

**Federal Law No. (1) 1987  
Concerning  
Civil Transactions Law of the U.A.E.**

## **INTRODUCTORY CHAPTER**

### **General Provisions**

#### **Part 1**

#### **Provisions governing to the application of the Law with regard to time and place**

##### **Section 1**

##### **The Law and its application**

###### **Article 1**

(As amended by Federal Law No. 1 of 1987). “The attached Law shall operate in respect of civil transactions for the UAE. However, commercial transactions shall continue to be governed by the existing laws and regulations relating thereto until the Federal Commercial Law is enacted”.

###### **Article 2**

The rules and principles of Islamic jurisprudence (fiqh) shall be relied upon in the understanding, construction and interpretation of these provisions.

###### **Article 3**

Public order shall be deemed to include matters relating to personal status such as marriage, inheritance, and lineage, and matters relating to sovereignty, freedom of trade, the circulation of wealth, rules of private ownership and the other rules and foundations upon which society is based, in such manner as not to conflict with the definitive provisions and fundamental principles of the Islamic Sharia.

##### **Section 2**

##### **The application of the Law with regard to time**

###### **Article 4**

- (1) It shall not be permissible to repeal a legislative provision or to suspend the operation of it, save by a subsequent legislative provision expressly so enacting or which includes a provision inconsistent with the earlier legislative provision which rearranges the subject matter the rules for which are already laid down in such legislation.
- (2) If a legislative provision repeals an earlier legislative provision and the later legislative provision is itself repealed, such repeal shall not result in the earlier provision coming into force again unless it is expressly so laid down.

###### **Article 5**

- (1) Provisions relating to competence (legal capacity) shall apply to all persons to whom the conditions laid down in such provisions apply.
- (2) If a person is competent under old provisions and he loses that competence under new provisions, such loss shall not affect his earlier dispositions.

###### **Article 6**

- (1) The new provisions relating to limitation of time for claims shall apply as from the date they come into force to every period of limitation which has not expired.
- (2) Provided that the old provisions shall apply to questions relating to the commencement of the running of time, and the suspension and interruption thereof, in relation to the period prior to the new provisions coming into force.

#### **Article 7**

- (1) If the new provision lays down a limitation period shorter than that laid down in the old provision, the new period shall apply from the time the new provision comes into effect notwithstanding that the old period has already commenced.
- (2) If, however, the remainder of the period provided for under the old provision is shorter than the period provided for under the new provision, the period of limitation shall expire upon the expiry of that remainder.

#### **Article 8**

The provisions relating to evidential proof current at the time such proof was prepared or should have been prepared shall apply thereto.

#### **Article 9**

Times shall be calculated according to the solar (Gregorian) calendar unless the law provides other- wise.

### **Section 3**

#### **The application of the Law with regard to place**

#### **Article 10**

The law of the State of the United Arab Emirates shall be the authoritative source in determining relationships when the nature of such relationships requires to be determined in a suit in which there is a conflict of laws as to the law to be applied between the parties.

#### **Article 11**

- (1) The law of the state of which a person has the nationality shall apply to the civil status and competence of such person, but nevertheless in financial dealings transacted in the State of the United Arab Emirates the results of which materialize therein, if one of the parties is an alien of defective capacity and the lack of capacity is attributable to a hidden cause which the other party could not easily discover, such cause shall have no effect on his capacity.
- (2) With regard to the legal regulation of foreign juridical persons including companies, associations, establishments and otherwise, the law of the state in which such bodies have their actual main administrative center shall apply thereto, and if such a body carries on an activity in the State of the United Arab Emirates, the national (sc. UAE) law shall apply.

#### **Article 12**

- (1) The substantive conditions for the validity of a marriage shall be governed by the law of each of the spouses at the time the marriage was contracted.
- (2) With regard to the form, a marriage between aliens or between a national and an alien shall be deemed to be valid if it is contracted in accordance with the rules of the country in which it took place, or if the rules laid down by the law of each of the spouses have been observed.

#### **Article 13**

- (1) The law of the state of which the husband is a national at the time the marriage is contracted shall apply to the effects on personal status, and the effects with regard to the property, resulting from the contracting of the marriage.
- (2) Talaq (unilateral non-judicial declaration of divorce by a husband) shall be governed by the laws of the state of which the husband is a national at the time of the talaq, and talaq and separation shall be governed by the law of the state of which the husband is a national at the time the proceedings are brought.

#### **Article 14**

In the circumstances provided for in the two foregoing Articles, if one of the spouses is a national at the time the marriage is contracted, the law of the United Arab Emirates alone shall apply, save in respect of the legal capacity to marry.

#### **Article 15**

Obligations to support relatives shall be governed by the law of the person having such obligation.

#### **Article 16**

Substantive matters relating to guardianship, trusteeship and maintenance and other systems laid down for the protection of persons having no competence or of defective competence or of absent persons shall be governed by the law of the person requiring to be protected.

#### **Article 17**

- (1) Inheritance shall be governed by the law of the deceased at the time of his death.
- (2) Property rights located in the territory of the state which belong to an alien having no heir shall become vested in the State.
- (3) The substantive provisions governing testamentary dispositions and other dispositions taking effect after death shall be governed by the law of the state of which the person making such dispositions is a national at the time of his death.
- (4) The form of wills and other dispositions taking effect after death shall be governed by the law of the state of which the person making such disposition is a national at the time the disposition is made, or the law of the state in which the disposition is made.
- (5) The law of the United Arab Emirates shall apply to wills made by aliens disposing of their real property located in the State.

#### **Article 18**

- (1) Possession, ownership and other rights over property shall be governed by the lex situs in the case of real property, and movable property shall be subject to the law of the place in which such property is at the time when the cause resulting in the acquisition or loss of possession, ownership or other rights over the property arose.
- (2) The law of the state in which property is located shall determine whether such property is real or movable

#### **Article 19**

- (1) The form and the substance of contractual obligations shall be governed by the law of the state in which the contracting parties are both resident if they are resident in the same state, but if they are resident in different states the law of the state in which the contract was concluded shall apply unless they agree, or it is apparent from the circumstances that the intention was, that another law should apply.
- (2) The lex situs of the place in which real property is situated shall apply to contract made over such property.

#### **Article 20**

- (1) Non-contractual obligations shall be governed by the law of the state in which the event giving rise to the obligation took place.
- (2) The provisions of the foregoing paragraph shall not apply to obligations arising out of an unlawful act in connection with events taking place abroad which are lawful in the

State of the United Arab Emirates notwithstanding that they are considered to be unlawful in the country in which they took place.

**Article 21**

The rules relating to jurisdiction, and all procedural matters, shall be governed by the law of the state in which the action is brought or in which the procedures are carried out.

**Article 22**

The provisions of the foregoing Articles shall not apply in cases where there is a contrary provision in a special law or in an international convention in force in the State.

**Article 23**

The principles of private international law shall apply in the absence of a relevant provision in the foregoing Articles governing the conflict of laws

**Article 24**

The law of the State of the United Arab Emirates shall apply in the case of persons of unknown nationality, or persons who are shown to have more than one nationality at the same time. Provided that in case of persons shown to have at the same time the nationality of the United Arab Emirates and of another state, United Arab Emirates law must be applied.

**Article 25**

If it appears from the provisions contained in the foregoing Articles that the law to be applied is the law of a particular state which has more than one legal system, the domestic law of that state shall determine which legal system is to be applied. In the absence of a specific provision, the prevailing system of law, or the law of the place of residence, as the case may be, shall apply.

**Article 26**

- (1) If it is established that a foreign law is to be applied, only the domestic provisions thereof shall be applied, to the exclusion of those provisions relating to private international law.
- (2) Provided that the law of the United Arab Emirates shall apply if international law relating to applicable law provides that United Arab Emirates law shall apply.

**Article 27**

It shall not be permissible to apply the provisions of a law specified by the preceding Articles if such provisions are contrary to Islamic Sharia, public order, or morals in the State of the United Arab Emirates.

**Article 28**

The law of the United Arab Emirates shall be applied if it is impossible to prove the existence of an applicable law or to determine its effect.

## **Part 2**

### **Certain jurisprudential maxims and rules of interpretation**

#### **Article 29**

Ignorance of the law is no excuse.

#### **Article 30**

Exceptions may not be used by analogy, nor may their interpretations be extended.

#### **Article 31**

A mandatory provision (of law) shall take precedence over a contractual stipulation.

#### **Article 32**

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

#### **Article 33**

A rule shall depend on its cause for its existence, and shall cease to be if the cause ceases to exist.

#### **Article 34**

Fungibles shall not cease to exist.

(Translator's note: The principle is that where goods are defined by type, quality, etc., as opposed to specifically ascertained items or parcels of goods, then the loss or destruction of any specifically ascertained goods shall not affect a contract made e.g. for the sale of replaceable goods of that description. See Article 99 for a definition of fungibles.)

#### **Article 35**

Certainty shall not be removed by a doubt.

#### **Article 36**

There is a presumption of continuance.

#### **Article 37**

There is a presumption that an obligation has been discharged.

#### **Article 38**

There is a presumption against the existence of supervening qualities (i.e. things will be presumed to be normal and usual unless the contrary is proved).

#### **Article 39**

A thing proved to have existed in the past shall be deemed still to exist in the absence of evidence to the contrary.

#### **Article 40**

There is a presumption that an event (known to have occurred) has occurred in the immediate past.

#### **Article 41**

No analogies may be drawn from what is shown to be contrary to analogy (i.e. outside the normal course of events).

#### **Article 42**

- (1) No harm shall be done, nor harm done in return.
- (2) Harm shall be made good.

- (3) Harm may not be made good by causing similar harm (in return).

**Article 43**

Necessity excuses the doing of a prohibited act.

**Article 44**

The averting of evil is better than the doing of good.

**Article 45**

Compelling need shall not annul the rights of others.

**Article 46**

- (1) Custom, whether general or particular is binding.
- (2) Regard shall be had to custom if it is of long duration and continuing, or is prevalent.
- (3) Actual facts may be established by reference to custom.

**Article 47**

Customary usage amounts to evidence (of rights and obligations) and shall be abided by.

**Article 48**

What custom (or common knowledge) regards as impossible (absurd) shall be treated as what is in fact impossible (absurd).

**Article 49**

Greater (evidential) weight shall be given to the prevailing and the commonplace than to the rare (and exceptional).

**Article 50**

That which is established by custom is equivalent to a stipulated condition.

**Article 51**

An obligation under custom has the same force as an expressly stipulated condition.

**Article 52**

Where prohibition conflicts with an obligation, the prohibition shall take precedence.

**Article 53**

That which is ancillary attaches (to the principal subject matter) and need not be separately specified.

**Article 54**

If a matter ceases to exist, that which is incidental to it shall also cease to exist.

**Article 55**

That which has lapsed (been waived) or ceased to exist shall not arise again.

**Article 56**

A subordinate matter (right or obligation) shall be annulled if the principal matter (right or obligation) is annulled.

**Article 57**

If (and only if) the original thing is lost, an obligation may be performed by use of a substitute.

**Article 58**

A disposition affecting the public must, to be valid, be in the public interest.

**Article 59**

An answer refers back to the question.

**Article 60**

No regard shall be had to mere possibilities.

**Article 61**

No regard shall be had to an (act performed in consequence of a) belief which is shown to be wrong.

**Article 62**

If a matter is established by (proper lawful means of) proof, (the effect is tantamount to the judge being) as an eye-witness.

**Article 63**

A person shall be bound by his admissions.

**Article 64**

A subsidiary matter may be proved without the principal matter being proved.

**Article 65**

A matter which is (merely) outwardly apparent suffices as a defense (to maintain the status quo), but not to establish a (positive claim of) right.

**Article 66**

The yield (esp. of animals or land) belongs to (him who undertakes) the burden (of making the payment for the upkeep of the thing producing the yield).

**Article 67**

(He who has) the advantage (of e.g. an arrangement must bear) the burden (e.g. of contributing his share).

**Article 68**

No person may validly make a disposition over the property of another.

**Article 69**

He who prematurely obtains a thing shall be penalized by being deprived of it.

**Article 70**

No person may resile from what he has (conclusively) performed.



**Part 3**  
**Persons**  
**Section 1**  
**Natural Persons**

**Article 71**

- (1) The personality (status of person) of a human being shall commence at the moment of being born alive. It shall terminate upon his death.
- (2) The law shall lay down the rights of a fetus in utero.

**Article 72**

- (1) The facts of birth and death shall be recorded (or: proved) by entries in registers kept for that purpose.
- (2) If there is no such evidence or if it should appear that the entries in the register are incorrect, it shall be permissible to prove the same by any legal means of proof.

**Article 73**

Provisions relating to foundlings shall be laid down in a special law.

**Article 74**

The provisions relating to lost and missing persons shall be laid down in a special law.

**Article 75**

- (1) The nationality of the State of the United Arab Emirates shall be regulated by law.
- (2) By the word “national”, wherever it appears in the Civil Code, shall be meant any person having the nationality of the United Arab Emirates. By the word “alien” shall be meant any person who does not have the nationality of the United Arab Emirates.

**Article 76**

- (1) The family of a person shall consist of his spouse and relatives.
- (2) All persons coming from a common stock shall be deemed to be relatives.

**Article 77**

- (1) A direct relationship is the relationship of root and branch (direct lineage).
- (2) An indirect relationship is the link between persons of a common stock without direct lineage, whether or not within the degree of consanguinity precluding marriage.

**Article 78**

In calculating the degree of direct relationship each upwards stage of generation to the source shall be regarded as one degree away from that source. In calculating the degree of indirect relationship degrees of ascent from the descendants to the common origin shall be taken into account net, and then downwards from him to the last generation, and each stage shall be counted as a degree with the exception of the common source.

**Article 79**

One of the relations of the spouses shall be regarded as having the same degree of relationship to the other spouse.

**Article 80**

- (1) Each person shall have a name and a surname, and his surname shall attach to the names of his children.

- (2) A special law shall regulate the manner of acquisition and changing of names and surnames.

#### **Article 81**

- (1) A residence (mawtin) is the place in which a person normally resides.
- (2) A person may have more than one residence at the same time.
- (3) If a person does not have a place in which he normally resides, he shall be deemed to be without a residence.

#### **Article 82**

The place in which a person carries on trade, profession or occupation shall be deemed to be a residence in connection with the administration of the business relating to such trade, profession or occupation.

#### **Article 83**

- (1) The residence of a person of defective capacity or a person under a restriction, and missing or absent persons, shall be the residence of the person representing such persons at law.
- (2) A person of defective capacity who is authorized to trade shall have a special residence in relation to the work and dealings which the law regards him as having capacity to transact.

#### **Article 84**

- (1) It shall be permissible to adopt an elective place of residence to carry out a specific legal operation.
- (2) An elective place of residence may only be proved by writing.
- (3) An elective place of residence to carry out a legal operation shall be the residence in relation to all matters connected with operation including compulsory enforcement proceedings unless it is expressly stated that that residence is restricted to certain matters exclusively.

#### **Article 85**

- (1) Every person who has reached the age of majority in possession of his mental powers and who has not been placed under a restriction shall be of full capacity to exercise his rights laid down in this law and the laws deriving from it.
- (2) A person shall be of the age of majority upon reaching the age of twenty-one lunar years.

#### **Article 86**

- (1) No person who lacks discretion by reason of youth, imbecility or insanity shall be competent to exercise his civil rights.
- (2) Persons under the age of seven years shall be deemed not to have reached the age of discretion.

#### **Article 87**

Any person who has reached the age of discretion but has not reached the age of majority and any person who has reached the age of majority but is an idiot or of unsound mind shall be of defective capacity under the law.

#### **Article 88**

Persons of no capacity or of defective capacity as the case may be shall, with regard to guardianship, tutelage and custodianship, be subject to the relevant conditions in accordance with the rules laid down by law.

### **Article 89**

No person may divest himself of his personal liberty or of his capacity, or vary the concomitants thereof.

### **Article 90**

Any person who suffers an unlawful infringement of any of the rights appurtenant to him as a person shall have the right to require that such infringement cease, together with compensation for any damage suffered by him.

### **Article 91**

Any person whose use of his name or surname or both is disputed by another without justification or whose name or surname or both are wrongfully assumed by another shall have the right to require that such infringement do cease and to claim compensation for any harm suffered.

## **Section 2**

### **Juridical Persons**

### **Article 92**

Juridical persons shall consist of the following: -

- (a) the State, the (individual) Emirates, the Municipalities and other administrative units, under the conditions laid down for them by law;
- (b) public departments, authorities and bodies and public institutions and establishments upon which a judicial personality is conferred by law;
- (c) Islamic bodies recognized by the State as having juridical personality;
- (d) waqfs;
- (e) civil and trading companies, save as excluded by a special provision;
- (f) private societies and establishments established in accordance with the law; and
- (g) any grouping of persons or property having a juridical personality under the provisions of the law.

### **Article 93**

- (1) A juridical person shall enjoy all rights, save those pertaining (exclusively) to the capacity of being a natural person, within the limits laid down by law.
- (2) Such persons shall have: -
  - (a) separate financial liability;
  - (b) legal capacity within the limits laid down by the document establishing it, or as laid down by law;
  - (c) the right to bring proceedings; and
  - (d) a separate place of residence. The place of residence of a juridical person shall be deemed to be the place in which it has its administrative center, and so far as concerns juridical persons whose head office is abroad but which carry on an activity in the State, their administrative center, with regard to the law of the State, shall be deemed to be the place at which the local administration is situated.
- (3) Such persons must have a (natural) person to express their intentions.

### **Article 94**

Juridical persons shall be subject to the special laws pertaining to them.

## **Part 4**

### **Things and property**

#### **Article 95**

Property (“mal”) is anything or right having a material value in dealing.

(Tr: The word translated as “thing” is “ain”. The word includes both land and chattels, and all that is broadly identifiable as a thing”, and embodies in the widest sense all that would be regarded as property (excluding choses in action or rights) under English law. In this translation, the word “property” is used to translate “mal”, wherever the latter word occurs in the text.)

#### **Article 96**

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

#### **Article 97**

Anything which can be possessed whether physically or constructively, or which may be lawfully enjoyed, and which does not by its nature or by operation of law fall outside the scope of dealing (transactions), shall be a proper subject of property rights.

#### **Article 98**

Things which are by their nature outside the scope of dealing are those which no person may possess exclusively, and things which are outside the scope of dealing by operation of law are those which the law does not permit to be the subject of property rights.

#### **Article 99**

- (1) Fungible things are those whose units or parts are of a replaceable nature, or nearly so, in such a way that by custom other things can take their place without any appreciable distinction, and which are calculated in dealing by number, measurement, capacity or weight.
- (2) Non-fungibles are those things whose individual instances differ appreciably as to description or value, or which are unique in circulation.

#### **Article 100**

- (1) Consumable things are those the nature of which cannot be enjoyed save by consuming or spending them.
- (2) Usable things (durables) are those which can only be enjoyed by repeated use, they retaining their specific identity.

#### **Article 101**

Anything of a permanently fixed nature and which cannot be removed without damaging or altering its surroundings shall be regarded as real property. Everything else shall be regarded as movable property.

#### **Article 102**

Real property by allocation (i.e. intended to serve as part of the real property) is movable property placed by an owner in real property of his, with the intent of its being used or exploited, even though not (permanently) fixed to the real property.

#### **Article 103**

- (1) All real property or movables owned by the State or public juridical persons, allocated in fact or in law for the public benefit, shall be deemed to be public property.

- (2) In no circumstances may such property be disposed of or distrained (attached) or pass into (private) ownership by effluxion of time.

## **Part 5** **Rights**

### **Section 1** **The scope and exercise of rights**

#### **Article 104**

The doing of what is permitted by law negates liability, and no person who lawfully exercises his rights shall be liable for any harm arising there out.

#### **Article 105**

- (1) It is proper that a private harm be borne to avert a public harm.
- (2) It is proper that a greater harm be removed by inflicting a lesser harm.

### **Section 2** **Abuse of rights**

#### **Article 106**

- (1) A person shall be held liable for an unlawful exercise of his rights.
- (2) The exercise of a right shall be unlawful:
- (a) if there is an intentional infringement (of another's rights);
  - (b) if the interests which such exercise of right is designed to bring about are contrary to the rules of the Islamic Sharia, the law, public order, or morals;
  - (c) if the interests desired are disproportionate to the harm that will be suffered by others; or
  - (d) if it exceeds the bounds of usage and custom.

### **Section 3** **Types of rights**

#### **Article 107**

A right may be personal, property or moral (choses in action).

#### **Article 108**

A personal right is a legal relationship between an obligee and an obligor whereby the obligee has a claim against his obligor for the transfer of a property right, or to perform or refrain from performing an act.

#### **Article 109**

- (1) A property right is a direct power over a particular thing, given by law to a particular person.
- (2) A property right may be original or consequential.

#### **Article 110**

- (1) Original property rights of ownership, disposal, usufruct, use, residence or shared occupation, rights of easement, Waqf, and rights which the law provides shall be deemed to be such.
- (2) Consequential property rights are mortgages for security, possessory mortgages, and liens.

#### **Article 111**

- (1) Moral rights are those which subsist over a non-material thing.
- (2) Rights of authors, inventors, artists, and rights in trademarks and other moral rights, shall be governed by the provisions of special laws.

### **Section 4** **Proof of rights**

#### **(1) Categories of evidence**

#### **Article 112**

Evidence to prove a right shall take the following forms: -

- (a) writing;
- (b) testimony;
- (c) circumstantial evidence;
- (d) eye-witness and expert evidence
- (e) admissions; and
- (f) evidence on oath.

#### **(2) General rules of proof**

#### **Article 113**

The burden lies on an obligee to prove his right, and on an obligor to refute it.

#### **Article 114**

Writing, testimony, and conclusive circumstantial evidence, as well as eye-witness and expert evidence, shall be valid as against other parties, but an admission shall be valid against the maker thereof alone.

#### **Article 115**

Any testimony by which an advantage is gained by or a detriment averted from the witness shall be rejected.

#### **Article 116**

The testimony of a deaf person, and his oath, shall be admitted by his accustomed signs, if he is unable to write.

#### **Article 117**

The burden of proof is upon him who asserts, and the oath (of denial) must be taken by him who denies.

#### **Article 118**

(In dependent) evidence must be produced to establish what is contrary to the apparent facts, and the oath must be taken to show that the facts presumed to exist are true.

#### **Article 119**

The oath shall be accepted from one who takes it to discharge himself, but not to bind another.

#### **Article 120**

- (1) The oath shall only be taken on the application of the opposing party.
- (2) It shall be permissible for the judge, of his own motion, to direct that a party take the oath in the following circumstances:
  - (a) if he claims a right in an inheritance and establishes the same, he shall take the oath of is tithaq to show that he has not received what is due to him from the deceased, and that he has not discharged him, that he has not assigned his rights to another, and that there is no pledge in existence as against such right;
  - (b) in the event of proof of his entitlement to property, he shall take the oath to show that he has not sold such property or that he has not given it as gift, or that it has not left his possession by any other means;
  - (c) in the event that a sale is rescinded for a defect, he must swear that he did not consent to the defect either by word or deed; or
  - (d) in the event of a judgment for a right of preemption, he must take the oath to show that his right of preemption has not lapsed for any reason

#### **Article 121**

The evidence of a translator registered in the special register shall be accepted, as laid down by law.

#### **Article 122**

Conflicting evidence shall no force, but (sic) it shall be of no effect in the judgment of a court if it is proved thereafter, and an interested party shall have a claim for indemnity against the witness.

### **(3) Application of the rules of proof.**

#### **Article 123**

In the rules and procedures for proof and the adducing of evidence of a right, the Courts shall apply the provisions laid down in special laws, to the extent that the same do not conflict with the fore- going provisions.

## **BOOK ONE**

### **Chapter 1**

#### **Personal obligations and rights Sources** **of personal obligations and rights**

##### **Article 124**

Personal obligations or rights shall arise out of dispositions, legal events and the law, and the sources of obligations shall be as follows: -

1. contracts;
2. unilateral acts;
3. acts causing harm (torts);
4. acts conferring a benefit; and
5. the law.

##### **Part 1**

##### **Contracts**

##### **Section 1**

##### **General provisions**

##### **Article 125**

A contract is the coming together of an offer made by one of the contracting parties with the acceptance of the other, together with the agreement of them both in such a manner as to determine the effect thereof on the subject matter of the contract, and from which results an obligation upon each of them with regard to that which each is bound to do for the other.

There may be a coincidence of more than two wills over the creation of the legal effect.

##### **Article 126**

The following may be the subject matter of a contract:

- (a) property, whether moveable or immovable, or corporeal or incorporeal;
- (b) benefits derived from property;
- (c) a particular act or service; and
- (d) any other thing which is not prohibited by a provision of the law and is not contrary to public order or morals.

##### **Article 127**

A contract to do an unlawful thing is unlawful.

##### **Article 128**

- (1) The general provisions contained in this Part shall apply to nominate and innominate contracts.
- (2) With regard to rules applying to certain contracts only, the special provisions governing the same shall be laid down in this Law or in other laws.

##### **Section 2**

##### **The elements, validity and effect of the contract, and options**

##### **(1) The making of the contract**



#### **Article 129**

The necessary elements for the making of a contract are: -

- (a) that the two parties to the contract should agree upon the essential elements;
- (b) the subject matter of the contract must be something which is possible and defined or capable of being defined and permissible to be dealt in; and
- (c) there must be a lawful purpose for the obligations arising out of the contract.

#### **Article 130**

A contract shall be made by virtue solely of the confluence of offer and acceptance, subject to the specific provisions laid down for the making of the contract by law.

#### **Article 131**

Both offer and acceptance are any expression of intent used to create a contract. The first to be uttered is the offer, and the second the acceptance.

