a)

ARTICLE 2248. Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

ARTICLE 2249. If there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied pro rata, after the payment of the taxes and assessments upon the immovable property or real right. (1927a)

ARTICLE 2250. The excess, if any, after the payment of the credits which enjoy preference with respect to specific property, real or personal, shall be added to the free property which the debtor may have, for the payment of the other credits. (1928a)

ARTICLE 2251. Those credits which do not enjoy any preference with respect to specific property, and those which enjoy preference, as to the amount not paid, shall be satisfied according to the following rules:

(1) In the order established in article 2244;

ARTICLE 2252. Changes made and new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect.

For the determination of the applicable law in cases which are not specified elsewhere in this Code, the following articles shall be observed: (Pars. 1 and 2, Transitional Provisions).

ARTICLE 2253. The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin. (Rule 1)

ARTICLE 2254. No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. (n)

ARTICLE 2255. The former laws shall regulate acts and contracts with a condition or period, which were executed or entered into before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect. (n)

ARTICLE 2256. Acts and contracts under the regime of the old laws, if they are valid in accordance therewith, shall continue to be fully operative as provided in the same, with the limitations established in these rules. But the revocation or modification of these acts and contracts after the beginning of the effectivity of this Code, shall be subject to the provisions of this new body of laws. (Rule 2a)

ARTICLE 2257. Provisions of this Code which attach a civil sanction or penalty or a deprivation of rights to acts or omissions which were not penalized by the former laws, are not applicable to those who, when said laws were in force, may have executed the act or incurred in the omission forbidden or condemned by this Code.

If the fault is also punished by the previous legislation, the less severe sanction shall be applied.

If a continuous or repeated act or omission was commenced before the beginning of the effectivity of this Code, and the same subsists or is maintained or repeated after this body of laws has become operative, the sanction or penalty prescribed in this Code shall be applied, even though the previous laws may not have provided any sanction or penalty therefor. (Rule 3a)

ARTICLE 2258. Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court. If the exercise of the right or of the action was commenced under the old laws, but is pending on the date this Code takes effect, and the procedure was different from that established in this new body of laws, the parties concerned may choose which method or course to pursue. (Rule 4)

ARTICLE 2259. The capacity of a married woman to execute acts and contracts is governed by this Code, even if her marriage was celebrated under the former laws. (n)

ARTICLE 2260. The voluntary recognition of a natural child shall take place according to this Code, even if the child was born before the effectivity of this body of laws. (n)

ARTICLE 2261. The exemption prescribed in article 302 shall also be applicable to any support, pension or gratuity already existing or granted before this Code becomes

ARTICLE 2263. Rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. The inheritance of those who, with or without a will, die after the beginning of the effectivity of this Code, shall be adjudicated and distributed in accordance with this new body of laws and by the Rules of Court; but the testamentary provisions shall be carried out insofar as they may be permitted by this Code. Therefore, legitimes, betterments, legacies and bequests shall be respected; however, their amount shall be reduced if in no other manner can every compulsory heir be given his full share according to this Code. (Rule 12a)

ARTICLE 2264. The status and rights of natural children by legal fiction referred to in article 89 and illegitimate children mentioned in article 287, shall also be acquired by children born before the effectivity of this Code. (n)

ARTICLE 2265. The right of retention of real or personal property arising after this Code becomes effective, includes those things which came into the creditor's possession before said date. (n)

ARTICLE 2266. The following shall have not only prospective but also retroactive effect:

- (1) Article 315, whereby a descendant cannot be compelled, in a criminal case, to testify against his parents and ascendants;
- (2) Articles 101 and 88, providing against collusion in cases of legal separation and annulment of marriage;
- (3) Articles 283, 284, and 289, concerning the proof of illegitimate filiation;
- (4) Article 838, authorizing the probate of a will on petition of the testator himself;
- (5) Articles 1359 to 1369, relative to the reformation of instruments;
- (6) Articles 476 to 481, regulating actions to quiet title;
- (7) Articles 2029 to 2031, which are designed to promote compromises. (n)

ARTICLE 2267. The following provisions shall apply not only to future cases but also to those pending on the date this Code becomes effective:

- (1) Article 29, Relative to criminal prosecutions wherein the accused is acquitted on the ground that his guilt has not been proved beyond reasonable doubt;
- (2) Article 33, concerning cases of defamation, fraud, and physical injuries. (n)

ARTICLE 2268. Suits between members of the same family which are pending at the time this Code goes into effect shall be suspended, under such terms as the court may determine, in order that compromise may be earnestly sought, or, in case of legal separation proceedings, for the purpose of effecting, if possible, a reconciliation. (n)

ARTICLE 2269. The principles upon which the preceding transitional provisions are based shall, by analogy, be applied to cases not specifically regulated by them. (Rule 13a)

REPEALING CLAUSE

the date when this new Civil Code becomes effective;

(2) The provisions of the Code of Commerce governing sales, partnership, agency, loan, deposit and guaranty;

(3) The provisions of the Code of Civil Procedure on prescription as far as inconsistent with this Code; and

(4) All laws, Acts, parts of Acts, rules of court, executive orders, and administrative regulations which are inconsistent with this Code. (n)

Approved: June 18, 1949.

Footnotes:

* New, except articles 2164 and 2165.

1. New, except articles 2200, 2201, 2209, and 2212.

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