#### **Article 132**

An expression of intent may be made orally or in writing, and may be expressed in the past or present tense or in the imperative if the present time is intended or by such means as are customary even by a person who is not dumb, or by an interchange of acts demonstrating the mutual consent or by adopting any other course in respect of which the circumstances leave no doubt that they demonstrate mutual consent.

#### **Article 133**

The form of acceptance having the purport of a bare promise will give rise to a contract by way of binding promise if such is the intention of both parties.

#### **Article 134**

- (1) An offer of goods or services accompanied by an indication of the consideration shall be regarded as an offer.
- (2) A publication or advertisement of a current price list of any other statement connected with offers or orders directed towards the public or individuals shall not in the event of doubt be treated as offers but only as an invitation to enter into a contract.

#### **Article 135**

- (1) A person who remains silent shall not be deemed to have made a statement, but silence in the face of a circumstance in which a statement is called for shall be regarded as an acceptance.
- (2) In particular, silence shall be deemed to be an acceptance if there has been a prior dealing between the contracting parties and the offer is related to such dealing or if the offer will bring about a benefit to the person to whom it is made.

#### **Article 136**

The contracting parties shall retain the option (to rescind) from the time the offer has been made until the time the majlis ends, and the offer shall be avoided if the offeror retracts it after making it and prior to its being accepted by the other side or if either of the contracting parties says or does anything to demonstrate that he is resiling from it, and no acceptance made after that shall be of any effect.

[Tr: This section embodies the Sharia concept of “khiyar al-majlis” - literally “the option of the session”. This means that while the two parties are still in session, i.e. they have not gone their separate ways, and are still effectively together, each party retains the right to revoke any agreement made between them from the moment they came together].

#### **Article 137**

If the parties concern themselves during the majlis of the contract with extraneous matters, that shall be regarded as rejection of the matter in hand.

#### **Article 138**

A repetition of the offer prior to acceptance annuls the first offer, and the last made offer shall be regarded as the valid one.

#### **Article 139**

- (1) If a time is fixed for the acceptance to be given, the offeror shall be bound to keep to his offer until such time expires.
- (2) The time may be inferred from the circumstances of the case or from the nature of the transaction.

#### **Article 140**

- (1) The acceptance must coincide with the offer.
- (2) If the acceptance exceeds the subject matter of the offer or places a restriction on it or varies it, that shall be regarded as rejection containing a new offer.

#### **Article 141**

- (1) A contract may only be made upon the agreement of the two parties to the essential elements of the obligation, and the other lawful conditions which the parties regard as essential.
- (2) If the parties agree on the essential elements of the obligation and the remainder of the other lawful conditions which both parties regard as essential and they leave matters of detail to be agreed upon afterwards but they do not stipulate that the contract shall not be regarded as made in the event of absence of agreement upon such matters, the contract shall be deemed to have been made, and if a dispute arises as to the matters which have not been agreed upon, the judge shall adjudicate thereon in accordance with the nature of the transaction and the provisions of the law.

#### **Article 142**

- (1) A contract made between parties not in each other's presence shall be deemed to have been made at the time and place at which the offeror learns of the acceptance, unless there is an agreement or a provision of the law to the contrary.
- (2) The offeror shall be deemed to have learned of the acceptance at the time and place at which such acceptance reaches him, unless there is evidence to the contrary.

#### **Article 143**

A contract made by telephone or by any similar means shall be regarded, so far as concerns place, as if it had been made between the contracting parties otherwise than in a single majlis with them both present at the time of the contract, and with regard to time, it shall be regarded as having been made between those present at the majlis.

#### **Article 144**

A contract by way of auction shall only be made by the bid being accepted, and an offer shall lapse upon a higher offer being made even though the higher offer may be void, or upon the auction ending without a bid being accepted.

#### **Article 145**

Acceptance in contracts of adhesion shall be by virtue of simple delivery on conditions similar to those made to all his customers made to all his customers by an offeror who does not accept any negotiation about those conditions.

#### **Article 146**

- (1) An agreement whereby both or one of the contracting parties undertake to make a specific contract in the future may only be made if all of the essential matters of the contract intended to be made and the period within which it is to be made are specified.
- (2) If the law requires that for a contract to be perfected a certain specified form should be used, that form must likewise be observed in the agreement containing the promise to make such contract.

#### **Article 147**

If a person promises to make a contract and then reneges and is sued by the other person for the performance of the promise and the conditions necessary for the making of the contract, in particular the form, are satisfied, the judgment shall, when it becomes final, stand as the contract.

#### **Article 148**

- (1) Payment of earnest money shall be regarded as evidence that the contract has become final and irrevocable, unless the agreement or custom are to the contrary.
- (2) If the two parties agree that the earnest money shall be forfeited in the event of reneguing, each of them shall have the right to renege, and if the person who has paid the money reneges he shall lose it, and if the person receiving it reneges, he shall pay over double that amount.

### **(2) Agency in contracting**

#### **Article 149**

A contract may be made by a principal and it may also be made by an agent unless the law stipulates otherwise.

#### **Article 150**

- (1) The agency in the contract may be by agreement or by law.
- (2) The deed of agency (power of attorney) issued by the principal shall specify the extent of the powers of the agent if the agency is by agreement, and the law shall specify such powers if the agency is by law.

#### **Article 151**

If a person makes a contract on his own and for his own account, then he shall be bound by the provisions of it to the exclusion of other persons.

#### **Article 152**

- (1) If a contract is made by means of an agency, it is the person of the agent and not the person of the principal to whom regard shall be had when considering defects in consent or the effect of knowledge of certain special circumstances or a presumption of knowledge thereof.
- (2) Nevertheless, if the deputy is an agent acting in accordance with specific instructions given to him by his principal, the principal may not rely on the ignorance of the agent of circumstances of which the principal knew or which he is presumed to have known.

#### **Article 153**

If the agent makes a contract within the limits of his authority in the name of the principal, the provisions of that contract and the rights (obligations) arising therefrom shall devolve upon the principal.

#### **Article 154**

If the party making a contract does not state at the time the contract is made that he is contracting in his capacity as agent, the effect of the contract will not attach to the principal either as obligee or obligor, unless it is conclusively presumed that the person with whom the agent contracted knew that he was an agent or if it was a matter of indifference for him whether he was contracting with the principal or the agent.

#### **Article 155**

If the agent and the person contracting with him are both ignorant at the time the contract is made of the agency having been terminated, the effect of the contract made by the agent will attach to the principal or his successors.

#### **Article 156**

It shall not be permissible for a person to contract with himself in the name of the person for whom he is an agent whether the contract is for his own account or for the account of another party without authorization from the principal, but provided that it is permissible for the principal in that event to approve the contract, having regard in all of the above to any contrary provisions of the law or commercial practice.

### **(3) The capacity to contract**

#### **Article 157**

Every person shall have capacity to contract, unless that capacity is taken from him or restricted by operation of law.

#### **Article 158**

A minor who is not of the age of discretion shall not have the right to deal in his property, and all his dealings shall be void.

#### **Article 159**

- (1) Financial dealings of a minor of the age of discretion shall be valid if they are purely for his own benefit, and void if they are purely to his detriment.
- (2) Dealings falling between pure benefit and pure detriment shall depend upon the consent of the guardian within the limits which it is permissible for him to make dispositions either immediately or by ratification by the minor after his attaining the age of adulthood.
- (3) The age of discretion shall be 7 complete Hijri years.

#### **Article 160**

- (1) A guardian may permit a minor who has reached the age of 18 Hijri years to receive all or part of his property to administer it.
- (2) It shall be permissible for the court upon hearing the evidence of the guardian to permit a minor who has attained the age of 18 Hijri years to receive all or some of his property to administer it.
- (3) The provisions relating to the above shall be laid down by law.

#### **Article 161**

A minor who is authorized to make dealings within the terms of the authorization shall have the same status as an adult.

#### **Article 162**

It shall not be permissible for a minor whether under guardianship or tutelage to trade unless he has attained the age of 18 Hijri years, and the court has given him absolute or limited authority so to do.

#### **Article 163**

- (1) A judge may grant authorization to a minor of the age of discretion where his guardian has withheld authorization, and the guardian may impose no restriction upon the minor there after.
- (2) The judge may, after giving authorization, reimpose the restriction upon the minor.

#### **Article 164**

The guardian of the property of a minor shall be first his father then the executor of his father then the true grandfather then the judge or the guardian appointed by the judge.

#### **Article 165**

The law shall determine the necessary capacity which the guardian must have in order to exercise his rights of guardianship over property.

#### **Article 166**

Contracts of administration issued by a guardian over the property of a minor shall be valid and effective in accordance with the conditions and provisions laid down by law.

#### **Article 167**

Dispositions made by the guardian in respect of the property of a minor not falling within acts of administration shall be valid and effective in accordance with the provisions and conditions laid down by law.

#### **Article 168**

- (1) Minors, insane persons and imbeciles shall be ipso facto under a restriction.
- (2) With regard to idiots and persons under a mental disability, the judge shall impose restrictions upon them and lift such restrictions in accordance with the rules and procedures laid down by law.
- (3) Notice shall be given of the restricting order to the persons so restricted, and the reason therefor shall be publicly declared.

#### **Article 169**

Adult insane persons and imbeciles who are under a restriction shall be of the same status as a minor of no capacity.

#### **Article 170**

- (1) Dispositions made by an idiot or person suffering from a mental disability occurring after either an application for a restriction has been made or after an order in that behalf has been made or after an application or order for restoration of guardianship has been made shall be subject to the same provisions as govern dispositions made by persons of defective capacity.
- (2) With regard to dispositions made prior to such restriction, they shall not be void or voidable unless they result from exploitation or conspiracy.

#### **Article 171**

- (1) It shall be permissible for the court to permit a person under a restriction on the grounds of idiocy or mental disability to have all or part of his property for administration thereof.

- (2) The law shall lay down provisions in that behalf.

**Article 172**

The laws shall set out the procedures to be followed with regard to restrictions over restricted persons, the management and exploitation of their property, and dealing therein, and other questions relating to guardianship, tutelage and protection.

**Article 173**

If a person is deaf and dumb or blind and deaf, or blind and dumb and he is by reason thereof unable to express his intent, it shall be permissible for the judge to appoint a judicial assistance for him to help him in his dispositions if his interests so require in such manner as is laid down by law.

**Article 174**

Dispositions made by guardians, tutors or protectors shall be valid within the limits laid down by law.

**Article 175**

If a person of defective capacity uses deceitful means to conceal his defect in capacity, he shall be bound to pay compensation.

**(4) Defects in Consent**

**(a) Duress**

**Article 176**

Duress is coercion of a person without the right of so doing to perform an act without his consent. Duress may be forcible or non-forcible, and may be material or moral.

**Article 177**

Duress is forcible if it is threat of grave and imminent danger to person or property. It is non-forcible if it involves a lesser threat.

**Article 178**

A threat to cause harm to a person's parents, children, spouse or sibling or a threat of a risk prejudicial to honour shall be regarded as duress, and may be forcible or non-forcible as the case may be.

**Article 179**

Forcible duress nullifies consent and vitiates free choice. Non-forcible duress nullifies but does not vitiate free choice.

**Article 180**

Duress may vary according to different persons, their age, weakness, position, rank, influence, the degree to which they are hurt by the duress whether lesser or greater, and by any factor which may affect the seriousness of the duress.

**Article 181**

In order for there to be duress the person exercising it must be capable of carrying out his threat, and the victim must believe that the threat will be carried out immediately if he does not do that which he is coerced into doing.

**Article 182**

A person who exercises either kind of duress to conclude a contract may not enforce his contract, but the contract will be valid if the victim or his heirs so permit after the threat has ceased, either expressly or by their acts.

### **Article 183**

If a husband coerces his wife by beating her or forbidding her to see her family or the like, to cede to him a right of hers or to give him property, the disposition will not be effective.

### **Article 184**

If the duress is exercised otherwise than by one of the contracting parties, the person coerced into contracting may not claim that the contract is ineffective, unless he proves that the other contracting party knew or is presumed to have known of the duress.

### **(b) Deception and cheating**

[Tr: The word translated as “cheating” is ghubn, meaning trickery or persuasion of a person to enter into an unconscionable bargain involving an imparity between the consideration moving from each party].

### **Article 185**

Misrepresentation is when one of the two contracting parties deceives the other by means of trickery of word or deed which leads the other to consent to what he would not otherwise have consented to.

### **Article 186**

Deliberate silence concerning a fact or set of circumstances shall be deemed to be a misrepresentation if it is proved that the persons misled thereby would not have made the contract had he been aware of that fact or set of circumstances.

### **Article 187**

If one of the contracting parties makes a misrepresentation to the other and it transpires that the contract was concluded by a gross cheat, the person so misled may cancel the contract.

### **Article 188**

Gross cheating involving land or otherwise is a bargain which no ordinary person conversant with that market could contemplate as reasonable.

### **Article 189**

If the cheating, however slight, affects the property of a person under judicial restriction on account of a debt or a terminally ill person, and that person's liabilities exceed his assets, the contract shall be dependent upon the cheating being redressed, or the consent of the creditors, otherwise it shall be void.

### **Article 190**

If the misrepresentation is made by a person other than the contracting parties, and the person to whom the misrepresentation was made proves that the other contracting party knew of the misrepresentation, it shall be permissible for him to cancel the contract.

### **Article 191**

A contract may not be cancelled on the basis of a gross cheat in the absence of misrepresentation save in respect of property of a person under restriction, Waqf property of the State.

### **Article 192**

The right to cancel for misrepresentation and gross cheat shall lapse on the death of the person having the right to apply for the cancellation or upon a dealing made in the subject matter of the contract in whole property is destroyed while in the possession of the person who would otherwise have such rights, or if he consumes it, damages it, or increases it.

### **(c) Mistake**

#### **Article 193**

No regard shall be had for any mistake save in so far as it is contained in the form of the contract or demonstrated by the surrounding circumstances and conditions, or the nature of things, or custom.

#### **Article 194**

If there is a mistake as to the identity of the contract or as to one of the conditions upon which it is made or as to the subject matter of the contract, the contract shall be void.

#### **Article 195**

A contracting party shall have the right to cancel the contract if he has made a mistake in a desired (non-essential) matter such as a characteristic of the subject matter of the contract or the identity of the other contracting party or as to a characteristic of such person.

#### **Article 196**

A contracting party shall have the right to cancel the contract if he makes a mistake of law and the conditions relating to mistake of fact under Articles 193 and 195 are satisfied, unless the law provides otherwise.

#### **Article 197**

A mere mistake in an account or in a writing shall not affect the contract, and it shall simply be rectified.

#### **Article 198**

A person who has made a mistake may not rely on it in a manner inconsistent with good faith.

### **(5) The subject matter and purpose of the contract** **(a) The subject matter of the contract**

#### **Article 199**

Every contract must have a subject matter to which it attaches.

#### **Article 200**

- (1) In transactions involving property, the subject matter of the contract must be property which may lawfully be dealt in.

[Tr: "Mutaqawwim", see Art. 96.]

- (2) The subject matter may be specific property or a benefit or any other right in property, and likewise the subject matter may be an act or refraining from an act.

#### **Article 201**

If the subject matter is inherently impossible at the time the contract is made, the contract shall be void.

#### **Article 202**

- (1) A future thing may properly be the subject matter of commutative contracts involving property, in the absence of uncertainty (Gharar - see Chapter IV of Book Two).
- (2) It shall not, however be permissible to deal in the after death estate of a person still living notwithstanding that that person may have consented, save in the cases provided for by law.



### **Article 203**

- (1) In commutative contracts involving property the subject matter must be specified in such a way as to avoid gross uncertainty by reference to it or to the place where it is if it is in existence at the time of the contract or a statement of its distinguishing characteristics, and the amount thereof must be stated if it is measurable property or the like, so as to avoid gross uncertainty.
- (2) If the subject matter is known to both contracting parties, there is no requirement that it should be otherwise described or defined.
- (3) If the subject matter is not specified as aforesaid, the contract shall be void.

### **Article 204**

If the subject matter of the disposition or the consideration therefor is money, its amount and type must be specified without any increase or decrease in the value of that money at the time of payment having any effect.

### **Article 205**

- (1) The subject matter must be such as falls within the ambit of a contract.
- (2) If the law prohibits dealing in a thing or if it is contrary to public order or morals, the contract shall be void.

### **Article 206**

The contract may be accompanied by a condition confirming its purport or consistent with it or in accordance with usage and custom or containing an advantage to one of the contracting parties or a third party, provided that in the case of all of the foregoing it is not prohibited by law or contrary to public order or morals, otherwise the condition shall be void and the contract shall be valid, unless the condition is the inducement to make the contract, in which case the contract also shall be void.

## **(b) The purpose of the contract**

### **Article 207**

- (1) The reason is the direct purpose aimed at by the contract.
- (2) The reason must be existent, valid, and permitted, and not contrary to public order or morals.

### **Article 208**

- (1) The contract shall not be valid if it does not contain a lawful benefit to both contracting parties.
- (2) A contract shall be presumed to contain such lawful benefit, unless there is evidence to the contrary.

## **(6) Valid, void and defective contracts**

### **(a) The valid contract**

### **Article 209**

A valid contract is a contract which is lawful in its essence and description, being made by a competent person in respect of a subject matter properly falling within the ambit of a contract, having an existing, valid and lawful purpose and in proper form, and unaccompanied by any vitiating condition.

## **(b) The void contract**

### **Article 210**

- (1) A void contract is one which is unlawful in its essence and form, lacking the elements of a contract or defective in its subject matter or purpose or form as laid down by law for the making of a contract, and such contract shall be of no effect and shall not be capable of being rectified by consent.
- (2) Any person having an interest may rely on the voidness of the contract and a judge may so rule of his own motion.
- (3) No claim (for a declaration) that a contract is void shall be heard after the expiry of 15 years from the date the contract was made, but any person having an interest may raise the defense of the voidness of the contract at any time.

### **Article 211**

- (1) If part of a contract is void the entire contract shall be void unless the subject matter of each part, and the remainder shall be valid.
- (2) If part of a contract is dependent upon the grant of a consent, then if the consent is given the whole contract will be effective and if the consent is not given only that part will be void together with the consideration therefor, and the remainder of the contract with its consideration will be valid.

## **(c) The defective contract**

### **Article 212**

- (1) A voidable contract is one which is lawful in its essence but not in form, and if the cause of the voidability is removed, the contract shall be valid.
- (2) A transfer of ownership under a voidable contract shall only be effective if the property itself has been received.
- (3) A voidable contract shall only have effect within the area laid down by the provisions of the law.
- (4) Each of the parties to the contract and their heirs shall have the right to cancel the contract after giving notice to the other contracting parties.

## **(7) Suspended and non-binding contracts**

### **(a) The suspended contract**

#### **Article 213**

A disposition shall be dependent for the effectiveness thereof upon ratification if it is made by a volunteer in respect of property belonging to another or by an owner in respect of property of his encumbered by a third party right or by a person lacking capacity in respect of his own property, where such transaction lies in the area between (pure) advantage and (pure) detriment or is made under duress, or if the law so provides.

#### **Article 214**

The right to grant or withhold consent to the contract shall be that of the owner or the person in whose favor the right over the thing contracted for exists, or in the tutor or guardian, or in the person of defective capacity after the defect has been remedied, or the person who has suffered duress after the duress has been removed, or such person to whom the law gives that power.

#### **Article 215**

- (1) Consent may be by any act or word indicating the same expressly or by implication.
- (2) Silence shall be taken to be consent if by custom it indicates consent.

#### **Article 216**

It is a condition of the validity of the consent that the disposition should have been one capable of being consented to at the time it was made and at the time the consent is given, and it is likewise a condition that at the time the consent is given, there should be in existence the person who had the right to give the consent, the two parties to the contract, the subject matter of the contract, or a substitute therefor if it is a specified thing.

#### **Article 217**

- (1) If consent is given to a suspended transaction, it shall become effective retroactively to the time it was made, and the subsequent consent shall have the same effect as a prior agency.
- (2) If consent is refused, the disposition shall be void.

#### **(b) The non-binding contract.**

#### **Article 218**

- (1) A contract shall not be binding on one or both of the contracting parties despite its validity and effectiveness if there is a condition that such party may cancel it without mutual consent or an order of the court.
- (2) Each party may act unilaterally in cancelling it if by its nature the contract is not binding upon him or if he has made it a condition in his own favor that he has the option to cancel.

#### **(8) Options affecting the binding nature of the contract**

##### **(a) The option of conditionality**

#### **Article 219**

In binding contracts which are liable to be cancelled it shall be permissible for the contracting parties or either of them to make it a condition in the contract or thereafter that he should enjoy the benefit of the option of conditionality in his own or another's favor for such period as may be agreed between the parties, and if they do not agree on a particular period, it shall be permissible for the judge to specify that period in accordance with custom.

#### **Article 220**

If each of the two contracting parties has the advantage of the benefit of conditionality in communicative contracts involving property and the consideration on both sides has not left the ownership of either of the contracting parties but one then exercises the option to cancel, that property shall not pass out of his ownership neither shall the property of the other pass into the ownership of the first.

#### **Article 221**

- (1) The person having the benefit of the option of conditionality shall have the right to cancel or to affirm the contract.
- (2) If he elects to confirm the contract, it shall become binding with retroactive effect to the date on which it was made, and if he elects to cancel it, the contract shall be cancelled and deemed void ab initio.

#### **Article 222**

If both of the contracting parties have the advantage of the option of conditionality and one of them elects to cancel the contract, the contract shall be cancelled notwithstanding that the other may have

affirmed, and if one affirms the contract the other shall retain his option to cancel throughout the period laid down for the option.

**Article 223**

- (1) Cancellation or affirmation may take place by any act or word indicating the same, whether expressly or by implication.
- (2) If the period expires without the option to cancel or to affirm being exercised, the contract shall become binding.

**Article 224**

- (1) In order for the cancellation to be valid, the option in that behalf must have been exercised within the period thereof and the other party notified thereof if the cancellation is effected by words and is not dependent on mutual consent or an order of the court.
- (2) With regard to affirmation, it is not a requirement (of the contract becoming binding) that the other party should know of it.

**Article 225**

The option shall lapse upon the death of the person entitled to exercise it during the period thereof. The contract shall become binding with regard to his heirs, and the other party shall retain his option, if he originally had an option, until the expiry of the period thereof.

**(b) The option to inspect.**

**Article 226**

The option to inspect shall arise in contracts liable to cancellation in favor of the person to whom the disposition is made even though not expressly stipulated if the subject matter of the contract has not been seen, and is specified.

**Article 227**

The option to inspect shall remain until the inspection is carried out within the agreed period, or until anything occurs which causes it to lapse.

**Article 228**

The option to inspect shall not prevent the contract becoming effective but will only prevent it becoming binding on the person in whose favor the option exists

**Article 229**

- (1) The option to inspect shall not lapse by non-exercise.
- (2) The option will lapse upon the inspection of the thing contracted for and its acceptance whether expressly or by implication, and it will likewise lapse upon the death of the person having the option, the destruction of the goods concerned, whether in the whole or in part, or by their becoming defective, or the disposition thereof by a person having the right so to do by way of a disposition which may not be cancelled, or in such a way as gives rise to a right in a third party.

**Article 230**

Cancellation under the option to inspect may be by any act or word indicating the same whether expressly or by implication, but on condition that the other contracting party is aware thereof.

**(c) The option to specify (one out of two or more potential objects of the contract)**

**Article 231**

It shall be permissible to agree that the subject matter of the contract shall be one of two or three

things, and that one of the contracting parties should have the right to choose between them on condition that the consideration for each and the period of the option is expressed.

#### **Article 232**

If the contracting parties do not specify the period of the option or if the period laid down for one of them to exercise it expires without the election being made, it shall be permissible for the other party to apply to the judge to fix the period of the option or to determine the subject matter of the disposition.

#### **Article 233**

The contract shall not be binding upon the person having the right to exercise the option until that right is exercised, and if the option is exercised expressly or by implication the contract shall become binding and effective in connection with the subject matter over which the option is exercised.

#### **Article 234**

The exercise of the option shall relate back to the time the contract came into existence.

#### **Article 235**

- (1) If the option to select is vested in a purchaser and one of the two things is lost while in the hands of the seller, the purchaser shall have the option if he so wishes to take the other thing at its price or to leave it, but if both things are lost, the sale shall be void.

If the loss takes place after the purchaser has received the things to be sold and one of the two things is lost while in the hands of the purchaser, that thing shall be designated as the thing sold and the purchaser shall be bound to pay the price, and the other thing shall be regarded as being held in trust.

If the two things are lost in succession, the first shall be regarded as the thing sold and the second as held in trust, and if they are lost simultaneously the purchaser shall be bound to pay half the price of each.

- (2) If the option to appoint is vested in the seller and one of the things is lost before or after receipt, the seller shall have the right to elect either that the purchaser shall be bound to take the remaining thing or that the contract be cancelled, and if both things are lost before receipt, the contract shall be void.

If the two things are lost in succession after receipt, the first thing lost shall be regarded as held in trust and the second as the thing sold, and if they are lost at the same time, the purchaser shall be bound to pay half the price of each.

#### **Article 236**

If the person having the option to appoint dies during the period of the option, his right shall be transferred to his heirs.

### **(d) The option to reject for defects**

#### **Article 237**

Contracts capable of being cancelled shall carry with them the right to cancel the contract under the defects option without there being a condition in that in the contract.

#### **Article 238**

In order for a defect to give rise to an option to reject, it must be old (pre-existing), it must affect the value of the subject matter of the contract, it must be unknown to the purchaser, and the seller must not have contracted for an exemption from liability in respect of it.

#### **Article 239**

- (1) If the conditions set out in the preceding Article are satisfied in respect of a defect, the contract is not binding on the person having the right to exercise the option before taking delivery, and is liable to cancellation thereafter.
- (2) The contract will be cancelled prior to taking delivery by any matter demonstrating the same, without the need for mutual agreement or an order of the court on condition that the other party is aware (of the cancellation), but after delivery has been taken cancellation must be by mutual consent or by order of the court.

#### **Article 240**

If a contract is cancelled by reason of a defect, the subject matter of the contract is to be returned to the owner, and the price paid is recoverable.

#### **Article 241**

- (1) The option to reject for a defect shall lapse by non-exercise or by acceptance of the defect after knowledge thereof, by dealing in the thing contracted for even prior to such knowledge, by its being destroyed or damaged after receipt or by its being increased prior to receipt by way of direct connection with the thing, not arising from the thing itself, by the act of the purchaser, or after receipt by way of a single increase arising out of the thing itself.
- (2) The option to reject for a defect shall not lapse by reason of the death of the person having that option, but shall enure to the benefit of his heirs.

#### **Article 242**

The person having the option to reject for a defect may also retain the thing contracted for and claim for the reduction in value.

### **Section 3**

#### **The effects of the contract**

##### **(1) With regard to the contracting parties**

#### **Article 243**

- (1) The contract shall apply to the subject matter of the contract and the consideration therefor as soon as the contract is made, and shall not depend upon receipt or any other thing, unless the law provides otherwise.
- (2) With regard to the rights (obligations) arising out of the contract, each of the contracting parties must perform that which he is obliged to do under the contract.

#### **Article 244**

In the case of commutative contracts for specific property, provided the conditions for the validity thereof are satisfied, each of the contracting parties must have an established right to dispose of the property, and each shall have an obligation to deliver the subject matter of the contract to the other.

#### **Article 245**

In the case of commutative contracts to derive benefits from property, provided the conditions for the validity thereof are satisfied, the person dealing in the property shall have the obligation to deliver it to the usufructuary, and the usufructuary shall have the obligation to deliver the consideration for the benefit to the owner of the property.

#### **Article 246**

- (1) The contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith.
- (2) The contract shall not be restricted to an obligation upon the contracting party to do that which is (expressly) contained in it, but shall also embrace that which is appurtenant to it by virtue of the law, custom, and the nature of the transaction.

#### **Article 247**

In contracts binding upon both parties, if the mutual obligations are due for performance, each of the parties may refuse to perform his obligation if the other contracting party does not perform that which he is obliged to do.

#### **Article 248**

If the contract is made by way of adhesion and contains unfair provisions, it shall be permissible for the judge to vary those provisions or to exempt the adhering party therefrom in accordance with the requirements of justice, and any agreement to the contrary shall be void.

#### **Article 249**

If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.

### **(2) With regard to third parties**

#### **Article 250**

The effects of the contract shall extend to the contracting parties and their general successors without prejudice to the rules relating to inheritance, unless it appears from the contract or from the nature of the transaction or from the provisions of the law that the effects were not to extend to a general successor.

#### **Article 251**

If the contract gives rise to personal rights connected with a thing transferred thereafter to a special successor, such rights shall be transferred to such successor at the time at which the thing is transferred if it is one of the appurtenances thereof and the special successor was aware of those rights at the time of the transfer of the thing to him.

#### **Article 252**

A contract may not impose an obligation upon a third party but it may create a right in him.

#### **Article 253**

- (1) If a person undertakes to procure a third party to enter into an obligation the third party will not be bound by that undertaking, and if the third party refuses to be bound the person making the undertaking must compensate the other contracting party.

He may nevertheless be released from having to make compensation by himself performing the obligation in respect of which he gave the undertaking.

- (2) If, however the third party agrees to the undertaking, his agreement shall take effect only from the time it was given, unless it appeared that he expressly or impliedly intended that the effect of the agreement should relate back to the time he undertaking was made.

#### **Article 254**

- (1) It shall be permissible for a person to contract in his own name imposing a condition that rights are to enure to the benefit of a third party if he has a personal interest, whether material or moral, in the performance thereof.
- (2) Such a condition shall confer upon the third party a direct right against the undertaker for the performance of that condition in the contract enabling him to demand the performance thereof unless there is a contrary agreement, and such undertaker may rely as against the beneficiary on any defenses arising out of the contract.
- (3) The person making the condition may also demand the performance of the condition in favor of the beneficiary, unless it appears from the contract that the beneficiary alone has such a right.

#### **Article 255**

- (1) The person imposing that condition in the contract, but not his obliges or heirs, may cancel that condition before the beneficiary gives notice to the undertaker or the person imposing the condition of his intention to benefit thereby, unless that is contrary to the purport of the contract. The person imposing the condition may replace the first beneficiary by another, and he may also allocate the benefit of the condition for himself.
- (2) The cancellation of the conditions shall not relive the undertaker of his obligation to the party imposing it, unless there is an express or implied agreement to the contrary.

#### **Article 256**

In imposing a condition in favor of a third party it shall be permissible for the beneficiary to be a future person or future body, and the beneficiary may also be a person or body not specified at the time the contract is made if such beneficiary is ascertainable at the time the contract is to be given effect to in accordance with the condition.

### **Section 4**

#### **The construction of contracts**

#### **Article 257**

The basic principle in contracts is the consent of the contracting parties and that which they have undertaken to do in the contract.

#### **Article 258**

- (1) The criterion in (the construction of) contracts is intentions and meanings and not words and form.
- (2) The primary rule is that words have their true meaning and a word may not be construed figuratively unless it is impossible to give it its direct meaning.

#### **Article 259**

There shall be no scope for implications in the face of clear words.

#### **Article 260**

Words should be given effect to rather than ignored, but if it is impossible to give effect to words, they shall be ignored.

#### **Article 261**

Reference to part of an indivisible shall count as reference to the whole.



#### **Article 262**

An unconditional provision shall be so constructed unless there is evidence, whether textual or circumstantial, restricting it.

#### **Article 263**

A description of that which is present is a superfluity, but a description of that which is absent shall have effect.

#### **Article 264**

Known custom as between merchants shall have the effect of (express) conditions made between.

#### **Article 265**

- (1) If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties.
- (2) If there is scope for an interpretative construction of the contract, an enquiry shall be made into the mutual intentions of the parties beyond the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust and confidence which should exist between the parties in accordance with the custom current in (such) dealings.

#### **Article 266**

- (1) A doubt shall be resolved in favor of the obligor.
- (2) Nevertheless, it shall not be permissible to construe ambiguous words in contracts of adhesion in a manner detrimental to the interests of the adhering party.

### **Section 5**

#### **The dissolution of a contract**

##### **(1) General provisions**

#### **Article 267**

If the contract is valid and binding, it shall not be permissible for either of the contracting parties to rescind from it, nor to vary or rescind it, save by mutual consent or an order of the court, or under a provision of the law.

#### **Article 268**

The contracting parties may mutually revoke the contract by their mutual consent after it has been concluded.

#### **Article 269**

So far as concerns the contracting parties' revocation amounts to cancellation, and with regard to a third party amounts to a new contract.

#### **Article 270**

Revocation shall be by offer and acceptance in the session (majlis), and by receiving (back the thing contracted for) on condition that the subject matter of the contract is in existence and in the possession of the contracting party at the time of the revocation, and if part of it has been lost the revocation shall be valid as to the remainder to the extent of the amount of the consideration attributable to it.

#### **Article 271**

It shall be permissible to agree that a contract shall be regarded as being cancelled spontaneously (automatically) without the need for a judicial order failing performance of the obligations arising

there out, and such agreement shall not dispense with notice unless the contracting parties have expressly agreed that it should be dispensed with.

#### **Article 272**

- (1) In contracts binding on both parties, if one of the parties does not do what he is obliged to do under the contract, the other party may, after giving notice to the obligor, require that the contract be performed or cancelled.
- (2) The judge may order the obligor to perform the contract forthwith or may defer (performance) to a specified time, and he may also order that the contract be cancelled and compensation paid in any case if appropriate.

#### **Article 273**

- (1) In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.
- (2) In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware.

### **(2) The effects of dissolution of the contract**

#### **Article 274**

If the contract is cancelled automatically or by the act of the parties, the two contracting parties shall be restored to the position they were in before the contract was made, and if that is not possible, compensation shall be ordered.

#### **Article 275**

If the contract is dissolved by reason of voidness or cancellation or through any other cause and each of the parties is obliged to return that which he has obtained, it shall be permissible for each of them to detain what he has received so long as the other party has not returned what he has received from the former, or provided security for such return.

### **Part 2**

#### **Unilateral dispositions**

#### **Article 276**

It shall be permissible for a disposition to take place through the unilateral intention of the disponor without depending on the acceptance of the disponent unless a third party becomes obligated in any respect as laid down in the law, provided that there is no provision in the law to the contrary.

#### **Article 277**

The provision relating to contracts shall apply to unilateral acts with the exception of those provisions relating necessarily to the existence of a mutual corresponding intention to establish a contract, unless the law provides to the contrary.

#### **Article 278**

If the elements and conditions of a unilateral disposition are satisfied, it shall not be permissible for the disponor to resile from it, unless the law provides to the contrary.

#### **Article 279**

- (1) If the unilateral disposition amounts to a passing of property, then it shall only be effective with regard to the donee upon his acceptance thereof.
- (2) If the act is a waiver amounting to a passing of property or a discharge from an obligation, it shall be effective with regard to the donee but may be retracted during the time of the majlis.
- (3) If the act is a pure waiver, it shall be effective with regard to the donee and may not be retracted.
- (4) All of the above is subject to any provision of the law to the contrary.

#### **Article 280**

- (1) A promise is something imposed by a person on himself in favor of another relating to the future, otherwise than by way of an obligation with regard to property, and it may be for a contract or to do an act.
- (2) A promise binds the maker unless he dies or becomes bankrupt.

#### **Article 281**

- (1) Whoever promises a prize to the public for performing a particular act and fixes a time limit for it shall be bound to give the prize to the person who performs that act, notwithstanding that the act was performed without regard to the promise of the prize.
- (2) If the promisor does not fix a time limit for the performance of the act it shall be permissible for him to rescind from his promise by a public notice, but provided that that shall not affect the rights of a person who has performed the act prior to the revocation of the promise. No claim for the prize shall be heard, unless it is brought within three months from the date of notice being given of the revocation of the promise.

### **Part 3**

#### **Acts causing harm**

##### **Section 1**

#### **General provisions**

#### **Article 282**

Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm.

#### **Article 283**

- (1) Harm may be direct or consequential.
- (2) If the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongful or deliberate element and the act must have led to the damage.

#### **Article 284**

If the harm is both direct and consequential, the rules relating to direct harm shall apply.

#### **Article 285**

If a person deceives another he shall be liable to make good the harm resulting from that deception.

#### **Article 286**

No person who has been caused loss in his property by another may cause that other loss in his property, otherwise each shall be bound to make good the loss he has caused to the other.

#### **Article 287**

If a person proves that the loss arose out of an extraneous cause in which he played no part such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it good in the absence of a legal provision or agreement to the contrary.

#### **Article 288**

Any person causes damage in the course of lawful defense of himself, his honour, or his property, or the defense of the person, honour or property of another, shall not be responsible for such damage provided that he has done no more than was necessary, otherwise he shall be bound to make good the excess

#### **Article 289**

- (1) The act shall be regarded as being that of the actor and not of the person who ordered him to do it unless the actor is so compelled, provided that for there to be compulsion in respect of a physical act it must amount to forcible duress and no less.
- (2) Nevertheless, a public servant shall not be liable for his acts causing harm to others if he performed them in execution of an order given to him by his superior, and he is obliged to obey such order, or believed that he had to do so, and if he provides evidence of his belief in the lawfulness of the act which he does, such belief being based on reasonable grounds, and provided that he acts with prudence and caution.

#### **Article 290**

It shall be permissible for the judge to reduce the level by which an act has to be made good or to order that it need not be made good if the person suffering harm participated by his own act in bringing about or aggravating the damage.

#### **Article 291**

If a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liabilities.

#### **Article 292**

In all cases the compensation shall be assessed on the basis the amount of harm suffered by the victim, together with loss of profit, provided that that is a natural result of the harmful act.

#### **Article 293**

- (1) The right to have damage made good shall include moral damage, and an infringement of the liberty, dignity, honour, reputation, social standing or financial condition of another shall be regarded as being moral damage.
- (2) It shall be permissible for an order to be made by way of compensation for moral damage caused to a spouse, or relatives of the family, by reason of the death of the victim.
- (3) The right to receive compensation for moral damage may not be transferred to a third party unless the amount of it has been fixed by agreement or by a final judicial order.

#### **Article 294**

The compensation may be made payable by instalments or by of a regular income, and in those events the obligor may be ordered to provide a guarantee assessed by the judge, or acceptable security.

#### **Article 295**

The compensation shall be assessed in money, but provided that the judge may, according to the circumstances and upon the application of the victim, order that the plaintiff be restored to his former position, and he may also order that a specific act connected with the harmful act be performed by way of making good.

#### **Article 296**

Any condition purporting to provide exemption from liability for a harmful act shall be void.

#### **Article 297**

Civil liability shall be without prejudice to criminal liability provided that the elements of criminal liability are present, and no criminal penalty shall limit the scope of the civil liability or the assessment of the compensation.

#### **Article 298**

- (1) No claim for compensation arising out of a harmful act shall be heard after the expiration of three years from the day on which the victim became aware of the occurrence of the harm and of the identity of the person responsible for it.
- (2) Provided that if such claim arises out of a crime and the criminal proceedings are still current after the expiry of the time limit referred to in the foregoing paragraph, the claim for compensation shall not be barred.
- (3) No claim for compensation shall be heard in any case upon the expiration of fifteen years from the day on which the harmful act took place.

### **Section 2**

#### **Liability for personal acts**

##### **(1) Harm done to the person**

#### **Article 299**

Compensation shall be payable for any harm caused to a person. Provided that in cases in which the Diya (blood money) or arsh (sharia damages for personal injury not resulting in death) are payable, they shall not be payable in addition to such compensation, unless the parties agree to the contrary.

##### **(2) Damage to property**

#### **Article 300**

Whoever destroys or damages property of another shall be obliged to make it good in kind if it can be so made good, and to pay the value thereof otherwise, subject to the general provisions relating to indemnification.

#### **Article 301**

If the damage is partial, the person causing it shall be bound to make good the decrease in value, and if the decrease in value, and if the decrease in value is serious (gross) the owner of the property may elect between taking the equivalent of the decrease in value, or abandoning the damaged property and taking the (full) value thereof, subject to the general provisions relating to indemnification.

#### **Article 302**

- (1) If a person damages the property of another in the belief that it is his own, he shall be bound to make good the loss.

- (2) If a person damages the property of another with the permission of the owner thereof, he shall not be bound to make good the loss.

**Article 303**

If a minor, whether of discretion or not, or any person of similar status, damages the property of another, he shall be bound to make it good out of his own property.

**(3) Expropriation and trespass to goods**

**Article 304**

- (1) The hand shall be bound to restore that which it has taken, and shall remain bound until it does so.
- (2) Whoever misappropriates property belong to another must restore it to that other in the condition it was in when, and at the same place where, the misappropriation took place.
- (3) If (the tort easer) has consumed or damaged the goods or if they have diminished or been damaged either with or without a wrongful act on his part, he must make good in kind or in value as at the day and place of misappropriation.
- (4) He must also hand over any benefits or increase he has obtained from such property.

**Article 305**

If a person damages misappropriated goods in the hands of the misappropriator, the person from whom the goods have been misappropriated shall have an election whether to make the misappropriator liable, and the latter may have recourse against the person who caused the damage, or he may, if he wishes, impose the liability on the person causing the damage, in which case the person causing the damage will not have any recourse against the misappropriator.

**Article 306**

If the misappropriator disposes of the goods misappropriated by way of commutative contract or by way of gift and the goods misappropriated are lost in whole or in part in the hands of the person to whom the misappropriator made the disposition, the person from whom the goods have been misappropriated may elect to make either of them liable, and if he elects to make the misappropriator liable his disposition shall be valid, and if he elects to make the person to whom the misappropriator has made the disposition liable, such person shall have a right of recourse against the misappropriator in accordance with the provisions of the law.

**Article 307**

- (1) A person who misappropriates goods from a misappropriator shall himself be regarded as a misappropriator.
- (2) If the misappropriator from a misappropriator returns the goods misappropriated to the first misappropriator, he alone shall be discharged of liability, and if he returns the goods to the person from whom they were misappropriated both he and the original misappropriator shall be discharged.
- (3) If the goods become damaged in the hands of a misappropriator from a misappropriator, the person from whom they have been misappropriated shall have an election whether to make the first misappropriator or the second misappropriator liable.

He may also make the first liable for part and the second liable for part, and if he makes the first misappropriator liable, such person shall have a right of recourse against the second misappropriator, and if he makes the second misappropriator liable, the last mentioned person shall have no right of recourse against the first.

### **Article 308**

The judge may in all cases order the misappropriator to pay such compensation as he thinks appropriate if in his opinion that course is justified.

### **Article 309**

If a person has goods in his possession by way of trust and he is guilty of a default in preserving them, or is guilty of a wrong-doing in respect of them or refuses to return them to the owner without right, or if he wrongfully asserts that they are his own, or if he dies and it is not known where the goods are, he shall be liable to return similar goods or the value thereof as the case may be.

### **Article 310**

Whoever steals goods or seizes them by violence or takes goods must return them to their owner if they are still in existence, or must return similar goods or the value thereof if the goods are no longer available, notwithstanding that a criminal penalty may have been imposed upon him.

### **Article 311**

- (1) If goods misappropriated change of their own, then the person from whom they have been misappropriated may elect between the recovery of those same goods, or a replacement thereof.
- (2) If goods misappropriated change in such a way that they become of a different description, (the misappropriator) shall be liable to make a replacement.
- (3) If goods misappropriated change by reason of a misappropriator having added something of his own to them, the person from whom they have been misappropriated may elect between paying the value of the increase and recovering the goods misappropriated in specie, or making the misappropriator liable to provide a replacement.
- (4) If the goods misappropriated suffer a decrease in value as a result of the use made by the misappropriator, the misappropriator must return those same goods and shall be liable for the shortfall in value.

### **Article 312**

Any act of the same nature as misappropriation shall be treated as misappropriation.

## **Section 3**

### **Liability for the acts of others**

### **Article 313**

- (1) No person shall be liable for the act of another person, but nevertheless the judge may, upon the application of an injured party and in the event that in his opinion there is justification for taking that course, render any of the following persons liable as the case may be to satisfy any amount awarded against a person who has caused the harm:
  - (a) any person who by law or by agreement is obliged to supervise a person who requires supervision by virtue of his being an infant or by reason of his mental or physical condition, unless it is proved that he carried out his duty of supervision or that the damage would necessarily have occurred even if that duty had been carried out with the proper care; or
  - (b) any person who has actual control, by way of supervision and direction, over a person who has caused the damage, notwithstanding that he may not have had a free choice, if the act causing harm was committed by a person subordinate to him in or by reason of the execution of his duty.

- (2) Any person obliged to make good may have a recourse against the person against whom the original award was made.

#### **Section 4**

#### **Liability for animals and objects and use of public roads**

##### **(1) Damage done by animals**

##### **Article 314**

Acts done by animals shall be regarded as inevitable, but that which they do shall be made good by the person having control of the animals, whether he is the owner or not, if he has been in default or guilty of a wrongdoing.

##### **(2) Collapse of buildings**

##### **Article 315**

- (1) Harm done to a third party by reason of the collapse of a building whether in whole or in part shall be made good by the owner of the building or the person having control over it unless it is proved that he was not guilty of any wrongdoing or default.
- (2) Any person who is threatened with harm which may befall him from a building may require the owner to take the necessary measures to avert the risk, and if the owner does not take such measures, the judge may permit him to take those measures at the expense of the owner.

##### **(3) Things and equipment**

##### **Article 316**

Any person who has things under his control which require special care in order to prevent their causing damage, or mechanical equipment, shall be liable for any harm done by such things or equipment, save to the extent that damage could not have been averted. The above is without prejudice to any special provisions laid down in this regard.

#### **Use of public road**

##### **Article 317**

The use of a public right is restricted (so far as is necessary to ensure) the safety of others, and any person who uses his public right and causes harm to another person which could have been avoided, shall be liable for the same.

#### **Part 4**

#### **Acts conferring a benefit**

##### **Section 1**

##### **Acquisition without cause unjust enrichment**

##### **Article 318**

No person may take the property of another without lawful cause, and if he takes it he must return it.



### **Article 319**

- (1) Any person who acquires the property of another person without any disposition entitling him so to do must return it if that property still exists, or similar property or the value thereof if it no longer exists, unless the law otherwise provides.
- (2) If the property of any person leaves his possession without his so intending and by unavoidable process merges with the property of another person in such a way that it cannot be separated therefrom without causing harm to one of the owners, the property of the lesser value shall be regarded as part of the property of the greater value after paying the value thereof, and if (the two parts) are of equal value then the property shall be sold and the proceeds distributed, unless there is an agreement or a provision of law to the contrary.

## **Section 2** **Unjustified expropriation**

### **Article 320**

Whoever hands over a thing believing that he has a duty so to do, and it then becomes apparent that he had no such duty, may recover it from the person who took it if it still exists, or similar property or the value thereof if it does not still exist.

### **Article 321**

A recovery of property handed over without entitlement may be made if payment was made in satisfaction of a debt for which the cause had not materialized, or for a debt of which the cause has ceased to exist after it had materialized.

### **Article 322**

It shall be proper to recover money paid in satisfaction of a debt which has not matured, and in respect of which the payer was ignorant of the due date for payment.

### **Article 323**

If payment is obtained from a person other than the obligor and the result of that is that the obligee acting in good faith has been deprived of an instrument proving the debt or any security attaching thereto. If he has forbore to make a claim against the true obligor within the time limit laid down, he does not have to return what he has taken, but the person who has paid may have a recourse against the true obligor for the obligation and render him a guarantor thereof if appropriate.

### **Article 324**

Whoever takes a thing without a claim of right must return it to its owner together with any profits or yield it has produced, and the judge may compensate the owner of the right for any shortfall in the return of the yield on the part of the person who had taken the goods.

## **Section 3** **Voluntary agency**

### **Article 325**

Whoever performs an act beneficial to a third party otherwise than upon the latter's instructions, but by leave of a judge, or under compelling necessity, or by the dictate of custom, shall be deemed to be acting on his behalf, and the following provisions shall apply to such person.

### **Article 326**

The rules of agency shall apply if the principal ratifies the act of the voluntary agent.

#### **Article 327**

A voluntary agent must continue the work which he has commenced until the principal is able to undertake it himself, and he must also inform the principal of his intervention as soon as he is able.

#### **Article 328**

A voluntary agent is liable for any losses sustained by the principal, and the judge may limit (also: determine) the extent of the liability if the circumstances justify that course.

#### **Article 329**

If a voluntary agent delegates the whole or part of the work to another person, he shall be liable for the acts of his deputy, without prejudice to any direct recourse which the principal may have against such deputy.

#### **Article 330**

A voluntary agent shall have the same obligations as a (duly constituted) agent in restoring that which he has obtained by reason of the voluntary agency, and in giving an account of what he has done.

#### **Article 331**

The principal must perform the obligations entered into by the voluntary agent on his account, and must indemnify him against the obligations which he has undertaken, reimburse necessary and useful expenses justified by the circumstances, and compensate him for any loss sustained by reason of his carrying out the work, and the voluntary agent shall not be entitled to a fee for his work unless such work is performed in the course of his profession.

#### **Article 332**

- (1) If a voluntary agent dies, his heirs shall be under the same obligations as the heirs of a (duly constituted) agent upon the termination of the agency by the death of such agent.
- (2) If the principal dies, the voluntary agent shall remain under the same duties towards his heirs as he was towards the principal.

### **Section 4**

#### **Discharging the debt of another**

#### **Article 333**

If a person discharges the obligations of a third party upon his directions, he shall have a right of recourse against the person so directing him for what he has performed on his behalf, and he shall take the place of the original obligee in his right to claim against the obligor, whether or not such right of recourse was (expressly) agreed.

#### **Article 334**

If a person discharges the obligations of a third party otherwise than upon his directions, he shall not have a right of recourse against the obligor for moneys he has paid save in the circumstances provided for in Article 325, and there shall be no recourse against the obligee unless he has discharged the obligor of the obligation, even after obtaining satisfaction of the obligation from the person performing it.

#### **Article 335**

If a pledgor discharges the debt of a third party in order to release his property pledged by way of security for such debt, he shall have a right of recourse against the debtor for the money he has paid.

## **Section 5**

### **General provisions**

#### **Article 336**

No claims arising out of a beneficial act shall be heard after the expiration of three years from the day on which the obligee became aware of his right of recourse, and in no case shall claims be heard after the expiration of fifteen years from the day on which the right of recourse arose.

## **Part 5**

### **The Law**

#### **Article 337**

Rights arising directly and exclusively out of the law (or: (this) Law) shall be governed by the legal provisions out of which they arose.

## **CHAPTER II**

### **The effects of a right**

## **Part 1**

### **General provisions**

#### **Article 338**

A right must be satisfied when the legal conditions rendering it due for performance exist, and if an obligor fails to perform an obligation, he shall be compelled to do so either by way of specific performance or by way of compensation in accordance with the provisions of the law.

#### **Article 339**

- (1) Performance shall be voluntary if it takes place by satisfaction or the equivalent.
- (2) Performance shall be compulsory if it takes place by (an order for) specific performance or by way of compensation.

#### **Article 340**

If a right loses the protection of the law for any reason, there shall be no compulsory performance, and the obligation shall become non-enforceable obligation of the obligor.

#### **Article 341**

If an obligor discharges a non-enforceable obligation, such discharge shall be valid, and shall not be deemed to be a discharge of what he was not obliged to perform.

## **Part 2**

### **Means of enforcement**

## **Section 1**

### **Voluntary execution**

#### **(1) Satisfaction**

##### **(a) The parties to the satisfaction**

#### **Article 342**

- (1) Discharge shall be good if performed by the obligor or his representative or by any other person having an interest in the discharge.
- (2) Discharge shall also be good if performed by a person not having an interest in the discharge upon the directions of the obligor or otherwise, and provided that the obligee shall have the right to refuse the discharge by a third party if the obligor objects thereto and notifies the obligee of his objection.

#### **Article 343**

In order for there to be a valid discharge of an obligation, the person performing it must be the owner of that by which the performance is effected, and if the obligor is a minor of the age of discretion, or is of the age of majority but an imbecile or subject to a restriction on the grounds of idiocy or feeble-mindedness and he discharges the obligation by which he is bound, such discharge shall be good, unless it causes damage to the person making the discharge.

#### **Article 344**

Discharge made to certain obligees shall be of no effect against other obligees if the obligor is under a restriction with regard to that obligation, or if the discharge is made out of restricted property, or if the obligor is terminally ill and the discharge would prejudice the remaining obligees.

### **(b) The person to whom satisfaction is made**

#### **Article 345**

Discharge may be performed to the obligee or his representative, and any person who gives a receipt issued by the obligee shall be regarded as a proper recipient of the discharge, unless it is agreed that the discharge shall be performed towards the obligee in person.

#### **Article 346**

If an obligee is not a person of full capacity, an obligor shall not be released save by discharging the obligation towards his guardian, and if discharge is effected to the obligee and that whereby discharge was made is destroyed or lost in his hands, the guardian may make a claim against the obligor for satisfaction.

### **(c) Rejection of discharge**

#### **Article 347**

If an obligee rejects without justification a discharge validly offered to him in circumstances when he should accept it, or if he refuses to perform an act without which the discharge may not be effected, or if he states that he will not accept the discharge, the obligor shall give him notice specifying a reasonable period to perform what he is obliged to do to obtain satisfaction of his right.

#### **Article 348**

The result of the giving of such notice by the obligor shall be that the thing which was the subject matter of the obligation shall come under the responsibility of the obligee if it had previously been under the responsibility of the obligor, and the obligor shall have the right to put it into safe keeping at the expense of the obligee, under the responsibility of the latter for any harm that may be sustained by it.

#### **Article 349**

If the subject matter of the discharge is a specific thing, and the obligation is to deliver it at the place in which it is, the obligor may, after giving notice to the obligee to take delivery of it, obtain the leave of the judge to put it into safe keeping, and if such thing is real property or deemed to be so by affixation in the place where it is, the obligor may apply that it be placed under guard.

#### **Article 350**

If the subject matter of the discharge is a perishable thing or if it requires the incurring of substantial expense to keep it safe or under guard, the obligor may, after obtaining the leave of the judge, or without such leave in compelling circumstances, sell it at its customary market value, or, if that is impossible, by public auction, and shall lodge the proceeds in place of putting the thing itself in safe keeping.

#### **Article 351**

The placing in safe keeping or the act performed in its stead shall also be permissible if the obligor is unaware of the identity or place of residence of the obligee or if the obligor is under a restriction and does not have a representation who can accept discharge on his behalf, or if the obligation is the subject of a dispute among several persons, or if there are other serious reasons justifying that course.

#### **Article 352**

A valid offer shall, with regard to the obligor, take the place of discharge if it is followed by a deposit satisfying the legal requirements, or by any similar procedure, if accepted by the obligee or if a final judgment is made to the effect that it is valid.

#### **Article 353**

- (1) If the obligor tenders discharge and the tender is followed by a deposit of similar procedure, he may resile from that tender so long as the obligee has not accepted it and there has been no final judgment as to its validity, and if he does so resile, neither his co-obligors nor his guarantors shall be discharged.
- (2) If an obligor resiles from the tender after the obligee has accepted it or after a judgment as to its validity, and the obligee accepts such resilement from him the obligee may not there after rely on any securities for the performance of the obligation, and the co-obligees and the guarantors shall be discharged.

#### **(d) The subject matter, time, and place of the satisfaction, expenses thereof, and proof**

#### **Article 354**

- (1) If the obligation is one which must be specifically performed, the obligor may not effect substituted performance of it without the consent of the obligee, notwithstanding that such substituted performance is of a value equivalent to or greater than the thing due.
- (2) If, however, the obligation is not one to be specifically performed, the obligor may discharge it by similar performance, even without the consent of the obligee.

#### **Article 355**

- (1) The obligor may not compel the obligee to accept partial performance of the obligation, unless there is an agreement or a provision of law permitting that.
- (2) If there is a dispute as to part of the obligation and the obligee agrees to accept performance of the agreed part, the obligor may not refuse performance of such part.

#### **Article 356**

If the obligee is bound to discharge any expenses together with the obligation, and his performance does not cover the obligation as well as those expenses, what he has performed shall be deducted firstly from those expenses and then from the principal obligation, unless a contrary agreement is made.

#### **Article 357**

If an obligor is bound by several obligations of the same kind towards the same obligee, and the performance made by the obligor does not satisfy all of those obligations, the obligee may, upon performance, specify the particular obligation which he wishes to be (regarded as) performed, unless there is any legal or contractual bar preventing such a course.

#### **Article 358**

If the obligation is not specified as set out in the foregoing Article, the performance shall be attributed to such obligation as has matured, and if there are several such obligations, then the attribution shall be to the most burdensome of the obligations upon the obligee, and if the obligations are of equal burden, the attribution shall be to such obligation as the obligee shall specify.

#### **Article 359**

- (1) An obligation must be discharged as soon as it becomes final and binding as against the obligor, in the absence of an agreement or provision of law to the contrary.
- (2) Provided that a judge may, in exceptional circumstances and if not prevented by any provision in the law, grant a reasonable period or periods to the obligor for the performance of his obligations if his circumstances so warrant, and provided that such granting of time does not cause serious loss to the obligee.

#### **Article 360**

- (1) If an obligation is deferred, the obligor may discharge it prior to its falling due if the deferment is to his advantage, and the obligee must accept.
- (2) If an obligor discharges an obligation before it falls due, and a third party right arises over that whereby discharge is performed, the obligation shall again become deferred as before.

#### **Article 361**

- (1) If the subject matter of the obligation is one for specific performance, it must be delivered at the place where it is at the time the obligation arose, unless there is an agreement or provisions of law to the contrary.
- (2) In the case of other obligations performance shall be at the place where the obligor has his residence at the time of discharge or at the place where he carries on business, if the obligation relates to his business.

#### **Article 362**

If the obligor sends that wherewith discharge is to be made with his messenger to the obligee and the thing is lost in the hands of the messenger before he arrives, the loss shall fall on the obligor. If the obligee directs the obligor to discharge the obligations to the messenger of the obligee and he does so, thereafter the loss shall fall upon the obligee and the obligor shall be discharged from his obligation.

#### **Article 363**

The costs of discharge shall be borne by the obligee, unless there is an agreement or a provision of law to the contrary.

#### **Article 364**

- (1) Any person discharging part of an obligation may require a receipt as to that which has been performed, with an endorsement on the document relating to the obligation that such discharge has been received, and if the obligation is discharged in full he may require that such document be returned to him or cancelled. If the document has been lost, he may require the obligee to make a written acknowledgement of the loss of the document.

- (2) If the obligee refuses to comply with his obligations under the foregoing paragraph, the obligor may deposit the thing due with the court.

**(2) Quasi-satisfaction**  
**(a) Substituted satisfaction**

**Article 365**

An obligee may, in satisfaction of his right, accept another thing or another act performed by the obligor, and the agreement to the substitution shall be subject to the general provisions governing contracts as laid down in this Law.

**Article 366**

- (1) Substituted performance shall be governed by the provisions relating to sale if that which is given in performance is a specific thing in place of discharge of the (original) obligation.
- (2) The provisions governing performance in the termination of an obligation shall apply thereto.

**Article 367**

The original obligation, together with any securities pertaining thereto, shall be extinguished by the substituted performance, and the rights of the obligee shall be transferred to the substitute.

**(b) Set-off**

**Article 368**

Set-off is the satisfaction of an obligation of the obligee by an obligation to be performed by the obligor.

**Article 369**

Set-off may either be mandatory, occurring by operation of law, or voluntary, occurring by agreement between the parties, or judicial, occurring by order of the court.

**Article 370**

In the case of mandatory set-off, each of the parties must be both the obligor and the obligee of the other, and the obligations must be of the same type and description, must be equally due and of equal strength or weakness, and the making of the set-off must not be prejudicial to the rights of third parties, whether the cause of the arising of the obligations is the same or different.

**Article 371**

A set-off may be made by agreement if any of the conditions for a mandatory set-off is not satisfied.

**Article 372**

A judicial set-off takes place by order of a judge if the conditions thereof are satisfied, either upon an original application or upon an objection.

**Article 373**

If a bailee is under an obligation to his bailor, or if a person who has misappropriated goods is owed an obligation by the person from whom the goods have been misappropriated, and the obligation is of the same nature as the goods deposited or misappropriated, there shall be no set-off save by the agreement of the parties.

**Article 374**

If an obligee loses property of the obligor, of the same kind as the subject matter of the obligation,

such property shall fall into the set-off, and if it is not of the same kind, it shall not fall into the set-off save with the agreement of the parties.

#### **Article 375**

A set-off may be made upon the request of a person having an interest therein, and the set-off shall be effective to the amount of the lesser of the two obligations.

#### **Article 376**

If the obligation is one for which a claim has become time-barred by the time the set-off is claimed, that fact shall not operate to prevent a set-off, provided that the period causing the claim to be time-barred had not already expired by the time the set-off first became possible.

#### **Article 377**

If an obligor discharges an obligation of his and has a right to claim a set-off for a right due to him, he may not rely on the guarantees of that right to the detriment of third parties, unless he was unaware of the existence (of a right of set-off), and has a reasonable excuse for such ignorance.

### **(c) The merger of capacities**

#### **Article 378**

- (1) If the same person acquired the status of both obligor and obligee with regard to a single obligation, the obligation shall become extinguished to the extent to which the two statuses have merged.
- (2) Obligations shall not merge if the obligor is the heir of the obligee and he joins with the other obligors in obtaining satisfaction of the obligation out of the estate.

#### **Article 379**

If the cause of the merging of the two statuses ceases retrospectively, the obligation shall revert to its former position.

### **Section 2**

### **Compulsory enforcement**

#### **(1) Specific performance**

#### **Article 380**

- (1) An obligor shall, after being given notice, be compelled to discharge his obligation by way of specific performance, if that is possible.
- (2) Provided that if specific performance would be oppressive for the obligor, the judge may, upon the application of the obligor, restrict the right of the obligee to a monetary substitute unless that would cause him serious loss.

#### **Article 381**

- (1) If the subject matter of the right is an act which, by its nature or by virtue of a contractual provision, the obligor must perform personally, the obligee may reject performance there-off by another person.
- (2) If the obligor does not perform the act, the obligee may seek the leave of the judge to perform it (himself) and he may also perform it (himself) without leave under compelling necessity, and in both cases the performance shall be at the expense of the obligee.

#### **Article 382**

The judgment of the court shall take the place of performance if the subject matter of the right is an act, and the nature of the case so allows.



### **Article 383**

- (1) If that which is required of an obligor is the preservation of a thing, or the management thereof, or the exercise of care in the performance of his obligation, he shall have discharged that obligation if, in the performance thereof, he exercises all such care as the reasonable man would exercise, notwithstanding that the intended object is not achieved, unless there is an agreement or a provision of law to the contrary.
- (2) In all cases, the obligor shall remain liable for any fraud or gross negligence on his part.

### **Article 384**

If the subject matter of the right is the refraining from an act, and the obligor is in breach of that obligation, the obligee may require that the effects of such breach be removed, or apply to a judge for leave to remove such effects at the expense of the obligor.

### **Article 385**

If specific performance has taken place, or if the obligor persists in refusing performance, the judge shall determine the amount of compensation to be paid by the obligor, having regard therein to the prejudice suffered by the obligee, and the unreasonableness of the attitude of the obligor.

## **(2) Performance by way of compensation**

### **Article 386**

If it is impossible for an obligor to give specific performance of an obligation, he shall be ordered to pay compensation for non-performance of his obligation, unless it is proved that the impossibility of performance arose out of an external cause in which (the obligor) played no part. The same shall apply in the event that the obligor defaults in the performance of his obligation.

### **Article 387**

Compensation shall not be due until after the obligor has been put on notice, unless there is a contrary provision in the law or in the contract.

### **Article 388**

It shall not be obligatory to give notice to the obligor in the following circumstances: -

- (a) if the performance of the obligation becomes impossible or useless through the act of the obligor;
- (b) if the subject matter of the obligation is compensation arising out of an unlawful act;
- (c) if the subject matter of the obligation is the return of a thing which the obligor knows is stolen, or a thing received by him without claim of right and the obligor is aware of that; or
- (d) if the obligor states in writing that he does not wish to perform his obligation.

### **Article 389**

If the amount of compensation is not fixed by law or by the contract, the judge shall assess it in an amount equivalent to the damage in fact suffered at the time of the occurrence thereof.

### **Article 390**

- (1) The contracting parties may fix the amount of compensation in advance by making a provision therefor in the contract or in a subsequent agreement, subject to the provisions of the law.
- (2) The judge may in all cases, upon the application of either of the parties, vary such agreement so as to make the compensation equal to the loss, and any agreement to the contrary shall be void.

**Section 3**  
**Lawful means to safeguard performance**

**(1) Security of the assets of the debtor for performance**

**Article 391**

- (1) All of the property of the obligor stands as security for the performance of his obligations.
- (2) All creditors stand pari passu in respect of such security, without prejudice to any provisions of the law to the contrary.

**(2) Indirect claims**

**Article 392**

- (1) Every obligee, notwithstanding that his right may not be due for discharge, may exercise, in the name of his obligor, all of the rights of that obligor, save those that relate particularly to his person or which are not capable of being attached.
- (2) The exercise by the obligee of the rights of his obligor shall not be permitted unless it is established that the obligor has not exercised those rights and that his failure so to do is such as may lead to or aggravate his bankruptcy, and the obligor must be brought into the claim.

**Article 393**

The obligee shall be regarded as acting on behalf of his obligor in exercising his rights, and any benefit arising out of the exercise of those rights shall be brought into the obligor's property and shall stand as security for all his creditors.

**(3) Sham arrangements**

**Article 394**

- (1) If a sham contract is made, the obligees of the contracting parties, and special successors, may, if they are acting in good faith, rely on the sham contract and also rely on the hidden contract, and prove by all means the sham nature of the contract by which they are prejudiced.
- (2) If there is a conflict of interest between the parties concerned and some of them rely on the apparent contract and others on the hidden contract, the former shall take precedence.

**Article 395**

If the contracting parties conceal a true contract with an apparent contract, the true contract will be the effective one as between the contracting parties and a special successor.

**(4) Claims against a debtor not to make dispositions detrimental to the creditor**

**Article 396**

If obligations, whether due or deferred, exceed or are equal to the assets of the obligor, then he may not make any gift he is not bound to make or which custom does not dictate that he must, and an obligee may ask for an order declaring that such disposition is ineffective as against him.

**Article 397**

If obligees are making a claim against an obligor whose assets do not exceed the obligations due to them, he may not make any gifts of his property or dispose of it by way of commutative contract notwithstanding the absence of preference, and the obligees may seek an order declaring that the disposition is ineffective as against them, and may also seek an order for the sale of his property and that they do share in the proceeds thereof in accordance with the provisions of the law.

#### **Article 398**

If an obligee alleges that the property of the obligor does not exceed the amount of the debt, he need only prove the amount of the obligations to him, and the obligor himself must prove that he has assets exceeding the amount of the obligations.

#### **Article 399**

If an order is made declaring that the disposition is ineffective, the obligees prejudiced by such disposition shall have the benefit of that order.

#### **Article 400**

- (1) No claim for a declaration that a disposition is ineffective shall be heard after the expiration of three years from the day on which the obligee learned of the cause rendering the disposition ineffective.
- (2) In no circumstances shall such claims be heard after the expiration of fifteen years from the time the disposition was made.

### **(5) Restrictions on bankrupt obligors**

#### **Article 401**

A restriction may be placed on an obligor if his obligations due exceed his assets.

#### **Article 402**

- (1) The restriction shall be by way of an order made by a judge within whose jurisdiction the residence of the obligor is situated upon an application made by the obligor or any of the obligees, and the application shall be heard promptly.
- (2) Any obligee may, under the restriction order, obtain an order from the competent judge attaching all of the property of the obligor save such as may not be attached. The attachment shall remain in effect over the property of the obligor for the benefit of the obligees until the restriction is terminated.

#### **Article 403**

The judge must in each case before imposing a restriction on the obligor have regard in exercising his discretion to all of the circumstances surrounding the obligor, the extent to which he was responsible for the circumstances which led to the restriction order being sought, the lawful interests of his obligors, and any other circumstances which may affect his financial condition.

#### **Article 404**

- (1) The clerk of the court must, on the day on which the application for a restriction is lodged, register the contents of the claim in a special register arranged in order of the names of the obligors over whom a restriction is applied for, and must make a note in the margin of the said register of the order must make a note in the margin of the said register of the order made in the claim, and of any order made confirming or reserving it, on the same day that any such order is made.
- (2) The court clerk must also send to the office of the Ministry of Justice a copy of these registrations and endorsements for registration on the general register to be kept in accordance with a regulation to be issued by the Minister.

#### **Article 405**

If an obligor changes his address he must give notice thereof to the clerk of the court within the area of which his old address was and the clerk must, as soon as he learns of the change of address, either through notification from the obligor or from any other source, send a copy of the restriction order and of the particulars noted in the margin of the register to the court within whose jurisdiction the new address is, for registration in its records.

#### **Article 406**

A restriction order shall have the following consequences: -

- (1) any deferred obligations due by the obligor shall become due for performance;
- (2) any disposition by him over his existing and future property shall be ineffective as against his obligees as a whole; and
- (3) any acknowledgement of an obligation made by him to another person shall be ineffective as from the time the order is registered.

#### **Article 407**

If a restriction is imposed on an obligor, the president of the court having jurisdiction in the restriction may make an order in favor of the obligor on a petition lodged by him for expenses to be paid to him out of his assets, and an objection may be made against such order made on the petition within three days from the date of issue thereof if the objection is on the part of the obligor, or from the date that the creditors are notified of the order, if the objection is from them.

#### **Article 408**

The property of an obligor under a restriction shall be sold and divided among the creditors by way of pro rata sharing in accordance with the procedures laid down by law, and he shall be left such money as he needs to maintain himself and other persons whom he has an obligation to maintain.

#### **Article 409**

An obligor shall be liable to be punished for fraud in the following circumstances: -

- (1) if a claim for an obligation is brought against him and he deliberately becomes bankrupt in order to cause loss to his obligees, and an order is made in the case against him for the performance of the obligation and for the making of restriction against him;
- (2) if, after the judgement against him imposing a restriction, he conceals some of his property in order to avoid execution against it, or if he fabricates bogus debts or the amounts thereof with the intention of causing loss to his obligees; or
- (3) if he fraudulently changes his place of residence and his obligees suffer loss thereby.

#### **Article 410**

- (1) The restriction shall terminate by the order of the judge having jurisdiction in the place where the obligor has his residence upon the application of any interested party in the following circumstances: -
  - (a) if the property subject to a restriction is divided among the creditors;
  - (b) if it is established that the obligations of the obligor do not exceed his assets; or
  - (c) if the obligor satisfies his obligations which have fallen due without the restriction having any effect upon the date of their falling due, and in that event the maturity date of the obligations which had fallen due by reason of the restriction shall again become as they were before, but provided that the obligor has discharged all the instalments that have fallen due.

- (2) The clerk of the court shall of his own motion make an endorsement of the order terminating the restriction on the day it is made in the margin of the register provided for in Article 404, and he must send a copy thereof to the office of the Ministry of Justice for endorsement thereof also.

#### **Article 411**

A restriction order shall terminate by operation of law after the expiration of five years from the date of the registration of the order in that behalf.

#### **Article 412**

An obligor may, after the termination of the restriction, require the return of debts which became due and payable by reason of the restriction and for which the original maturity date has not yet come, on condition that he has discharged his obligations which have fallen due without the restriction having had any effect on their falling due.

#### **Article 413**

The termination of the restriction shall not prevent the obligees from challenging the dispositions of the obligor or from exercising their rights under Articles 392 and 394-400.

### **(6) Rights of retention**

#### **Article 414**

Any person who is obliged to perform a thing may refrain from so doing so long as the obligor has not discharged an obligation of his arising by reason of an obligation of the obligee and connected with it.

#### **Article 415**

Each of the contracting parties in a commutative contract generally involving property may retain the thing contracted for while it is in his possession until he receives the consideration due.

#### **Article 416**

Any person who has incurred necessary or beneficial expense on property of another in his possession may refuse to return such property until he recovers what is due to him at law, in the absence of an agreement or a provision of law to the contrary.

#### **Article 417**

- (1) Any person who retains a thing must preserve it and must give an account for any yield derived therefrom.
- (2) He may seek the leave of the judge to sell the thing retained if he fears that it may suffer loss or deterioration, in accordance with the procedures laid down for sale of goods held by way of possessory pledge, and the right of retention of a thing shall pass to the proceeds of sale thereof.

#### **Article 418**

Any person who retains a thing in the exercise of his right of retention thereof has a prior right over other competing creditors for the satisfaction of his rights there out.

#### **Article 419**

- (1) The right of retention shall be extinguished if the thing passes out of the hands of the person in possession or control, in the absence of any provision of law to the contrary.

- (2) Nevertheless, it shall be permissible for a person, who retains a thing which passes out of his possession either without his knowledge or despite his objection, to require within thirty days from the time he learns of its having so passed and prior to the expiration of one year of its having so passed that it be restored to him.

### **Part 3**

#### **Dispositions conditional by suspension or deferment**

##### **Section 1**

##### **The condition (subsequent)**

[Translator's note: "Condition" as used in this part of the law is a technical term defined in Article 420. The word is written with a capital letter when it appears with that specialized meaning.]

##### **Article 420**

A Condition is a future matter upon the existence or absence of which the full effectiveness (of a disposition) depends.

##### **Article 421**

A perfected disposition is one which has been absolutely concluded, is not subject to a Condition or deferred to a future time, and is of full effect immediately.

##### **Article 422**

A conditional (lit: suspended) disposition is one which is dependent on a not yet existing Condition or on a future event, and whose effect is suspended until such Condition is satisfied.

##### **Article 423**

In order for the suspension to be valid, the Condition must be an event which has not taken place, but which could take place and is not impossible.

##### **Article 424**

A disposition shall be void if the existence thereof depends on an impossible Condition, or if it permits what is forbidden, or forbids that which is lawful, or is contrary to public order or morals.

##### **Article 425**

A disposition dependent upon a Condition not incompatible with the contract shall be ineffective, unless the Condition materializes.

##### **Article 426**

A disposition shall cease to be effective if the Condition to which it was subject materializes, and the obligee shall be bound to return what he has taken, and if it is impossible to make restitution through a cause attributable to him, he shall be bound to give an indemnity.

##### **Article 427**

(A disposition) dependent upon a Condition shall be affirmed upon its being established that the Condition has materialized.

##### **Article 428**

A condition must be observed as far as is possible.

## **Section 2** **Deferment**

### **Article 429**

It shall be permissible to defer a disposition to a future time upon the coming of which the provisions (of the disposition) shall become effective or be extinguished.

### **Article 430**

If it appears from the disposition that the obligor is not to perform unless it is possible or convenient for him to do so, the judge shall determine the time for performance having regard to the present and future resources of the obligor, and shall require of him that he exercise due diligence in the performance of his obligations.

### **Article 431**

The right of an obligor to defer shall lapse in the following circumstances: -

- (1) if a bankruptcy or restriction order is made against him;
- (2) if he does not provide the agreed securities for performance; or
- (3) if the securities in rem for the obligation become defective by his act or through a cause in which he has played no part, unless he takes steps to supplement them.

### **Article 432**

If the deferment is for the benefit of either one of the parties, such party may waive it unilaterally.

### **Article 433**

A deferred obligation shall not mature upon the death of the obligor, but shall mature on the death of the obligee unless guaranteed by a security in rem.

## **Part 4** **Multiplicity of objects of the contract**

### **Section 1**

#### **The grant of an option as to the thing to be performed**

### **Article 434**

It shall be permissible for the subject matter of a disposition to be a number of things, with the obligation of the obligee being discharged if he performs any one of them. The option shall be that of the obligee if it is absolute, unless there is an agreement or a provision of law to the contrary, and the rules relating to the option of specification shall apply to the subject matter of the disposition.

### **Section 2**

#### **Substitution of the thing to be performed**

### **Article 435**

- (1) A disposition is substitutive if the subject matter thereof is one thing, but the obligation of the obligee is discharged upon the performance of another thing is substitution thereof.
- (2) It is the original (subject matter) alone and not the substitute which is the subject matter of the obligation, and that which determines the nature thereof.

**Part 5**  
**Multiplicity of parties to a disposition**

**Section 1**  
**Joint obligees**

**Article 436**

Obligees shall not be regarded as being joint save by agreement or by law.

**Article 437**

An obligor may discharge his obligation to any of the joint obligees, unless any one of them gives him notice that discharge may not be made to him.

**Article 438**

If the liability of an obligor is discharged towards one of the joint obligees for a reason other than performance, he shall not be released as against the other obligees save to the extent of the share of such obligee.

**Article 439**

- (1) Joint obligees may claim jointly or severally against the obligor for the performance of the obligation.
- (2) An obligor may not object to the obligation as towards any one joint obligee on grounds particular to another obligee, but he may object on grounds that are particular to that obligee and also on grounds common to all of the obligees.

**Article 440**

Any part of an obligation discharged towards joint obligees shall be deemed to have been discharged as towards all of them equally, unless there is a provision of law or an agreement to the contrary.

**Section 2**  
**Joint obligations**

**Article 441**

An obligation shall be joint if it has the same subject matter, is an obligation due from a family by way of inheritance to a number of heirs, is joint consumed property, or is consideration for a loan raised from property owned in common.

**Article 442**

All co-obligees in a joint obligation shall have the right to claim their share therein, and anything received by one of them shall be the joint property of the co-obligees, to each according to his proportion.

**Article 443**

- (1) If one co-obligee in a joint obligation receives part of the satisfaction of that obligation, the other co-obligee may share with him therein in proportion to his share of it. They may pursue the obligor for the balance, or he may leave what the other has received, and pursue the obligor for his share.
- (2) If one co-obligee elects to pursue the obligor, he may not have recourse against his co-obligee unless his share has been lost, the foregoing applying in the proportion of his share in what (the co-obligee) has received.



#### **Article 444**

- (1) If one of the co-obligees receives his share of the discharge of a joint obligation and then disposes of it or consumes it, the other co-obligees may have recourse against him for their shares therein.
- (2) If it is lost in his hands with no fault on his part, he shall not be liable for the shares of his co-obligees therein, but he shall be regarded as having received his share, and the balance of the obligation against the obligor shall belong to the other co-obligees.

#### **Article 445**

If one of the co-obligees in an obligation obtains a guarantor for his share in the joint obligation or if the obligor assigns the obligation to another, the co-obligees may share with him in their shares in the amount which he receives from the guarantor or the assignee.

#### **Article 446**

If one of the co-obligees purchases property from the obligor for his share in the debt, the other co-obligees may require him to guarantee any loss in value suffered by their shares up to the value of the thing purchased, or they may have recourse against the obligor for their shares, and they may share with him what he has purchased if they so agree.

#### **Article 447**

Any of the co-obligees may give his share to the obligor or may discharge him therefrom, and he shall not be required to guarantee the shares of his co-obligees for what he has given or released.

#### **Article 448**

Any of the co-obligees in a joint obligation may make a compromise for his share, and if the consideration for the settlement is of the same kind as the obligation, the others may share with him the consideration received, or they may pursue the obligor, and if the consideration for the settlement is not of the same kind as the obligation, they may pursue the obligor or the co-obligee who has made the compromise, and the latter may pay them his share in the consideration received, or their share in the obligation.

#### **Article 449**

- (1) None of the co-obligees in a joint obligation may defer it on his own without the consent of the remaining obligees to such deferment.
- (2) He may defer his share therein without the consent of the others and in that event he may not participate with them in such part of the debt as they receive.

### **Section 3**

#### **Joint liability between obligors**

#### **Article 450**

There shall be no joint liability as between obligors save by agreement or by a provision in the law.

#### **Article 451**

If one of the jointly liable obligors satisfies the obligation satisfies the obligation in full, the others shall be discharged.

#### **Article 452**

- (1) An obligee may claim against all or any of the jointly liable obligors, subject to the type of relationship he has with each obligor which may affect the obligation.

- (2) Any obligor may object upon a claim being against him on any grounds of objection particular to him, or common to all of the obligors alone.

**Article 453**

If an obligee agrees with one of the jointly liable obligors to substituted discharge, the others shall be released unless he reserves his rights as against them all.

**Article 454**

If the share of one of the jointly liable obligors in an obligation becomes extinguished for any reason other than satisfaction, the obligation shall not become extinguished with regard to the other obligors save to the extent of that share in the obligation.

**Article 455**

If an obligee does not agree to discharge the remainder of the jointly liable obligors from the obligation, he may not make a claim against them for anything other than the balance after deducting the share of the obligor whom he has discharged, unless he has reserved his right to have recourse against them for the whole obligation, and in that event they shall have a right of recourse against the other obligor for his share therein.

**Article 456**

If an obligee discharges one of the jointly liable obligors from the joint liability, he shall retain his right to have recourse against the others for the whole of the obligation unless a contrary agreement has been made.

**Article 457**

If an obligee discharges one of the jointly liable obligors from the obligation or from the joint liability, the remainder of the obligors may have recourse against that obligor for his contribution in the share of any of them who is bankrupt, unless the obligee has discharged him from all liability for the obligation, and the obligee shall then be responsible for the proportion of such obligor in the share of the bankrupt.

**Article 458**

(1) If a claim against one of jointly liable obligors has become barred by effluxion of time, that fact shall not assist the remaining obligors save to the extent of the share of that obligor.

- (2) If time is interrupted or ceases to run with regard to one of the jointly liable obligors, the obligee may not rely on that fact as against the others.

**Article 459**

A jointly liable obligor shall, in the performance of his obligation, be liable for his acts, and if the obligee gives him notice or sues him, that shall be of no effect so far as concerns the remaining obligors, but if one of the jointly liable obligors gives notice to the obligee, that shall benefit the others.

**Article 460**

A composition made by one of the jointly liable obligors with the obligee shall not be effective if it creates a new liability as against them or if it increases their liability, unless they accept it and benefit from the composition if it involves a discharge from the obligation or a release from liability therefor in any other way.

**Article 461**

An admission of an obligation made by a jointly liable obligor shall be of no effect as against the others, nor shall the other jointly liable obligors be prejudiced if the obligee demands the oath from the obligor and he refuses or if the obligor demands the oath from the obligee and he takes it, but if the obligee demands the oath from the obligor and he takes it, the other obligors shall have the benefit thereof.

#### **Article 462**

If a judgment is made against one of the jointly liable obligors, that shall be of no effect as against the remainder, but they shall benefit by it if the judgment is in his favor, unless it is based on a reason particular to him.

#### **Article 463**

Any jointly liable obligor who has satisfied the obligation shall have a right of recourse against any of the others up to the amount of that other's share, and if one of them is bankrupt he shall bear the consequences of that bankruptcy with the jointly liable obligors who are solvent, without prejudice to their right of recourse against the bankrupt if he becomes solvent again.

#### **Article 464**

If one of the jointly liable obligors is the obligor originally liable under an obligation and the other obligors are guarantors, he shall not, after satisfying the obligation, have any right of recourse against them.

### **Section 4**

#### **Indivisibility of dispositions**

#### **Article 465**

A disposition shall be indivisible if the nature of the subject matter precludes divisibility or if it appears from the intention of the contracting parties that it should not be permitted.

#### **Article 466**

- (1) If there are several obligees in an indivisible disposition, or if there are several heirs of the obligee in such disposition, any obligor or heir may make a claim for the satisfaction of the right in full.
- (2) If one of them objects, the obligor must discharge the obligation to them all jointly, or must lodge it with the competent authority as the law may provide.
- (3) Each of the obligors shall have a right of recourse for the amount of his share against the obligor who has received satisfaction of the right.

#### **Article 467**

- (1) If there are several obligees in an indivisible disposition, each of them shall be liable for the whole obligation.
- (2) A person who has satisfied a right shall have a right of recourse against each of the others up to the amount of his share.

**Part 6**  
**Extinguishment of rights**

**Section 1**  
**Discharge**

**Article 468**

If the obligor discharges his obligee voluntarily of a right due to him, the right shall be extinguished.

**Article 469**

The discharge shall not be dependent upon the agreement of the obligor, but shall be ineffective if rejected by him and if he dies before acceptance the debt may not be recovered from his estate.

**Article 470**

Discharge may only be in respect of an existing obligation, not a future obligation.

**Article 471**

- (1) The substantive provisions relating to gifts shall apply to discharges.
- (2) No particular form is required for a discharge, but if it applies to a disposition it must satisfy the form laid down by law or agreed by the contracting parties.

**Section 2**  
**Impossibility of performance**

**Article 472**

The right shall expire if the obligor proves that the performance of it has become impossible for him for an extraneous cause in which he played no part.

**Section 3**  
**Lapse of time barring a right**

**Article 473**

A right shall not expire by the passage of time but no claim shall be heard if denied after the lapse of fifteen years without lawful excuse, but having regard to any special provisions relating thereto.

**Article 474**

- (1) No claim shall be heard in respect of any periodical renewing right, if denied, upon the lapse of five years, in the absence of lawful excuse.
- (2) With regard to yields accruing due by a person in possession acting in bad faith, the claim shall not be heard if denied upon the lapse of fifteen years, in the absence of a lawful excuse.

**Article 475**

If denied, and in the absence of lawful excuse, no claim shall be heard in respect of the following rights after the passage of five years: -

- (1) rights of doctors, pharmacists, lawyers, engineers, experts, professors, teachers and brokers, if such rights are due to them by reason of professional services rendered, or by reason of disbursements incurred;
- (2) moneys reclaimable by reason of overpayment of taxes or duties, but without prejudice to the provisions of the special laws.

#### **Article 476**

If denied, and in the absence of lawful excuse, no claim shall be heard in respect of the following rights upon the expiry of two years: -

- (a) rights of merchants and craftsmen in respect of items supplied by them to persons not trading in those items, and rights of owners of hotels and restaurants in respect of the cost of accommodation and the cost of food, and moneys expended by them on account of their customers;
- (b) rights of workers, servants, and hired people for daily or non-daily wages and the cost of supplies provided by them.

#### **Article 477**

- (1) Claims shall not be heard in the circumstances referred to in the foregoing Article not withstanding that the obligee may still be carrying out other work for the obligor.
- (2) If there is a written acknowledgement or paper proving any of the rights set out in Articles 474, 475 or 476, the claim shall not be heard upon the lapse of fifteen years from their becoming due.

#### **Article 478**

The period laid down for the prescription of claims shall commence as from the day upon which the right falls due for exercise and from the time a condition is satisfied if the right is dependent upon a condition, and from the time the entitlement is proved in claims under a guarantee of an entitlement.

#### **Article 479**

Claims shall not be heard if left by a predecessor and then by the successor after him, and the total of the two periods amounts to the period laid down for prescription.

#### **Article 480**

The period for the prescription of claims shall be calculated in days. The first day of that period shall not be taken into account, and the time shall expire at the end of the last day of the period, unless that day is an official holiday in which case the time shall be extended to the following day.

#### **Article 481**

- (1) The running of time for prescription shall be suspended if there is a lawful excuse whereby the claim for the right could not be made.
- (2) The period during which that excuse subsisted shall not be taken into account in the prescription period.

#### **Article 482**

If certain heirs do not bring a claim relating to their inheritance (during) the period laid down for such claim, with no lawful excuse, and the other heirs have a lawful excuse, the claim of those heirs shall be heard up to the amount of their shares.

#### **Article 483**

An admission by an obligor of a right, whether express or by implication, shall interrupt the time laid down for prescription.

#### **Article 484**

The prescription period shall be interrupted upon a judicial claim being made or by any judicial proceeding being taken by an obligee to enforce his right.

**Article 485**

- (1) If the period of prescription is interrupted, a new period equivalent to the first period shall commence.
- (2) No right of whatever kind shall lapse if adjudicated upon by a judge in such a manner as not to admit of challenge.

**Article 486**

If a claim for a right is barred by passage of time, no claim may be made in respect of matters ancillary to that right notwithstanding that the period of prescription for such ancillary matters may not have expired.

**Article 487**

- (1) It shall not be permissible to waive a time-bar defense prior to the establishment of the right to raise such defense, nor shall it be permissible to agree that a claim may not be brought after a period differing from the period laid down by law.
- (2) It shall be permissible for any person having the competence to make dispositions in respect of his right to waive the defense, even by way of implied waiver, after the right has been established, but provided that such waiver shall not be effective in respect of obligees if it is made so as to cause them detriment.

**Article 488**

- (1) It shall not be permissible for a judge to judge of his own motion that a case may not be heard. Such order may only be made upon the application of the obligor or a party to the proceedings having an interest therein.
- (2) The defense may be raised at any stage of the proceedings, unless it appears from the circumstances that the person having the right has waived it expressly or impliedly.

**BOOK TWO**  
**CONTRACTS**  
**CHAPTER I**

**Contracts conferring ownership**

**Part 1**  
**Sale and barter**

**Section 1**  
**Sale**

**(1) Definition and elements of sale**

**Article 489**

A sale is the exchange of non-money property for money.

**Article 490**

- (1) The property sold must be known to the purchaser sufficiently to avoid gross uncertainty.
- (2) The property sold must be known to the purchaser by its distinguishing characteristics and descriptions, and if the property is in his presence, an indication of it shall be sufficient.

**Article 491**

If the contract of sale states that the purchaser is sufficiently aware of the property sold, he shall not have the right to avoid the contract on the grounds of his lack of knowledge, unless he proves that the seller deceived him about it.

**Article 492**

- (1) If the sale is by sample, it shall be sufficient for that to be seen, and the property sold must conform to it.
- (2) If it appears that the property sold does not conform to the sample, the purchaser may elect to accept or reject it.

**Article 493**

- (1) If there is a dispute between the two contracting parties as to whether the thing sold conforms to the sample, and both the thing and the sample are available, regard shall be had to the opinion of experts, and if the sample has been lost in the hands of one of the contracting parties, the other party shall have the last word as to whether the goods are in conformity or not, unless the other proves the contrary.
- (2) If the sample is in the hands of a third party by agreement between the parties, and is lost, and the object of sale is a specified thing and is agreed to be the thing contracted for, the seller shall have the last word as to whether the thing is in conformity unless the purchaser proves the contrary, and if the goods sold are specified by type, or are a specified thing and it is not agreed to be the thing contracted for, the purchaser shall have the last word as to whether the property is in conformity, unless the other party proves the contrary.

**Article 494**

- (1) It shall be permissible to make a sale subject to testing, with an agreement on a known period, and if the parties do not specify such period in the contract, a reasonable period shall apply.
- (2) The seller shall be obliged to give the buyer the opportunity to test.

#### **Article 495**

- (1) The purchaser may, within the testing period, either affirm or reject the sale, notwithstanding that the goods have not been tested, and in the event of rejection the seller must be notified.
- (2) If the testing period expires and the purchaser remains silent, he having had the opportunity to test the goods, his silence shall be taken as an acceptance and the sale shall be binding.

#### **Article 496**

If the object of the sale is destroyed in the hands of the purchaser after he has taken delivery of it, he shall be bound to pay to the seller the price specified, and if it is destroyed through a cause in which the purchaser played no part prior to delivery, such loss shall fall on the seller.

#### **Article 497**

The provisions relating to sales shall apply to the goods sold as from the date of the sale, after testing and the purchaser consenting.

#### **Article 498**

If the purchaser ceases to be of full capacity before he affirms the sale, the guardian or tutor or protector must elect what is in the purchaser's best interests, subject to the conditions and provisions laid down by law.

#### **Article 499**

If the purchaser dies before he makes his election, and he has an obligee the extent of whose rights exceeds the deceased's assets, the right of approval shall be transferred to him, otherwise that right shall be transferred to his heirs, and if they agree to affirm or reject the same, what they agree on shall be binding, and if some affirm and some reject, the rejection shall be binding.

#### **Article 500**

The purchaser may not use the goods sold during the testing period save to the extent required by the testing as generally recognized, and if a greater use is made of which the aim is not testing, then the sale shall be binding.

#### **Article 501**

The provisions relating to sales subject to testing shall apply to sales subject to tasting, save that the right of election subject to tasting shall not devolve by inheritance, and the sale shall be conclusive.

#### **Article 502**

The proceeds of the goods during the tasting period shall belong to the seller, and the costs thereof shall be borne by him, but the proceeds shall be treated as part of the goods and shall belong to the purchaser if the sale becomes final.

#### **Article 503**

"Price" means that which the parties have agreed in consideration of the sale, whether it is greater or less than the value, and "value" means the (true) value of the goods, neither more nor less.

#### **Article 504**

If the parties to the sale agree to define the price by reference to the market rate, the rate shall be the market rate at the time and place of sale, and if there is no market at that place, the relevant place shall be that the current rates of which are recognized by custom.

#### **Article 505**

If the contracting parties declare a price contrary to their true agreement, the true price shall be taken to be the valid one.



#### **Article 506**

- (1) A sale may be by way of resale with a profit, a loss, or at cost price if the capital value of the thing sold is known at the time of the contract, and the amount of the profit or loss is specified.
- (2) If it appears that the seller has exaggerated in declaring the amount of the capital value, the purchaser may reduce (the amount) by the amount of the excess.
- (3) If the capital value of the thing sold is not known when the contract is made, the purchaser may rescind the contract when he learns of it, and the same shall apply if the seller conceals a matter affecting the thing sold of the capital value, and he shall lose his right to elect if the goods are sold or consumed or pass out of his ownership after delivery.

#### **Article 507**

- (1) An increase in price on the part of the purchaser after the contract is made shall attach to the principal of the contract if the seller accepts, and the designated price plus the increase shall become the consideration for the entire subject matter of the sale.
- (2) Any deduction by the seller from the designated price after the contract is made shall attach to the principal of the contract if the purchaser accepts, and the remaining balance shall become the designated price.

#### **Article 508**

The price shall be payable immediately unless there is an agreement or a custom that it should be deferred or paid in instalments over a known period.

#### **Article 509**

If the price is deferred or payable in instalments, the period of deferment shall commence as at the date of delivery of the goods.

#### **Article 510**

If the purchaser pays part of the price, he may not demand delivery of an equivalent part of the goods sold if dividing them up would result in a decrease in the value thereof.

### **(2) Effects of sale**

#### **(a) Obligations of the seller**

##### **(i) Transfer of ownership**

#### **Article 511**

- (1) The ownership of the goods sold shall be transferred to the purchaser as soon as the sale is concluded, unless there is a provision of law or of the agreement to the contrary.
- (2) Each of the contracting parties shall (immediately) proceed to carry out his obligations save such of them as are deferred.

#### **Article 512**

If the sale is of unascertained goods, ownership shall be transferred to the purchaser in the same manner as it is transferred in respect of a specifically ascertained thing.

#### **Article 513**

- (1) If the price is deferred or payable in instalments, the seller may stipulate that the transfer of ownership to the purchaser be suspended until he pays the whole price, notwithstanding that the goods have been delivered.

- (2) If the price is paid in full, the transfer of ownership to the purchaser shall operate retrospectively to the time of the sale.

**(ii) Delivery of the property sold**

**Article 514**

The seller must deliver the goods to the purchaser free of any third party right unless there is an agreement or provision of law to the contrary, and the seller must also do what is necessary on his part to transfer ownership to the purchaser.

**Article 515**

If, by law or in accordance with current practice, the nature of the goods sold requires the delivery of documents of title, the seller must deliver such documents to the purchaser, and if he fails to deliver them or alleges that they have been lost and they then appear, the judge shall order him to deliver them, and if in the event of an allegation that they are lost, they do not appear, the purchaser may elect between rejecting or affirming the contract.

**Article 516**

The seller shall be obliged to deliver the goods sold to the purchaser in the same condition as they were at the time of the sale.

**Article 517**

Delivery shall include the appurtenances of the thing sold, and such things as have been affixed to it or made for the use thereof in a permanent manner, and everything which, by custom, is ancillary to the thing sold, notwithstanding that it is not mentioned in the contract.

**Article 518**

Contracts over buildings or trees shall include the land upon which the building stands, and the land to which the roots of the tree extends, and a contract over land shall include the buildings and trees on it unless there is a stipulation or a custom to the contrary in either such contract, and a contract over a house shall include the fixtures therein but not the movables, unless the purchaser stipulates that they should be included in the contract.

**Article 519**

The sale of land shall not include crops growing on it in the absence of a provision or custom to the contrary.

**Article 520**

The sale of trees, whether directly or by way of appurtenance to the land, shall include the fruits on them which have not been pollinated or have not budded as to the whole or greater part thereof, but if they have been pollinated or have budded as to the whole or greater part thereof, the fruit shall not be included in the sale unless there is a provision or a custom that they shall form part of the subject matter of the sale, and if the pollinated or budded part amounts to one half only, each part shall be treated (separately) as aforesaid.

**Article 521**

A contract for harvestable crops shall not include the second crop (in the same year) unless there is a provision or custom to the contrary.

**Article 522**

If the settler validly delivers the goods sold to the purchaser, he shall not thereafter be liable for what happens to the goods.

### **Article 523**

If the contract specifies the quantity of the goods to be sold and it appears that there is a shortfall or an excess in them, then, if there is no provision or custom in that regard, the following rules shall have effect.

- (1) If the goods sold would not be harmed by being divided, the excess belongs to the seller, and he may recover the same in specie, and any shortfall is to his account, whether the price is fixed per unit or by measure, or for the whole goods.
- (2) If the goods would be harmed by being divided and the price has been fixed by unit or measure, then the excess shall belong to the seller and he shall be entitled to the price thereof, and any shortfall shall be to his account. If, however a price has been fixed for the goods as a lot, the excess shall belong to the purchaser, and there shall be no change in the price if there is a shortfall.
- (3) If the excess or shortfall places a greater obligation upon the purchaser than that for which he contracted to purchase or amounts to a different bargain for him, he shall have the option to rescind the contract unless the amount is minimal, and the shortfall does not prejudice the intention of the purchaser.
- (4) If the purchaser takes delivery of the goods sold knowing that they are short, he shall lose his right to elect to rescind the contract as referred to in the foregoing paragraph.

### **Article 524**

No claim for rescission of a contract or for a reduction in or supplement to the purchase price shall be heard after the expiration of one year from the date of delivery of the goods.

### **Article 525**

- (1) Delivery of the goods may be by actual delivery or by the seller leaving the way open to the purchaser to take the goods, with permission for him to take them, without there being any obstacle to his coming into possession of them.
- (2) The delivery of anything shall be according to the nature thereof, and in accordance with the agreement, or custom

### **Article 526**

If the goods sold are in the possession of the purchaser prior to the sale in any capacity or for any reason, such possession shall be regarded as delivery in absence of an agreement to the contrary.

### **Article 527**

If the contracting parties agree that in a specific instance the purchaser should be regarded as having taken delivery of the goods sold, or if the law requires that certain instances should be regarded as amounting to delivery, constructive delivery shall be deemed to have taken place.

### **Article 528**

Constructive delivery shall be deemed to have taken place by registration of the thing sold in the name of the purchaser if the law requires the registration of the transfer of ownership.

### **Article 529**

Constructive delivery shall likewise be deemed to have taken place in the two following cases-

- (1) If the seller retains the goods sold in his possession at the request of the purchaser.

- (2) If the seller gives notice to the purchaser to pay the price and take delivery of the goods within a fixed period, failing which they will be deemed to have been delivered, and he does not do so.

#### **Article 530**

- (1) The seller shall be obliged to deliver the goods sold at the place where they are at the time the contract is made.
- (2) If it is stipulated in the contract, or if there is a custom, that the goods sold should be sent to the purchaser, delivery will only be made if the goods reach him, unless there is an agreement to the contrary.

#### **Article 531**

- (1) If the goods sold are destroyed prior to delivery through a cause in which neither of the contracting parties played any part, the sale shall be cancelled and the purchaser shall be entitled to recover the price which he has paid.
- (2) If part of the goods sold are lost, the purchaser shall have the option as he wishes either to cancel the sale or to take the balance for the appropriate portion of the price.

#### **Article 532**

- (1) If the goods sold are destroyed prior to delivery or if part of them is lost through the act of the purchaser, he shall be deemed to have taken delivery of the goods sold, and he shall be bound to pay the price.
- (2) If the seller has the right to elect in such circumstances and he chooses to cancel, the purchaser shall be liable either to provide the equivalent of the goods sold or the value thereof, and he shall be the owner of the remainder.

#### **Article 533**

- (1) If the goods sold are destroyed prior to delivery through the act of a third party, the purchaser shall have the option as he wishes either to cancel the sale or to affirm it, and he shall have a right of recourse against the person who has caused the loss either for equivalent goods or for the value thereof.
- (2) If part of the goods is destroyed, the purchaser may elect between the following options:
  - (a) to cancel the contract;
  - (b) to take the remainder for the appropriate proportion of the price and to rescind the contract with regard to the balance; or
  - (c) to affirm the contract as to the whole of the goods sold at the stipulated price, and to have recourse against the person who has caused the loss for that loss to be made good.

#### **Article 534**

- (1) The seller shall ensure that the goods sold are free of the right of any third party who may object to the purchaser (sic) if the cause of the third party right antedates the contract of sale.
- (2) The seller shall also ensure that the goods sold are free of any third party right if such right is based on a cause arising after the sale out of his act.

#### **Article 535**

- (1) Any claim by a third party for his rights over the goods sold prior to delivery thereof must be directed both against the seller and the purchaser.

- (2) If the claim is brought after delivery of the goods sold and the purchaser does not join the seller in the action at the appropriate time and a judgment is issued against him which becomes final, he shall lose his right of recourse for an indemnity if the seller proves that if he had been joined in the action the result would have been the dismissal of the third party's claim of right.

#### **Article 536**

- (1) If the judgment is passed affirming a third party right over the goods sold, such third party may have recourse against the seller for the price if he affirms the sale, and the goods sold shall then belong exclusively to the purchaser.
- (2) If the third party claimant does not affirm the sale, the contract shall be cancelled, and the purchaser may have recourse against the seller for the price.
- (3) The seller shall compensate the purchaser for any useful improvement in the goods sold made by the latter calculated on the value thereof on the day of delivery to the third party claimant.
- (4) The buyer shall likewise make good to the purchaser any loss arising out of the third party claim to the goods sold.

#### **Article 537**

- (1) Any condition that the seller shall not be liable for the price if there is a third party claim over the goods sold shall be invalid, and the sale shall be defective (voidable) on account of such condition.
- (2) If the purchaser knows that the goods sold are not the property of the seller, that fact shall be no bar to his having recourse for the price in the event of there being a third party right.

#### **Article 538**

If the third party right is based on an admission by the purchaser or his refusal to take the oath, he shall have no recourse against the seller.

#### **Article 539**

- (1) If the purchaser makes a settlement with a third party claimant over property prior to judgment in favor of the latter, and the seller denies the right of the claimant, it shall be open to the purchaser to prove that the claimant was justified in his claim, and, after proving the foregoing, the seller shall have the option either to pay the equivalent of the settlement amount or to return the price to the purchaser.
- (2) If settlement is made after judgment in favor of the third party claimant, the purchaser shall (sic) retain the goods sold, and he shall have a right of recourse against the seller for the price.

#### **Article 540**

- (1) If a third party claim arises over part of the goods sold prior to the purchaser taking delivery of the whole of it, he may return what he has taken and recover the price, or he may accept the sale and have a recourse in respect of the part subject to the third party right.
- (2) If a third party right arises over part of the goods sold after delivery of the whole of them and the third party right gives rise to a defect in the remainder, the purchaser may return the goods and have a recourse against the seller for the price, or he may keep the remainder for the appropriate proportion of the price, and if the third party claim does not give rise to a defect and the part over which the third party claim has arisen is the lesser part, the purchaser may only have recourse for that part over which the third party claim has arisen.

- (3) If it becomes apparent after the sale that there is a right over the goods sold in favor of a third party, the purchaser shall have the option either to wait until that right ceases, or to cancel the sale and have recourse against the seller for the price.
- (4) It shall be presumed in the case of an easement that the seller has stipulated that he should not be liable in respect thereof if such right was obvious, or if the seller has informed the purchaser of it.

#### **Article 541**

- (1) If a third party claim is made after the goods have been destroyed in the hands of the purchaser, he shall make good to the third party claimant the value thereof as at the date of the purchase, and shall have a right of recourse against the seller for the price.
- (2) If the value which the purchaser has to make good is greater than the stipulated price, he shall have a recourse for the difference and shall be entitled to an indemnity for the damages due to him in accordance with article 536 (4).

#### **Article 542**

The third party claimant may claim against the purchaser for any yield deriving from the goods sold or exploitation made thereof after deducting any expenses necessary to produce such a profit, and the purchaser shall have a right of recourse against the seller for anything he has paid to the third party claimant.

### **(iii) Liability for latent defects**

#### **Article 543**

- (1) A sale shall be deemed to have been concluded on the basis that the goods sold are free of any defects, save such as are within the customary tolerance.
- (2) The general rules relating to the option for defects shall apply to the contract of sale, subject to the provisions of the following Articles.

#### **Article 544**

- (1) If an old (pre-existing) defect appears in the goods sold, the purchaser shall have the option as he wishes either to return the goods or to accept them at the stipulated price, but he may not keep them and claim for any reduction in price (sic: should possibly be "value") caused by the defect.
- (2) The defect shall be deemed to be old if it was present in the goods sold prior to the sale, or if it arises thereafter while the goods are still in the hands of the seller prior to delivery.
- (3) A new defect (which arises while the goods are) with the purchaser shall be regarded as an old defect if it is attributable to an old cause which existed in the goods when they were still with the seller.
- (4) For a defect to be regarded as old it must have been latent and a latent, defect is one which cannot be observed by an external inspection of goods, or which would not be apparent to the ordinary man, or which could not be discovered by any person other than an expert, or which would only be apparent upon testing.

#### **Article 545**

The seller shall not be responsible for old defects in the following circumstances:

- (1) If the seller disclosed the defect to the purchaser at the time of sale.

- (2) If the seller accepted the defect after he had seen it, or after learning thereof from another person.
- (3) If the purchaser purchases the goods with knowledge of the defect therein.
- (4) If the seller sells the goods with a condition that he is not to be liable for any defect therein, or for a specified defect, unless the seller deliberately conceals the defect or if the buyer is prevented from seeing the defect.
- (5) If the sale is by public auction by the judicial or administrative authorities.

#### **Article 546**

If the seller disposes of the goods as owner after becoming aware of the old defect, his option shall lapse.

#### **Article 547**

If goods with an old defect are lost in the hands of the purchaser or if he consumes them prior to his knowledge of the defect, he shall have a right of recourse against the seller for any reduction in price (sic) caused by the defect.

#### **Article 548**

- (1) If a new defect arises in the goods in the hands of purchaser, he may not return them on the grounds of an old defect, but he shall be restricted to a claim against the seller for the reduction in price, unless the seller agrees to take the goods back with the new defect.
- (2) If the new defect is removed the purchaser shall again have a right to return the goods to the seller on the grounds of the old defect.

#### **Article 549**

- (1) If an addition is made to the property sold which prevents its being returned, and an old defect in it subsequently becomes apparent to the purchaser, he shall have a right of recourse against the seller for the reduction (in value) caused by the defect, but the seller shall not have the right to recover the property sold.
- (2) An addition which prevents return is anything from the property of the purchaser which becomes joined with the property sold.

#### **Article 550**

- (1) If several things are sold under one agreement and a defect appears in part of them prior to delivery, the purchaser shall have the option either to accept them at the stipulated price, or to return the whole of them.
- (2) If several things are sold under one agreement and an old defect becomes apparent in part of them after delivery, and no loss would be caused by dividing them, the purchaser may return the defective part for an appropriate portion of the price, but he may not return the whole of the goods without the consent of the seller, but if loss would be caused by dividing them, he may either return the whole of the goods or accept them at the full price.

#### **Article 551**

- (1) If the property sold has a defect whereby it may be returned, and the purchaser has created a third party right there over prior to his knowledge of the defect, but the property still remains within his ownership, he may return it to the seller with that defect free of such third party right if the property has not been altered during that period.

- (2) If the purchaser creates a third party right after becoming aware of the defect, he shall lose his right to return goods, and if the property has been altered it shall be treated as a new alteration to property with an old defect.

**Article 552**

The right of the purchaser to return the property on the grounds of a defect shall not lapse by reason of a change in the value thereof.

**Article 553**

- (1) Any yield of the property returned on the grounds of a defect which is not regarded as part of the property shall belong to the purchaser as from the time he receives the goods until the time the sale is cancelled, and he shall not have any recourse against the seller for any moneys extended on the property.
- (2) Any yield of the property sold which is deemed to be part of it shall belong to the seller.
- (3) As for property which has no yield, the purchaser shall have a right of recourse against the seller for moneys spent on it.

**Article 554**

Liability for property returned on the grounds of a defect shall pass from the purchaser to the seller as soon as the seller agrees to take it back from the purchaser notwithstanding that he has not in fact taken it back, or immediately upon proof in a court of law of the defect in the property sold giving a right to return the same, notwithstanding that there is no order that it be returned, in the event that the seller is present, and if he is absent the liability shall pass to him upon the issue of a judgment for the return of the property.

**Article 555**

- (1) A claim of liability for a defect shall become time barred upon the expiration of six months from receipt of the property, unless the seller has undertaken to be responsible for a longer period.
- (2) The seller may not rely on that time limit if it is approved that the concealment of the defect was by fraud on his part

**(b) Obligations of the purchaser**

**(1) Payment of the price and taking delivery of the goods.**

**Article 556**

The purchaser must pay the price when the contract is initially made and before the delivery of the property and before a claim is made for it, unless a contrary agreement has been made.

**Article 557**

- (1) The seller may retain the property until the price due to him is paid, notwithstanding that the purchaser may have delivered a pledge or a guarantee.
- (2) If the seller agrees to defer the price, his right to retain the property sold shall lapse, and he shall be obliged to deliver it to the purchaser.

**Article 558**

If the property sold is destroyed in the hands of the seller while he is retaining it, the loss shall fall on the purchaser unless the destruction of the property was due to the act of the seller.



#### **Article 559**

- (1) If the purchaser takes the property in the sight of the seller before paying the price and the seller does not prevent him, that fact shall amount to permission to take delivery.
- (2) If the purchaser takes the property sold before paying the price, without the permission of the seller, the seller shall have the right to recover it, and if the property is destroyed or becomes defective in the hands of the seller, he shall be deemed to have taken delivery of it.

#### **Article 560**

If the purchaser damages the goods, even unintentionally, that shall be regarded as taking delivery.

#### **Article 561**

If the purchaser does not know where the property sold is at the time of the contract and he there- after finds out, he shall have the option as he wishes to cancel or to affirm the sale, and to take delivery of the property at the place where it is.

#### **Article 562**

- (1) The purchaser shall be obliged to hand over the price if it is immediately payable at the place where the property is at the time of the contract, unless there is an agreement or a custom to the contrary.
- (2) If the price is a deferred debt owed by the purchaser and there is no agreement for payment thereof at a specified place, he shall be obliged to pay it at the residence of the purchaser (sic) when payment falls due.

#### **Article 563**

If the purchaser takes a thing in the course of negotiations for purchase, and it is destroyed or lost in his hands and the price has been specified, he shall be bound to pay it, and if the price has not been agreed, the purchaser shall not be liable save for his wrongful act or default.

#### **Article 564**

- (1) If a third party claim over the property sold is brought against the purchaser, in reliance on a right antedating the sale, or which follows him through the seller, it shall be permissible for the purchaser to retain the price until the seller provides a suitable guarantee securing the return of the price to the purchaser upon the third party right being proved, and the seller may apply to the court to order the purchaser to deposit the price with it in lieu of providing a guarantee.
- (2) The provisions of the foregoing paragraph shall apply if the purchaser discovers an old defect in the property guaranteed by the seller.

#### **Article 565**

If a specific time for the payment of the price is laid down in the contract and it is stipulated therein that if the purchaser does not pay the price within that time then there will be no sale, then, if he does not pay the price and the property is still in the hands of the seller, the sale shall be deemed to be cancelled.

#### **Article 566**

- (1) If the purchaser takes delivery of the property and then dies bankrupt before paying the price, the seller may not recover the property, but the purchase price shall become a debt as against the estate, and the seller shall take his place with the other creditors.
- (2) If the purchaser dies bankrupt before taking delivery of the property and paying the price, the seller shall have the right to retain the property until the price is paid out of the estate, and he shall have a priority right over the other creditors.

- (3) If the seller receives the price and dies bankrupt before delivering the property, the property shall be regarded as being held in trust by him, and the purchaser shall have a priority right over the other creditors.

## **(ii) The costs of sale**

### **Article 567**

The costs of delivering the price, and of the contract of sale, registration thereof and other costs, shall be borne by the purchaser, and the costs of delivering the property shall be borne by the seller, unless there is a contrary agreement, provision of law, or custom to the contrary.

## **Section 2**

### **Various types of sale**

#### **(1) Forward sales**

### **Article 568**

A forward sale is for property the delivery of which is deferred, against a price payable immediately.

### **Article 569**

The following conditions must be satisfied for a forward sale to be valid:

- (1) the property must be such as can be specified by description and quantity, and it must normally be available at the time of delivery; and
- (2) the contract must contain particulars of the nature, type, description and amount of the goods, and the time at which they are to be delivered.

### **Article 570**

The capital (i.e. the price) of the property must be ascertained as to amount and type, and must not be deferred for a period of more than three days.

### **Article 571**

The purchaser may dispose of the property sold by way of forward sale before taking delivery of it.

### **Article 572**

If it is impossible to deliver the goods at the due time because they are no longer available through an unforeseen occurrence, the purchaser may elect between waiting until they are available, or cancelling the sale.

### **Article 573**

If the seller by way of forward sale dies before the time comes to deliver the goods, the purchaser shall have the option as he wishes between canceling the contract and recovering the price from the estate, or waiting until the due time comes, and in that event he may place a restriction upon the estate to an amount in the value of the property, unless the heirs provide a sufficient guarantee to secure the delivery of the property when the due time comes.

### **Article 574**

- (1) If a purchaser by way of forward sale exploits the need of a farmer and buys a future harvest from him at a rate or upon conditions which are clearly oppressive, the seller may, when the time comes for payment, apply to the court for a variation in the rate or the conditions so as to remove the element of oppression. In that event the court shall take into account the circumstances of time and place, and the general level of prices and the difference between them at the time of the contract and delivery in accordance with custom.

- (2) The purchaser shall have the right not to accept the amendment made by the court, and he may instead recover the actual price which he has in fact paid to the seller, and in that event the seller shall have the right to sell the crop to whomever he wishes.
- (3) Any agreement or condition purporting to nullify that right, whether it is a condition in the contract of forward sale itself or in the form of a separate obligation, shall be void, of whatever type it may be.

#### **Article 575**

The consideration moving from each party in a forward sale may not be foodstuffs against foodstuffs or money against money, and in connection with consideration other than foodstuffs, it is sufficient that they be different in type and use.

#### **Article 576**

- (1) If the goods the subject matter of a forward sale are such as to have a specific time for appearing, but they do not appear when the time comes prior to the purchaser taking receipt thereof, he shall be bound to wait until the second appearance if the delay in taking delivery is attributable to him, and if it is not attributable to him, he shall have the option between cancelling the contract of forward sale, and waiting until the goods appear.
- (2) If the goods cease to exist after the purchaser has received part thereof, he must wait for the remainder unless the parties have agreed upon payment of a pro rata consideration for that part which has been received.

#### **Article 577**

The obligation to deliver goods sold by way of forward sale must be discharged by delivering goods of that nature, but it may, by agreement, be discharged by delivering goods of a different nature on the following conditions:

- (a) the substituted consideration must be given immediately;
- (b) the substitute must be such as can properly form the subject of a forward sale; and
- (c) the goods sold by way of forward sale must not be foodstuffs.

#### **Article 578**

When the time comes for delivery of goods sold by way of forward sale, the seller must deliver them to the purchaser at the place agreed by them both or at the place at which the contract of forward sale was made if no place has been specified, and the seller shall not be bound to deliver the goods nor shall the purchaser be bound to take delivery of them from him at any other place, unless they have made a contrary agreement.

#### **Article 579**

- (1) If there is a dispute between the seller and the purchaser as to the amount of the forward goods or as to the period of deferment, and neither party has independent evidence thereof, the word of the person alleging what is the more common practice between people shall be preferred, and if there is no common practice then the dispute shall be settled half way between what each party alleges.
- (2) If they are in dispute as to the place of delivery of the forward goods, the word of the person who claims that they are to be delivered at the place where the forward sale contract was made shall be preferred, and if neither party makes such allegation, the goods must be delivered at the (regular) market place for those goods in the place where the contract was made.

## **(2) Sales of air space**

### **Article 580**

It shall be permissible to sell space for building in it in any of the following circumstances:

- (a) sale of space above land, and permissibility thereof shall not be dependent upon the description of what is to be built;
- (b) sale of space above a building on condition that the building which is to be placed upon it is described; and
- (c) sale of space above space on condition that both the lower and upper buildings are described. In the event of any of the three types of aforesaid sale, the purchaser shall become the owner of the whole of the space above the land or above the building up to the limits of what he has purchased out of such space, but he shall not have the right to build more than was agreed save with the consent of the owner or the owner of the lower building.

### **Article 581**

A sale of space shall be presumed to be in perpetuity, and the following shall result from it:

- (1) the sale shall not be rescinded by virtue of the destruction either of the lower building or of the upper building; and
- (2) the owner of the lower building must restore his building if it has been demolished, and must repair it if it has become weakened, and the owner of the upper building may, with the consent of the owner of the lower building or by leave of the court, restore his building.

## **(3) Sales of unascertained goods**

### **Article 582**

- (1) A sale of unascertained goods is a sale of what may be weighed or measured or may be reckoned without weighing or measuring, or reckoned sufficiently to ascertain the whole, and a sale may be of unascertained goods notwithstanding that the determination of the price depends on the amount of the goods to be sold.
- (2) The following conditions must be satisfied for a sale of unascertained goods to be valid:
  - (a) the purchaser must have seen the goods at the time the contract was made, or must have seen them prior to the contract in such a way as the goods would not normally alter thereafter by the time of the contract, unless there has been a defect in his inspection, and it is sufficient that he should have knowledge of the nature thereof; and
  - (b) both the contracting parties should be unaware of the measure, weight or number of the goods, but the same should be ascertainable overall, and if either party proves that at the time the contract was made the other party did know the quantity of the goods, the contract shall be violable, and if he learns of the other's knowledge thereof after the contract is made, he shall have the option either to reject the sale or to affirm it.

## **(4) Deferred sales**

### **Article 583**

Whoever sells a thing for a deferred price may purchase it for an immediately payable or a deferred price from the person selling it to him, unless the two sales differ as to price and period of deferment and the payment of the lower price precedes the payment of the higher price, and in that event the

second sale shall be cancelled if the property sold exists, and if it does not exist, both sales shall be cancelled.

#### **(5) Assisted sales**

##### **Article 584**

An assisted sale is one which takes place between a person who holds himself out (as being available) to place a purchase order for goods which are not (immediately available) between him and the person asking for the goods, and who, if goods are ordered from him, purchases them and sells them to the person who has ordered them with an increase over the purchase price thereof, and such a sale is permissible unless it amounts to a loan with interest, which is when the person from whom the goods were ordered sells the goods to the person ordering them at a deferred price exceeding the price agreed between them, and if the sale takes place in that manner the second purchase shall be cancelled and the goods shall pass at the price agreed between the two parties to the original sale, with the addition of the least commission payable by way of profit for arranging such deals.

#### **(6) Sales of foodstuffs and other goods before receipt**

##### **Article 585**

It shall be permissible for a person who has acquired ownership of a thing by purchase or otherwise to sell it before taking delivery of it from the person who is to pass property to him, unless the subject matter is foodstuffs in a commutative contract, in which event it shall not be permissible for a person who has bought such goods by measure to sell them prior to taking delivery thereof by measure, but if he purchases them as unascertained goods, he may sell them prior to taking delivery thereof.

#### **(7) Sales of fruit**

##### **Article 586**

- (1) It shall be permissible to sell fruit notwithstanding that it has not yet become fit for consumption if it is sold together with the roots, but it shall not be permissible to sell fruit separately from the roots unless it has become fit for consumption, or unless some of it has become fit for consumption, and the appearance of fitness for consumption shall mean near maturity or fitness for eating or other use.
- (2) If the roots of fruits are such that the inner part may be eaten during the year, it shall be permissible to sell the inner parts if the fitness for the consumption of the first inner part has become apparent, if the inner parts are connected, and it is not possible to distinguish one part from the other, but if they are distinguishable, it shall not be permissible to sell the second inner part until the fitness for consumption thereof has become apparent.

##### **Article 587**

If after sale fruits are attacked by a blight which cannot normally be prevented, the purchaser shall have the right to demand a reduction in price the equivalent to the loss suffered by the blight if the damage occurred prior to ripening and normal harvesting and if the value of the damage amounts to one third or more of the value of the fruits, unless the blight is by reason of drought, in which event the price shall be reduced by the value of the damage suffered, notwithstanding that the same may be less than one third.

#### **(8) Sale of cultivated and sown land**

##### **Article 588**

- (1) If land sold contains crops which are harvested only once a year, they shall vest in the seller until the time for harvesting, unless the purchaser stipulates that they shall belong to him.

- (2) If the land sold contains crops which may be repeatedly harvested or which continually fruit, the roots shall belong to the purchaser and the available harvest then apparent shall belong to the seller and he must pick the crop immediately, unless the purchaser stipulates that the same shall belong to him, in which event he must pick it immediately.

#### **Article 589**

- (1) If sown land is sold and the seeds are such that the plants thereon are harvested only once a year, both the seeds and the plants shall belong to the seller, but if the purchaser does not know that there are seeds in the land at the time of the contract, he shall have the option either to cancel or affirm the contract, without liability.
- (2) If the seeds are such that their plants may be cropped several times a year or the fruits thereof appear continuously, or if the roots remain, the same shall belong to the purchaser.

### **(9) Form of sale of palms and trees**

#### **Article 590**

- (1) If palms whose spadixes have split, or trees whose buds and blossoms have appeared are sold, then that which has split or appeared shall belong to the seller, being left until harvest time, and anything sold prior thereto shall belong to the purchaser, and the evidence on oath of the seller as to the appearing or splitting shall be preferred.
- (2) Both the seller and the purchaser shall have the right to stipulate who shall be the owner of all or part.

#### **Article 591**

- (1) If some of the spadixes on a palm have split or if some of the fruit has appeared on a single tree, then all of the spadixes shall be deemed to have split, and all of the fruit to have appeared.
- (2) If there are several palms or trees and the spadixes have split or the fruit has appeared on some to the exclusion of the others, each tree shall be treated separately.

### **(10) Sale of foodstuffs inside an outer casing**

#### **Article 592**

It shall be permissible to sell foodstuffs in their outer casing, and grain enclosed in its husk or skin.

#### **Article 593**

- (1) If a person purchases foodstuffs in the outer casing, and breaks it and finds that it is spoilt, and the broken part has no value, he shall have a recourse for the whole of the price if the whole is spoilt, or for the equivalent part of what is spoilt if part only is so spoilt.
- (2) If the part broken has a value, he shall have the option either to keep the goods and receive compensation, or to return them together with any loss in value by breaking, and if the goods sold are lost, compensation shall be due to the purchaser.

### **(11) Sale of an inheritance**

#### **Article 594**

A sale of an inheritance is a sale by an heir of his proportion in the estate after the death of the legator to

one or more other heirs for a known consideration, notwithstanding that the assets of the estate have not been ascertained.

#### **Article 595**

- (1) A contract of sale of an inheritance shall transfer the portion of the seller in the estate to the purchaser, and the purchaser shall take the place of the seller in such portion.
- (2) A sale of an inheritance shall not include all of the property of the deceased appearing after the contract of which the contracting parties were not aware at the time the contract was made, nor shall it include the rights of the estate against the contracting parties or either of them, nor the rights which they or either of them have over it.

#### **Article 596**

The seller shall warrant to the purchaser no more than the existence of the estate and the fact that he has a share therein, in the event that the contract does not specify what the estate comprises.

### **(12) Sales by a terminally ill person**

#### **Article 597**

- (1) Terminal illness is an illness wherein a person cannot go about his normal business and in which the greater probability is that he will die in that condition prior to the expiration of one year, and if his illness continues for a period of one year or more with him remaining in the same condition without becoming worse, his dispositions shall be treated as those of a healthy person.
- (2) A terminal illness shall be deemed to include conditions in which people fear death and in which they normally die, notwithstanding that there may in fact be no such sickness.

#### **Article 598**

If a sick person sells some of his property to one of his heirs, the provisions of the following Article shall apply.

#### **Article 599**

- (1) If a sick person sells to a stranger at a fair price or with a slight element of cheating, the sale shall be effective and not dependent upon the consent of the heirs.
- (2) If such sale is at a price less than the value of the things sold at the time of death, the sale shall be effective as against the heirs if the excess amount of the value of the thing sold over the price does not exceed one third of the estate, including the thing sold itself.
- (3) If such difference is greater than one third of the estate, the sale shall not be effective unless it is affirmed by the heirs or the purchaser makes up two thirds of the value of the thing sold, otherwise the heirs shall have the right to cancel the sale.

#### **Article 600**

A sale by a sick person to a stranger shall not be effective if it is for less than the true value, even if the cheating may only be slight as against the obligees, if the debt exceeds the estate, and the purchaser may pay the true price, failing which the obligees shall have the right to cancel the sale.

#### **Article 601**

- (1) It shall not be permissible to cancel the sale of a sick person if the purchaser has disposed of the goods sold in such a way as to confer a right against consideration upon a third party acting in good faith.

- (2) In that event, it shall be permissible for the obligees of an estate insufficient to meet its debts to have recourse against the person who made the purchase from the sick person for the difference between the price and the value of the thing sold, and the heirs shall have that right if the purchaser is one of them, but if the purchaser is a stranger, then he must return such sum as shall make up two thirds of the value of the thing sold to the estate.

#### **(13) Sale by an agent to himself**

##### **Article 602**

It shall not be permissible for a person acting on behalf of another whether by a provision in the law or by agreement or by order of a competent authority to purchase for himself whether directly or under an assumed name or by way of auction any property entrusted to him by virtue of such proxy, subject to the provision of any special laws.

##### **Article 603**

It shall not be permissible for brokers or experts to purchase in their own names or in a borrowed name property which has been entrusted to them for sale.

##### **Article 604**

By way of exception to the provisions contained in two foregoing paragraphs, it shall be permissible for a proxy, broker or expert to purchase property for himself if he is so permitted by the principal or the person having an interest therein.

#### **14. Sale of property of a third party**

##### **Article 605**

If a person sells property of a third party without his consent, the sale shall be dependent upon the consent of the owner.

##### **Article 606**

If the owner affirms the sale, the contract shall be valid so far as concerns him and the purchaser, and the contract shall likewise be valid if ownership of the property sold vests in the seller after the contract is made.



### **Section 3**

#### **Barter**

#### **Article 607**

Bartering is the exchange of property or a property right for a non-money consideration.

#### **Article 608**

Each of the contracting parties in a barter contract shall be deemed to be both seller and purchaser at the same time.

#### **Article 609**

A barter shall still be a barter notwithstanding that a money consideration is added in the exchange.

#### **Article 610**

The expenses of the barter contract, the costs of delivery, and the like, shall be borne equally between the two parties to the contract unless a contrary agreement is made.

#### **Article 611**

The provisions relating to sale shall apply to a barter to the extent that they are not inconsistent with the nature thereof.

### **Section 4**

#### **Prohibited sales and barterers**

#### **Article 612**

There may be no sale or barter of the following: -

- (a) that which is concealed in the earth, until extracted and visible; and
- (b) the semen of stud horses.

#### **Article 613**

Sales and barterers shall be forbidden and defective in the following circumstances:

- (a) if one or both of the contracting parties are bound to observe Friday prayers, and the contract is made after one of the parties is in the mosque after the call to prayer, until the prayer is finished. The same applies if either or both of the contracting parties are bound to observe obligatory prayer and the contract is made after the time for so doing is becoming short, such that only just sufficient time remains, but the contract shall be valid in such circumstances in extremis or compelling necessity;
- (b) if the contract is made over a property to be used to commit an offence, and one of the two contracting parties knows of that fact from the other, even by circumstantial evidence; or
- (c) if goods sold by way of forward sale are rebought or sold (in a manner prejudicial to such forward sale) or, if having been so bartered, are re-bartered during the continuance of the period of either of the options of the majlis or conditionally.

## **Part 2**

### **Gifts**

#### **Section 1**

#### **Elements of an and conditions for the effectiveness of a gift**

##### **Article 614**

- (1) A gift is the passing of property or a right in property to another person during the period of the lifetime of the owner, without consideration.
- (2) It shall be permissible for the donor, while still intending to make a gift, to make it a condition that the donee should perform a specified obligation, and such obligation shall be regarded as consideration.

##### **Article 615**

- (1) A gift shall be made upon acceptance and offer, and shall become perfected upon receipt.
- (2) Mere offer shall be sufficient for a gift if the donor is the guardian or protector of the donee and the property given is in his possession, and the same shall apply notwithstanding that the donee is a minor of whom the donor has charge of the upbringing.

##### **Article 616**

A contract of gift shall not be effective if the property given is not owned by the donor, unless affirmed by the owner, and receipt is taken by his consent.

##### **Article 617**

- (1) The gift of a debt to a debtor shall be valid, and shall be regarded as a discharge.
- (2) A gift shall be valid if made to a person other than a debtor, and shall be effective if the debtor pays the debt to (sic - should possibly be "a behalf of") the donee.

##### **Article 618**

- (1) It shall be permissible for a donor to recover the property given if the contract so stipulates in the event that the donee does not carry out specified obligations in favor of the donor or the person concerned in the stipulation.
- (2) If the property given has been destroyed, or if the donee has disposed of it, the donor shall be entitled to recover the value thereof at the time of the disposition or destruction.

##### **Article 619**

The donor must not be a person restricted as to the gifts he gives, and the donee must not be an enemy.

An enemy shall mean a non-Muslim being a subject of a non-Muslim state between which and the Muslims a state of declared or actual war exists, and in which peace has not been declared.

##### **Article 620**

A gift made by an obligor whose liabilities exceed his assets shall be valid, but dependent upon the consent of the obligee.

##### **Article 621**

If a person pledges a thing against an obligation due by him and then gives that thing to a third party other than the pledgee, and the pledgee consents to the gift thereof to the third party, the gift shall be valid and the obligation shall remain without the pledge, notwithstanding that the pledgor is insolvent, and if the pledgee does not consent to the gift of the property pledged to the third party,

and the pledgor is insolvent, the gift shall be void, and if the pledgor is solvent, the gift shall be valid if the debt is immediately payable to the pledgee or if he gives sufficient pledge in its stead.

#### **Article 622**

If property pledged is given to a person other than the pledgee and the donor dies before the pledge is released, the possession by the pledgee of such pledge shall not, after the gift thereof, be a possession on the account of the pledgee, and the gift shall be void.

#### **Article 623**

A gift shall be void if there is a debt exceeding the assets of the donor prior to (the donee coming into) possession of the property given, notwithstanding that the debt arises after the gift is made.

#### **Article 624**

- (1) It shall not be permissible to make a gift of a tree and to exclude the fruit thereof for one year or more on condition that the donee shall irrigate and serve the same for that period, and such a gift must be cancelled if made.
- (2) If a gift is cancelled, the donee must return the tree to the donor if it is still in its original condition.
- (3) If the condition of the tree has changed, the donee must pay the value thereof as at the time he came into possession of it, and it shall become his property as from that date, and in that event he shall have a right of recourse against the donor for the equivalent of the fruit he has taken from it if he knows the amount thereof or the value thereof if he does not know the amount thereof.

#### **Article 625**

If a person gives a thing to another and then, before that other has possession of it, gives it to a second donee and the second donee takes possession of it before the first, then the second donee shall be regarded as the true donee, and the donor shall not be obliged to pay the value thereof to the first donee.

#### **Article 626**

A gift of goods bailed to a bailee or a gift of property lent to a borrower shall be void if either the bailee or the borrower refuses except after the death of the donor, whether he knows of the gift after the death of the donor or prior to his death.

#### **Article 627**

If goods lent are given to a person other than the borrower, or if goods bailed are given to a person other than the bailee, and the donor dies prior to the expiration of the period of the loan or before the return of the goods bailed, the possession of the borrower of the goods lent or of the bailee of goods bailed shall be regarded as possession in favor of the donee, and the gift shall be perfected if the donor bears witness thereto, and if he does not so bear witness, the possession of each of them shall be regarded as being possession in favor of the donor, and the gift shall be void.

#### **Article 628**

- (1) A gift of a minor or an imbecile otherwise than for consideration shall be void.
- (2) The guardian of a person under a restriction may not make a gift of any of the property of the person under the restriction unless he is his father, and the gift is for consideration.

#### **Article 629**

If property on hire is given to a person other than the hirer and the donor then dies before the expiration of the hire period, the possession of the hirer after the gift shall not be the possession of the donee unless the donor has also made a gift of the rental to the donee before receiving it from the hirer, in which event the possession of the hirer shall be the possession of the donee.

#### **Article 630**

If one of two spouses gives property to the other in such a way that they necessarily share the possession thereof, or if a wife gives the house which is the residence of them both to the husband, the perfection of the gift shall not depend on the independent possession of the donee of the property given, but if one of them gives a thing to the other which is such that they do not necessarily share possession thereof, or if a husband gives to his wife the house which is the residence of them both, the gift will only be perfected by the independent possession by the donee of the property given.

#### **Article 631**

- (1) The consideration stipulated for a gift must be known, otherwise either of the parties may cancel the contract even after taking delivery of the property given, unless they have agreed to determine the consideration prior to the cancellation.
- (2) If the property given is destroyed or is disposed of by the donee prior to the cancellation, he must return the value thereof as at the date he received it.

#### **Article 632**

Neither a promise to make a gift nor a gift of future property shall be valid.

#### **Article 633**

If one of the parties to the gift dies or becomes bankrupt prior to the delivery of the property given, the gift shall be void notwithstanding (sic: possibly should be "if") that it was made without consideration.

#### **Article 634**

- (1) The acceptance of property given by way of a gift shall be valid after the death of the donor if the property was received in order to enable the donee to consider whether to accept it as a gift or not, and he does accept it after the death of the donor.
- (2) Likewise, the receipt of property given after the death of the donor shall be valid if the donee attempted to take possession of it during the lifetime of the donor but was unable to do so until after his death.

#### **Article 635**

The provisions relating to testamentary dispositions shall apply to gifts made during a terminal illness.

#### **Article 636**

The effectiveness of a contract of gift shall be dependent upon any procedure required by law for the transfer of ownership over such property, and it shall be permissible for either of the parties to the contract to complete the necessary steps.

**Section Two**  
**Effects of a gift**

**(1) In relation to the donor**

**Article 637**

The donor shall be obliged to deliver the property given to the donee, and the provisions for the delivery of goods sold shall apply thereto.

**Article 638**

The donor shall not be liable for any third party right over the property given in the hands of the donee if the gift is given otherwise than for consideration, but he shall be liable for any loss sustained by the donee through such third party right if he deliberately concealed the fact of there being such a right, but if the gift was for consideration, he shall only be liable for the existence of a third party right to the extent of the consideration passing from the donee, unless a contrary agreement has been made.

**Article 639**

If a third party right over the property given arises after it has been destroyed in the hands of the donee and the third party having the right elects to exercise a recourse against the donee for compensation, the latter shall have a claim against the donor to the extent that he is liable to the third party.

**Article 640**

If there is a third party right in the property given and the donee has added to the value of the property in such a way that the increase cannot be separated without causing damage, then the third party having the right may only recover the property after paying the value of the increase.

**Article 641**

A donor is not liable for latent defects in the property given, notwithstanding that he may have deliberately concealed the same, unless the gift was for consideration.

**(2) In relation to the donee**

**Article 642**

The donee must provide such consideration as the donor has stipulated, whether the consideration is to be given to the donor or to another person.

**Article 643**

If the consideration for a gift is payment of a debt owed by the donor, then the donee shall be bound only to pay the debt as it was at the time of the gift, unless a contrary agreement is made.

**Article 644**

If the property given is encumbered with an obligation for the payment of a debt owed by the donor or by a third party, the donee shall be obliged to pay such debt, unless a contrary agreement is made.

**Article 645**

The costs of a contract of gift and the expenses of delivery of the property given and transfer thereof shall be borne by the donee, unless a contrary agreement is made.

**Section 3**  
**Revocation of gifts**

**Article 646**

- (1) The donor may revoke the gift without the consent of the donee prior to possession thereof being taken.
- (2) He may also revoke the gift after possession is taken if the donee agrees, and if he does not agree it shall be permissible for the donor to apply to the judge for the cancellation of the gift and the revocation thereof if such application is based on an acceptable cause, unless there is any obstacle to the revocation.

**Article 647**

The following shall be regarded as acceptable causes for the cancellation and revocation of a gift:

- (a) if the donor becomes unable to provide the means of livelihood for himself at a level appropriate to his standing, or if he becomes unable to support other people in the manner required by law;
- (b) if a child is born to the donor after the gift is made, and the child remains alive until the revocation of the gift, or if he has a child whom he believes to be dead at the time of the gift and it subsequently transpires that he is alive; or
- (c) an unjustified breach by the donee of his obligations as stipulated in the contract, or a breach by him of his obligations towards the donor or one of his relatives, in the event that such breach is a gross dereliction on his part.

**Article 648**

If the donee deliberately and unjustifiably kills the donor, his heirs shall have a right to annul the gift.

**Article 649**

The following matters shall be deemed to be obstacles to the revocation of a gift:

- (a) if the gift is from either of two spouses to the other, or to a person within the prohibited degree of consanguinity, unless the gift amounts to unjustified favoritism among those persons;
- (b) if the donee disposes of the property given in such a way as to transfer the ownership thereof, but if the disposition relates to part only of the property given, it shall be permissible for the donor to revoke the gift of the balance;
- (c) if there is a substantial increase in the property given and that increase forms part of it, which increases the value thereof, or if the donee alters the property given in such a manner as to alter its nature;
- (d) if one of the parties to the contract dies after possession of the property given has passed;
- (e) if the property given is destroyed in the hands of the donee, but if the destruction is partial, it shall be permissible to revoke the gift of the balance;
- (f) if the gift was for consideration;
- (g) if the gift was by way of charitable donation, or to a charitable organization; or
- (h) if a creditor makes a gift of the debt to the debtor.

**Article 650**

- (1) The revocation of a gift, whether by consent or by order of the court, shall be regarded as annulling the effects of the contract.
- (2) The donee shall not be obliged to return the fruits (of the property given) save from the date of the revocation by consent or from the date of a court order in that behalf, and he may recover expenses necessarily incurred, and so far as concerns other expenses, he may only recover such as have increased the value of the property given.

**Article 651**

- (1) If the donor recovers the property given otherwise than by consent or order of the court, he shall be liable for the destruction thereof, whatever the cause.
- (2) If the court orders the revocation of the gift, and the property is destroyed in the hands of the donee after he has been given notice to deliver it up, the donee shall be liable for the destruction thereof, whatever the cause.

**Article 652**

It shall be permissible for a father to recover from his child what he has given him, and it shall also be permissible for a mother to recover from her child what she has given to him if the child is not an orphan, but if he is an orphan then she may not recover the property from him notwithstanding that he may have become an orphan after the gift was made.

**Article 653**

The right of either parent to recover what he has given to his child shall lapse in the following circumstances:

- (a) if the property given itself has altered, or if the donee has disposed of it in such a way as to relinquish ownership thereof;
- (b) if a financial transaction has taken place with the donee as a result of the gift, and the effect of the revocation of the gift would be to cause harm to the donee or to the third party; or
- (c) if either the donee or the donor becomes ill so that his life is feared for after making the gift, but if the illness ceases, each of the parents shall regain his right to recover what he has given to his child.

**PART 3**  
**Companies**

**Section 1**  
**Companies generally**

(Translator's note: the vocabulary of the Arabic does not distinguish between companies and partnerships)

**(1) General provisions**

**Article 654**

A company is a contract whereby two or more persons are bound each to participate in a financial project by providing a share of property or work for the exploitation of that project and the division of any profit or loss which may arise there out.

**Article 655**

- (1) A company shall be regarded as a legal person immediately upon formation.
- (2) The legal personality may not be relied upon as against third parties until after completion of the procedures for registration and publication laid down by law.
- (3) Third parties may, however, rely on such legal personality despite the fact that the procedures referred to have not been completed.

**(2) Elements of a company**

**Article 656**

- (1) The company contract must be in writing.
- (2) If the contract is not in writing, it shall not affect the rights of third parties, and so far as concerns the partners themselves, the contract shall be deemed to be valid unless one of them requires that it should be regarded as being invalid, and the same shall apply to the contract as from the date of bringing a claim.

**Article 657**

- (1) The capital of the company must be cash or other like property which may be dealt in, and if it is not in cash the value thereof must be assessed.
- (2) It shall be permissible for the shares of the partners to be equal or diverse, and it shall not be permissible for a debt owed by a third party to constitute a share in the capital of the company.

**Article 658**

- (1) It shall be permissible for the share of a partner in the company to be a right of property or right to derive a benefit or any other right in specie, and the provisions relating to sale shall apply thereto in connection with the liability therefor, if it is lost or there is a third party right over it or if any defect or shortcoming becomes apparent therein.
- (2) If the share is no more than a right to derive benefit from property, the provisions relating to hire shall apply thereto.



(Tr: The word translated as “hire” embraces lease of property, hire of chattels and animals, and engagement of persons to work).

- (3) If the share is represented by work, the partner must carry out the services which he has undertaken to perform in a contract.

#### **Article 659**

- (1) The profits shall be distributed as stipulated in the contract.
- (2) If the company contract does not state the share of each of the partners in the profits, they shall be distributed in accordance with the share of each of them in the capital.
- (3) Losses shall be distributed among the partners in proportion to the share of each of them in the capital of the company, and every provision to the contrary shall be void.

#### **Article 660**

If the partners agree that the share of any of them in the profits should be a fixed sum of money, that condition shall be void, and the profits shall be distributed in accordance with the share of each of them in the capital.

#### **Article 661**

If the share of a partner is limited to his work, his portion of the profits shall be assessed in accordance with the benefit derived by the company from such work, and if in addition to work the partner provides cash or any other thing, he shall have one share in respect of his work and another share in respect of what he has provided in addition to the work.

#### **Article 662**

If an agreement is made in the contract that one of the partners should not benefit by the company's profits, or that he should not bear any of its losses, the company contract shall be void.

### **(3) The management of the company**

#### **Article 663**

- (1) Each partner shall be regarded as an agent for the remaining partners in his carrying out of the business of the company and in so acting as to bring about the aims for which the company was established, unless there is a contrary provision or agreement.
- (2) Each partner shall be regarded as a trustee for the property of the company in his possession.

#### **Article 664**

- (1) If it is agreed in the company contract that one of the partners should be deputed to represent the company and manage its affairs, he alone shall have charge of such acts as are embraced within that deputation and all necessary incidents thereof.
- (2) If more than one partner is deputed and neither of them is permitted to act singly, they must act jointly save in such matters as do not require consultation as to the views of the others or in an urgent matter delay in dealing with which would cause damage to the company.
- (3) It shall not be permissible to dismiss a person whom it has been agreed to depute in the company contract nor to impose restrictions on the powers so granted without justification.

- (1) It shall be permissible to appoint a manager of the company from among the partners or other persons with or without remuneration.
- (2) The manager may act within the limits of the purposes of the company as entrusted to him, but provided that in so acting he abides by the provisions of the contract or, in the absence thereof, within the limits of custom.
- (3) If the manager acts outside the scope of his authority, he shall be liable for any loss sustained by the company as a result of his action.

#### **Article 666**

- (1) There may be more than one manager of the company.
- (2) In the event that there is more than one manager, the powers of each of them shall be specified.
- (3) It shall be permissible to dismiss them or one of them in the same manner in which he was appointed.

#### **Article 667**

It shall not be permissible for a person deputed to manage the company or appointed as a manager of it to dismiss himself or to resign at such a time as would cause the company damage.

#### **Article 668**

The partners who are not managers shall not have a right of management, but they may themselves inspect the books and papers of the company.

### **(4) The effects of a company**

#### **Article 669**

- (1) A partner who has the right to organize the interests of the company shall be obliged in so doing to act with such care as he would exercise in the organization of his own private interests, unless he is appointed to work for a salary, and he may not fall below the standard of care of the reasonable man.
- (2) He shall also be obliged to refrain from any act which may cause damage to the company or which is contrary to the purpose for which the company was established.

#### **Article 670**

It shall not be permissible for a partner to retain for himself any property of the company, and if he does so he shall be liable in respect of any damage sustained by the company by virtue of such retention.

#### **Article 671**

- (1) If the company owes a debt connected with the objects of the company and the assets of the company are insufficient to discharge it, the partners shall be liable in their own personal property for the balance of the debt up to the amount of the share of each of them in the losses made by the company.
- (2) If it is stipulated that the partners should be jointly liable in the company contract, they shall all be responsible for the debt by way of joint liability.

## **Article 672**

- (1) If one of the partners is indebted to another in a personal debt, his creditor may not recover his right out of the share in the capital owned by that partner prior to the liquidation, but it shall be permissible for him to recover it out of the profits due to the debtor.
- (2) If the company contract provides for joint liability as between the partners, then such creditor may recover his debt from the capital of the company after it is liquidated.

## **(5) The termination of a company**

### **Article 673**

A company shall terminate for any of the following reasons: -

- (a) the expiry of the period of the company or the completion of the work for which it was established;
- (b) the loss of all of the capital or the capital of one of the partners prior to his making it available;
- (c) the death, insanity, bankruptcy, insolvency, being placed under legal restriction, or withdrawal of one of the partners;
- (d) the unanimous decision of the partners to dissolve the company; and
- (e) the making of a judicial order for the dissolution of the company.

### **Article 674**

- (1) It shall be permissible prior to the expiration of the period laid down for the company to extend it for a further fixed period, by way of continuing the company.
- (2) If the period laid down for the company expires or if the work for which the company was established is completed and then the partners continue with their operations, that shall be regarded as an implied extension of the company on a year by year basis under the same conditions.
- (3) It shall be permissible for the creditor of one of the partners to object to the extension of the company, and the effect of such objection will be to suspend the effect of the extension with regard to him.

### **Article 675**

- (1) It shall be permissible for an agreement to be made that if one of the partners dies the company shall continue with his heirs even in minor, and in that event the heirs shall take the place of the deceased after agreement being made by them or by the guardian of any of them who are under a disability, without prejudice to the conditions and provisions laid down by law.
- (2) It shall likewise be permissible for an agreement to be made to continue the company as between the remainder of the partners if one of them dies or is placed under a legal restriction or becomes bankrupt or withdraws, and in those events such partner or his heirs shall be entitled only to his share in the assets of the company. Such share shall be assessed on the basis of the value thereof on the date on which the event resulting in his departure from the company took place, and it shall be paid in cash. He shall not be entitled to any share in any new rights arising thereafter save to the extent that those rights arose out of operations

occurring prior to such event.

#### **Article 676**

It shall be permissible for the court to order that the company be dissolved upon the application of any of the partners on the grounds that a partner has not done that which he has undertaken to do or by reason of his having caused the company fundamental damage by virtue of his actions in the affairs thereof.

#### **Article 677**

- (1) It shall be permissible for a majority of the partners to apply for a judicial order dismissing any partner if they adduce serious reasons therefor justifying the dismissal.
- (2) It shall likewise be permissible for any partner to apply for a judicial order that he cease to be a partner in the company if the company is of limited duration, and he provides reasonable grounds for such application.
- (3) In both of the foregoing events the provisions of Article 675 (2) shall apply to the share of the dismissed or withdrawing partner, and such share shall be assessed in accordance with its value on the date the claim was brought.

### **(6) The liquidation and division of (assets of) companies**

#### **Article 678**

The assets of a company shall be liquidated and distributed in such manner as the partners agree, and if they do not agree it shall be permissible for any person having an interest to apply to the court for an order appointing one or more liquidators to carry out the liquidation and distribution.

#### **Article 679**

- (1) The company shall retain its legal personality to the extent necessary for the liquidation.
- (2) The manager or managers of the company shall be regarded as liquidators' vis-à-vis third parties until the liquidator is appointed.

#### **Article 680**

The liquidator shall carry out all the acts of liquidation including taking an inventory of the assets of the company, getting in its rights, paying its debts, and selling its assets until the property is ready for distribution, having regard in all of the foregoing to the restrictions laid down in the order appointing him, and he may not do any act not required by the liquidation.

#### **Article 681**

The rules relating to the distribution of property in co-ownership shall be followed in distributing companies.

#### **Article 682**

- (1) The property of the company shall be divided among the partners after settling the rights of creditors and retaining monies for the payment of debts not yet due or disputed debts, as well as the costs arising out of the liquidation.
- (2) There shall be allocated to each partner a sum of money proportionates to his share in the capital. Such person shall also receive profits and bear losses in the proportion agreed or laid down in the provision of this Law.

**Section 2**  
**Certain types of companies**

**1 - Companies to perform work**

**Article 683**

A business company is a contract whereby two or more persons agree to be bound to carry out work and to be liable therefor to third parties against payment of consideration, whether they share equally or unequally in the distribution of the work, and provided that the work must be of a single nature and inseparable.

**Article 684**

- (1) Each of the partners shall be obliged to perform the work which any of them has accepted and undertaken to do.
- (2) Each of them shall have the right to receive the consideration agreed, and the customer shall be discharged of liability by making payment to any of them.

**Article 685**

A partner shall not be personally obliged to carry out work which he has himself accepted, and he may give it to another partner or to a person other than one of his partners, unless the customer has stipulated that he should perform it himself.

**Article 686**

- (1) The profits shall be divided among the partners in the manner agreed.
- (2) It shall be permissible for there to be an unequal distribution of profits, notwithstanding that it is stipulated that there should be an equal division of work.
- (3) Each of them shall be entitled to his share of the profit, notwithstanding that, with an acceptable excuse, he has not worked.

**Article 687**

Partners shall be jointly liable in the performance of the work.

**Article 688**

If a thing which is to be worked on is destroyed or damaged by the act of one of the partners, the customer may hold whichever partner he wishes liable in his property. The loss shall be divided among the partners to the extent of the liability of each as between themselves.

**Article 689**

It shall be permissible in respect of a business company for the place of work to be provided by some of the partners, and the appliances and equipment to be provided by others, and it likewise shall be permissible for the place of business and the equipment and appliances to be supplied by some of them, and for the work to be performed by the others.

**Article 690**

- (1) It shall be permissible for the activities of a business company to be the carriage and transportation of goods, and no regard shall be had to the different types of means of transport owned by each partners as to type or capacity or carriage, so long as each partner is liable for the work.
- (2) Provided that if the company is formed not for the purpose of accepting work but for the hiring out of means of transport as such and the division of the hire moneys, the company contract shall be invalid and the hire moneys on each separate conveyance shall belong to the

owner thereof, and any person who has assisted in collecting and transporting shall receive a quantum meruit remuneration.

## **(2) Speculative venture partnerships**

### **Article 691**

- (1) A speculative venture partnership is a contract whereby two or more persons agree to purchase property on credit in accordance with the standing each of them has, then to sell it, and to participate in the profits.
- (2) The partners shall be liable for the price of the property purchased each according to his share in it, whether they carry out the purchase jointly or singly.

### **Article 692**

The profit and loss shall be distributed between the partners in the proportion of the liability of each of them for the property which they have purchased on credit, unless a contrary agreement is made.

## **(3) Mudaraba companies (where one partner places assets at the disposal of another to make a profit)**

### **Article 693**

A Mudaraba is a contract whereby the person owning property puts in the capital, and the mudarib puts in effort or work, with a view to making a profit.

### **Article 694**

The following conditions must be satisfied for a mudaraba to be valid:

- (1) The owner of the capital must be competent to grant power of attorney, and the mudarib competent to hold one.
- (2) The capital must be known, and such as may be properly dealt in.
- (3) The capital must not be a debt or a deposit with the owner of the capital owed by the mudarib.
- (4) The capital must be delivered to the mudarib.
- (5) The share of each of the contracting parties in the profits must be an ascertained and co-owned part.

### **Article 695**

- (1) After the capital has been delivered to him, the mudarib shall have the power to make dispositions of it on behalf of the owner thereof.
- (2) The mudarib shall be trustee of the capital, and a partner in the profits.

### **Article 696**

It shall not be permissible to stipulate that the mudarib shall be liable for the capital if it is lost or wasted through no wrongful act on his part.

### **Article 697**

It shall be permissible for a mudaraba to be general and absolute or specific and limited as to time, place, type or trade of by any other restrictive conditions.

#### **Article 698**

- (1) If the contract of mudaraba is absolute, the mudarib shall be deemed to have authorization to work and make dispositions of the capital in the affairs of the mudaraba and ancillary matters, in accordance with the prevailing custom in that regard.
- (2) It shall not be permissible for the mudarib to mix the capital in the mudaraba with his own property nor to give it to another person by way of mudaraba unless there is a custom to the contrary, or unless the owner of the capital has authorized the mudarib to use it as he thinks fit.
- (3) Likewise, it shall not be permissible for him to make a gift of or to lend the capital in the mudaraba, nor to raise a loan whereby the debt becomes greater than the amount of the capital, save by the express permission of the owner of the capital.

#### **Article 699**

If the owner of the capital restricts the mudaraba by certain conditions, those must be observed, and if the mudarib exceeds the permitted limits in his dispositions, the profit shall be distributed as agreed between the partners, and the loss shall fall on the mudarib.

#### **Article 700**

If the mudarib shares with another mudarib in the capital in the mudaraba, or if he sells part of the goods on credit without the consent of the owner of the capital, the first mudarib shall be liable for any diminution in or loss of the capital in the mudaraba in either event.

#### **Article 701**

If the mudarib pays out money in the mudaraba without the consent of the owner of the capital to a third party to make use of it, the first mudarib shall be liable for any diminution in or loss of it, and the second mudarib shall not be liable. If a profit is made, the first mudarib shall not have any of it, but the second mudarib shall have part of the profit to which he is entitled if it is equal to the part stipulated in favor of the first mudarib, and if it is less than it the excess shall belong to the owner of the capital, and not to either of the first mudarib or the second.

#### **Article 702**

If the mudarib trades with the property of the mudaraba and makes a loss, and pays the balance thereof without the consent of the owner of the capital to another operator to use it by way of mudaraba and he makes a profit, the owner of the capital shall have the whole of his capital and his share of the profit in the hands of the second mudarib by way of capital and profit, and the second mudarib shall have the right of recourse against the first mudarib for the balance of his share in the profit in the event that he was unaware that the first mudarib was exceeding his authority, or of the loss he had made, and if he was aware of the excess of authority or of the loss, he shall not be entitled to have any recourse against him.

#### **Article 703**

- (1) Both the mudarib and the owner of the capital must share in the profits in the proportion agreed in the contract, and if no division of profits has been specified between them then the division shall be in accordance with custom, and in the absence of any custom the division shall be equal.
- (2) If the mudarib is authorized to mix his property with the capital in the mudaraba, the profits shall be shared in proportion to the capital, the mudarib shall take the profit from his capital, and the profits of the capital in the mudaraba shall be shared between the two contracting parties in the manner provided for in the foregoing paragraph.

#### **Article 704**

- (1) The owner of the capital shall alone bear any loss, and any provision to the contrary shall be void.
- (2) If any of the capital in the mudaraba is lost, that shall be accounted for out of the profits, and if the loss exceeds the profits the balance shall be accounted for out of the capital, and the mudarib shall not be liable therefor.

#### **Article 705**

The mudaraba shall terminate in the following circumstances: -

- (1) If the contract is cancelled by either of the contracting parties.
- (2) If the owner of the capital dismisses the mudarib, and the mudarib may not, after becoming aware of his dismissal, dispose of the property in the mudaraba if it is money, and if it is not money, it shall be permissible for the mudarib to convert it into money.
- (3) If the expiry of the period of the mudaraba was expressed to continue until a specified time.
- (4) If one of the contracting parties dies or becomes totally insane or comes under a restriction.

#### **Article 706**

If either of the contracting parties terminates the mudaraba prior to the due time, it shall be permissible for the injured party to have a recourse against the other for any loss suffered by him to be made good.

#### **Article 707**

- (1) If the mudarib dies and the capital in the mudaraba is unknown, the right of the owner of the capital shall be a debt against the estate.
- (2) If, prior to his death, the mudarib specifies the capital, and that which he has specified is in the estate, the owner of the capital shall have the exclusive right thereto in priority over ordinary creditors.

#### **Article 708**

The general provisions relating to companies shall apply to business companies, partnerships of persons and mudaraba in all matters in which the special provisions relating thereto do not conflict with them.

#### **Article 709**

The rules set out in this Part shall be without prejudice to the provisions of any special laws.



## **Part 4** **Loans**

### **Article 710**

A loan is the granting of ownership of property or fungible things to another with the condition that that other should return its like in amount, kind and description to the lender upon the expiry of the period of the loan.

### **Article 711**

The borrower shall obtain full ownership of the property lent under the contract even if he does not take possession of it from the lender and he may obtain an order in respect of it if the lender refuses to deliver it to him. The loan shall not become void if any matter arises which prevents the borrower from dealing with the property before the borrower takes possession of it.

### **Article 712**

- (1) The lender must be a person having the capacity to make gifts.
- (2) A guardian or tutor may not lend to or borrow from the person under his guardianship save with the consent of the court.

### **Article 713**

Property borrowed must be fungible and consumable.

### **Article 714**

If the contract of loan provides for a benefit in excess of the essence of the contract otherwise than a guarantee of the rights of the lender, such provision shall be void but the contract shall be valid.

### **Article 715**

A condition of mortgage (or: pledge) or surety in a loan shall be valid.

### **Article 716**

If third party rights are subsisting (or: arise) in the property lent while it is in the hands of the borrower, his obligation to return it's like shall cease and he shall have a recourse against the lender for indemnity for any loss sustained by him by reason of such third party right if (the lender) was acting in bad faith.

### **Article 717**

If a latent defect appears in the property borrowed, the lender shall only be obliged to return its value with that defect.

### **Article 718**

- (1) If the loan has a fixed or usual term, the borrower must return the property to the lender upon the expiry of that period, even if no benefit would accrue to him thereby.
- (2) If there is no term for the loan, the borrower will only be obliged to return the property upon the expiry of such period as enables him to have the usual benefit of such property.

### **Article 719**

- (1) The borrower shall be bound to return the like of what he has borrowed in amount, type and description upon the expiry of the period of the loan, notwithstanding any difference occurring in the value of the property, at the time and place agreed.
- (2) If it is impossible to return the (exact) equivalent of the property borrowed, the right of the lender shall be transferred to its value at the time possession is taken of it.

#### **Article 720**

If a number of persons borrow property and one of them takes possession of it with the consent of the others, then none of them may claim against him save for the amount of his share of that which the one received.

#### **Article 721**

- (1) The borrower must make satisfaction of the loan at the place where the loan was made, unless there is express or implied agreement to the contrary.
- (2) If it has been agreed that the loan should be satisfied in another place where the value of the property borrowed is different from the value in the place it was lent, the right of the lender shall be transferred to the value at the place the loan was made.

### **Part 5**

#### **Accords (settlement of disputes)**

#### **Article 722**

An accord is a contract whereby a dispute is removed and litigation between the two composing parties ceases by mutual consent.

#### **Article 723**

- (1) The parties to an accord must be competent to make dispositions for consideration in respect of the rights covered by the contract of accord.
- (2) If the accord involves the waiver of any right, that competence must include the capacity to make gifts.

#### **Article 724**

The accord of a minor of the age of discretion or of an idiot authorized to make dispositions shall be valid if there is no evident damage to them therein, and the same applies to accords made by guardians and tutors, having regard to the provisions of the special laws.

#### **Article 725**

The matter in respect of which the accord is made must be such that an alternative may be taken in consideration of it, even if it is not property, and must be ascertained if it involves delivery and receipt.

#### **Article 726**

- (1) The consideration for the accord must be ascertained if it requires delivery and receipt.
- (2) If the consideration for the accord is property or a benefit owned by a third party, the validity of the accord shall depend on the consent of that third party.

#### **Article 727**

- (1) An accord in respect of rights shall be valid whether the defendant acknowledges them, denies them, or is silent and makes no acknowledgement or denial.
- (2) If an accord takes place in the case of an agreement for a specific consideration to be handed over it shall have the status of a sale, and in the case of a benefit (right of use) it shall have the status of a (contract of) hire.
- (3) If an accord is made by way of denial or silence that shall be regarded as a commutative contract with regard to the claimant, and a waiver of the oath and a cessation of the litigation with regard to the defendant.

#### **Article 728**

If a person makes an accord for part of the thing claimed or a certain amount of that which he claims as against the other, his right to claim the balance shall lapse.

#### **Article 729**

- (1) If two persons reach an accord in a case where each of them claims property in the possession of the other, on the basis that each may keep the property in his possession, the accord shall have the status of a barter transaction, and the validity thereof shall not depend on knowledge of (the amount of) the consideration.
- (2) Accords shall be governed by the provisions governing contracts most similar thereto in nature so far as concerns the validity and effects thereof.

#### **Article 730**

- (1) An accord shall result in the transfer of the rights of the compounding party to the consideration agreed, and the lapse of his right which was the subject matter of the dispute.
- (2) An accord shall be binding upon both parties to it, and it shall not be permissible for either of them or their heirs to resile from it thereafter.

#### **Article 731**

The effects of an accord shall be restricted to the rights with which it deals and the determination of the dispute there over, to the exclusion of other matters.

#### **Article 732**

It shall be permissible for the parties to an accord to abrogate it by mutual consent if it is made by way of commutative contract, but it shall not be permissible to abrogate it if it involves the waiver of certain rights.

#### **Article 733**

It shall not be permissible to enter into an accord if it includes any of the following impediments: -

- (1) The annulment of a debt by another debt.
- (2) The sale of food by way of commutative contract prior to delivery.
- (3) The deferred exchange of gold against silver and vice versa.
- (4) Riba al-nasi'a (usurious interest in consideration of the deferment of the payment of a debt).
- (5) Substituting part of a deferred debt owed by a debtor in consideration of advancing the date of payment.
- (6) Reducing the amount of a guarantee on a deferred debt owed by a debtor in consideration of accelerated payment with an increase.
- (7) A loan involving a benefit.

#### **Article 734**

An aggrieved party of the two compounding parties may, upon denial, set aside the accord in the following circumstances:

- (1) If the party acting unfairly acknowledges his unfair treatment of the other after the accord is made.

- (2) If facts become known to the aggrieved party after the accord was made and he swears that he was unaware of such facts at the time the accord was made.
- (3) If there was evidence not available to such person which could not have been made available during the currency of the proceedings and he testifies upon making the accord that he will adduce that evidence upon its becoming available.

#### **Article 735**

If an accord is made upon denial because of the claimant not having a document establishing the right compounded, he may set aside the accord if he thereafter finds such document, but if he has claimed he had such a document and the defendant has requested him to produce it in order for him to secure his right as evidenced thereby and he then alleges that it has been lost and makes an accord, he may not set aside the accord thereafter if he finds the document.

#### **Article 736**

If one of several heirs makes an accord with the debtor of their legator in respect of a debt, then the other heirs may either enter into the same accord, or refrain from doing so and claim their rights against the debtor or make an accord with him.

#### **Article 737**

One of several heirs may make an accord in respect of his part of the inheritance by way part of the legacy, provided that the part compounded is available if he is making an accord in respect of an amount equal to or less than his portion, or the whole of the estate is available if he is making an accord in respect of an amount greater than his portion.

#### **Article 738**

- (1) If one of two (or more) creditors makes an accord with their debtor, the other creditor may refrain from entering into that same accord with him and may have recourse against the debtor for his share, and if he proves unable to pay, he shall have no right of recourse against his co-creditor.
- (2) The other creditor may enter with his co-creditor who made the accord into that same accord if he has not refused to make an accord, and in that event he shall have a recourse against the debtor for the balance of his share and the compounding creditor shall have a recourse against the debtor for such money as his co-creditor took from him.

#### **Article 739**

It shall not be permissible to make an accord in respect of such part of merchandise, animals or unascertained food as has been consumed by agreeing to the deferred return of a greater amount of the same kind, or goods of a different kind, unless the amount agreed to be given in satisfaction is goods estimated at that value or less.

#### **Article 740**

In the event that it is impossible to ascertain an unknown, an accord for an ascertained consideration shall be valid if both parties or the debtor alone are in ignorance.

#### **Article 741**

Subject to the provisions of Articles 734 and 735, the accord shall cause the dispute to determine finally, and no claim made by the claimant shall be heard thereafter even if he adduces evidence of his claim or an earlier admission of what is denied.

**CHAPTER II**  
**Usufructuary contracts**

**Part 1**  
**Hire**

**Section 1**  
**Hire in general**

**(1) Definition of hire**

(Translator's note: The vocabulary of the Arabic does not distinguish between leasing (of real property) and hiring (of chattels). The words "hire" and "lease" and their derivatives are used interchangeably throughout. Likewise, the word "rent" is used irrespective of whether the subject matter of the contract is real property or a chattel.)

**Article 742**

A hire shall be the conferring by the lessor on the lessee of the right of use intended for the thing hired for a specified period in consideration of an ascertained rent.

**(2) Elements of hire**

**Article 743**

In order for there to be a valid hire, both parties must be of full capacity at the time of the contract.

**Article 744**

- (1) For a hire to be valid, the lessor or the person acting on his behalf must have the right to dispose of that which he is hiring.
- (2) A hire granted by a voluntary agent (see Article 325 et seq.) shall be dependent upon the consent of the person having the right to dispose of the property upon the conditions laid down.

**Article 745**

The subject matter of a hire shall be the enjoyment of the use of the property, and delivery thereof shall be effected by delivering the subject matter of hire.

**Article 746**

The enjoyment of use contracted for must satisfy the following conditions:

- (a) the benefit must be capable of being enjoyed; and
- (b) it must be sufficiently ascertained for a dispute to be determined.

**Article 747**

That from which the enjoyment of use is to be derived must be ascertained either by inspection or by reference to the particular place where it is or by a clear description, otherwise the contract shall be void.

**Article 748**

- (1) The rent must be known by specifying the type and amount thereof if it is money, and by specifying the type, description and determination of the extent thereof if it is a non-money rent.
- (2) If the rent is unknown, it shall be permissible to cancel the hire, and a fair rent shall be paid in respect of the period up to the cancellation.

#### **Article 749**

The rent may be property, a debt, or a benefit.

#### **Article 750**

The rent shall be due upon the enjoyment of use being derived, or when it becomes capable of being derived.

#### **Article 751**

It shall be permissible to stipulate that the rent be payable immediately, or be deferred or payable in instalments at specified times.

#### **Article 752**

- (1) If the time for payment of the rent is not specified in the contract, the rent determined for the enjoyment of the use absolutely shall be paid after the enjoyment of use has been derived or after it has become capable of being derived.
- (2) With regard to rent payable in respect of a unit of time, custom shall be followed with regard to the time for payment, otherwise the judge shall determine the same upon the application of the person having an interest.

#### **Article 753**

Rent shall not be payable in respect of any period expiring prior to the delivery of the thing leased unless the lessee is the cause (of non-delivery).

#### **Article 754**

The period of the hire shall commence as at the date agreed in the contract, and if not date is specified, then it shall commence as at the date of the contract.

#### **Article 755**

The period of the hire must be ascertained.

#### **Article 756**

If the contract of hire does not specify the period or if it is impossible to prove the period alleged, the hire shall be deemed to have been made for the period specified for the payment of the rent and to expire upon the expiration of such period upon the request of either of the contracting parties.

#### **Article 757**

If the contract of hire expires and the lessee remains in enjoyment of the thing hired with the knowledge of the lessor and without any objection from him, the hire shall be deemed to have been renewed on the original terms and for a like period.

#### **Article 758**

It shall be permissible to stipulate that the hire shall be for a future period and such contract shall be binding unless the thing leased is a Waqf (charitable endowment) or the property of an orphan, in which event it shall not be permissible for the hire for a future period to commence more than one year from the date of the contract.

#### **Article 759**

If the period of the hire expires, and it is proved that it is necessary to extend it, it shall be extended for as long as the necessity exists, and provided that the lessee shall pay a fair rent therefor.

#### **Article 760**

If the lessor asks the lessee for a specified increase in the named rent after the expiry of the period of the hire, he shall be bound to pay it if the period has expired and he remains in possession of the thing hired without objection.

### **(3) Effects of hire**

#### **Article 761**

Each of the two contracting parties shall be obliged to carry out the contents of the contract in such a manner as to achieve the lawful purpose thereof.

#### **Article 762**

If the contract of hire has been validly made, the right of enjoyment of the thing hired shall pass to the lessee.

### **(4) Obligations of the lessor**

#### **(a) Delivery of the thing hired.**

#### **Article 763**

- (1) The lessor must deliver the thing leased together with the appurtenances thereof in such condition that the intended benefit may be derived in full.
- (2) Delivery shall be effected by enabling the lessee to take possession of the thing hired without any obstacle to his enjoyment thereof, with his remaining in continuous possession of it until the period of the lease expires.

#### **Article 764**

The lessor may refuse to give delivery of the thing hired until rent payable in advance is paid.

#### **Article 765**

- (1) If a contract of hire is made over a specified thing for a lump sum rent and the number of units thereof is referred to without specifying the rent in respect of each unit thereof, and if appears that the units are greater or less, the rent shall be that specified in the contract without any increase or deduction, and in the event of a shortfall the lessee shall have the option to cancel the contract.
- (2) If the rent for each unit is specified in the contract the lessee shall be obliged to pay the specified rent for excess units, and the lessor shall be obliged to reduce the specified rent for any units short, and the lessee shall have the option to cancel the contraction either event.
- (3) Provided that if the amount of the shortfall or excess is slight and does not affect the intended enjoyment, then the lessee shall not have the option to cancel.

#### **Article 766**

The (legal) effects of delivery of goods sold shall apply to delivery of the thing hired and the appurtenances thereof, unless the two parties have agreed to the contrary.

#### **(b) Maintenance of the thing hired**

#### **Article 767**

- (1) The lessor shall be obliged to repair any defect in the thing hired which has an effect on the deriving of the intended enjoyment, and if he does not do so it shall be permissible for the lessee to cancel the contract or to obtain leave from the judge authorizing him to make the repair and to have recourse against the lessor for his expenditure up to a generally acceptable level.
- (2) If the defect which the lessor is by custom obliged to make good is a minor matter, or an urgent matter which does not admit of delay and the lessee requests him to repair it and he makes delay or it is impossible to contact him, it shall be permissible for the lessee to

repair it and to deduct his expense up to a generally acceptable level from the rent due.

**Article 768**

- (1) If, with the consent of the lessor, the lessee constructs buildings or makes repairs which benefit the thing hired, or if he maintains that thing, he shall have a recourse therefor for his expenditure up to a generally acceptable level, notwithstanding that there is no express provision that he should have such a right of recourse.
- (2) If, however, any new construction the lessee makes enures to his personal benefit, he shall have no right of recourse against the lessor unless there is an agreement to the contrary.

**Article 769**

- (1) It shall be permissible for the lessor to prevent the lessee from doing any work which results in damage or alteration to the thing hired, and from putting in any equipment or appliances which may damage it or reduce the value thereof.
- (2) If the lessee does not refrain from so doing, the lessor shall have the right to apply to the judge to cancel the contract and to seek damages for the loss caused to him by such wrongful act.

**(c) Liability for the thing hired**

**Article 770**

- (1) It shall not be permissible for the lessor to expose the lessee to anything which may disturb his enjoyment during the period of the hire, nor to effect any alteration in the thing hired which may prevent use being made thereof or which may prejudice the beneficial use contracted for, and if he does so, he shall be liable therefor.
- (2) The liability of the lessor shall not be restricted to acts done by him or those subordinate to him, but shall extend to any exposure or damage based on a legal cause emanating from any other lessee or any other person deriving his right from the lessor.

**Article 771**

If the interference results in the lessee being deprived of his use of the thing hired in accordance with the contract, he may require that the contract be cancelled or that the rent be reduced, and shall have a claim in damages for the detriment he has suffered.

**Article 772**

- (1) The lessor shall be liable to the lessee for any defects in the thing hired which prevent or substantially diminish the use made of it, but he shall not be liable for defects which by custom fall within the margin of tolerance.
- (2) The lessor shall not be liable for a defect if the lessee was aware thereof at the time the contract was made, or if it would have been an easy matter for him to gain knowledge thereof.

**Article 773**

If as the result of a defect the lessee is prevented from enjoying the thing leased, it shall be permissible for him to require that the contract be cancelled or that the rent be reduced, and he shall have a claim for any loss suffered by him.

**Article 774**

The provisions governing the option for defect in property sold shall apply to any defects in property hired in all matters not inconsistent with the nature of hire.



#### **Article 775**

Any agreement purporting to give exemption from liability for any interference or defect shall be void if the lessor has fraudulently concealed the cause of such liability.

#### **(5) Obligations of the lessee**

##### **(a) The preserve and return of the things hired.**

#### **Article 776**

- (1) The thing hired shall be regarded as being held in trust by the lessee who shall be liable for any diminution, damage or loss arising out of his default or wrongful act. He must exercise the care of the reasonable man in preserving the same.
- (2) If there are several lessees, each of them shall be liable for any damage arising out of his wrongful act or default.

#### **Article 777**

- (1) It shall not be permissible for a lessee to exceed in his use of the thing hired the bounds of the use agreed in the contract, and if there is no (specific) agreement he shall be bound to use it for the purpose for which it is intended, and in the manner dictated by custom.
- (2) If in using the thing he exceeds the agreed bounds or acts in breach of custom, he shall be liable for any damage arising out of his act.

#### **Article 778**

- (1) It shall not be permissible for the lessee to effect any alteration to the thing hired without the consent of the lessor unless he has a duty to repair the property hired, and provided that he causes no loss to the lessor.
- (2) If the lessee exceeds that duty he must, upon the expiration of the hire, restore the property hired to the condition in which it was, and must pay compensation if appropriate, all of the above being in the absence of any agreement to the contrary.

#### **Article 779**

- (1) The lessee must make the repairs agreed upon, for which he is obliged by custom to carry out. He must, during the period of the hire, clean the property leased and removed from it any accumulated dirt or rubbish, and anything else which by custom he is required to attend to.

#### **Article 780**

- (1) It shall not be permissible for a lessee to prevent the lessor from carrying out necessary works for the maintenance of the thing hired.
- (2) If those works are such as to disturb the enjoyment of the lessee, he shall have the right to cancel the contract unless he continues to enjoy the use until the maintenance works are completed.

#### **Article 781**

- (1) If the whole of the enjoyment of the thing leased is lost, the lessee shall not be obliged to pay the rent in respect of the period of the loss of enjoyment.
- (2) If the loss of the enjoyment is partial and is such as to affect the enjoyment intended, he shall have the right to cancel the contract and the obligation to pay the rent shall lapse as from the date of the cancellation.

- (3) If the lessor repairs the thing hired prior to the cancellation the lessee shall be relieved of the obligation to pay rent to the extent of his loss of use, and he shall have no option to cancel.

#### **Article 782**

- (1) If by any act of the competent authorities it becomes impossible to derive full enjoyment from the thing hired through no cause on the part of the lessee, the lease shall be cancelled and the obligation to pay the rent shall cease as from the date of the impossibility arising.
- (2) If the impossibility affects the enjoyment of part of the property hired in such a way as to affect the enjoyment intended, the lessee may cancel the contract and his obligation to pay the rent shall cease as from the time he notifies the lessor.

#### **Article 783**

It shall be permissible for the lessee to cancel the contract in the following circumstances:

- (1) if the performance thereof entails evident harm to his person or property or to any of his subordinates in the enjoyment of the property hired; or
- (2) if any event occurs which prevents the performance of the contract.

#### **Article 784**

- (1) The lessee must return the thing hired to the lessor upon the expiration of the period of the hire in the condition in which he took delivery of it, with the exception of such loss or damage as the property may have suffered through no cause of his.
- (2) If he retains possession of it without right he shall be bound to pay the lessor a fair rent, and he shall be liable for any loss suffered.
- (3) If the return of the thing hired requires portage and provisions, the charge for the carriage thereof shall be borne by the lessor.

#### **Article 785**

If the lessee has made a new building or planted plants in the thing hired, even with the consent of the lessor, the lessor may, upon the expiration of the hire, either require him to demolish the building or remove the plants, or he may take over ownership of the new buildings or plants placed there for such value as they would have if removed if the destruction or removal thereof would cause harm to the property, and if the demolition or removal would not cause harm to the property, the lessor may not require that they remain there without the consent of the lessee.

### **(b) Lending and (sub) hiring the thing hired**

#### **Article 786**

The lessee may lend the thing hired or may allow another person to use and enjoy the whole or part of it without consideration to the extent that such use does not differ from normal use.

#### **Article 787**

It shall not be permissible for a lessee to hire the thing hired either in whole or in part to another person, save with the consent or approbation of the lessor.

#### **Article 788**

In the circumstances provided for in the two foregoing Articles, the lessee shall be bound by the conditions of the contract of hire both as to type and time.

#### **Article 789**

If the lessee hires the thing hired with the consent of the lessor, the new lessee shall take the place of the first lessee in respect of all rights and obligations arising under the first contract.

#### **Article 790**

If the contract of hire made with the first lessee is cancelled or expires, his lessor shall have the right to terminate the contract made with the second lessee and to recover the thing hired.

### **(6) The termination of the hire**

#### **Article 791**

- (1) The hire shall terminate in the two following circumstances:
  - (a) upon the expiration of the period laid down in the contract, unless there is a stipulation that it should be renewed automatically; or
  - (b) upon the expiry of the right of beneficial use if the lease is granted by a person who has such right, or the person having the reversionary right.
- (2) If the contract of hire expires and the lessee continues to enjoy the property hired with the express or implied consent of the lessor, the contract shall be deemed to be renewed upon the original terms.

#### **Article 792**

If the lessee uses the thing hired without right after the expiration of the period of hire, he shall be bound to pay a fair rent in respect of the period of the use, and he shall be liable to the lessor over and above that for any harm suffered by the thing hired.

#### **Article 793**

- (1) A hire shall not terminate upon the death of either of the contracting parties.
- (2) However, it shall be permissible for the heirs of the lessee to require the termination of the hire if they establish that the burdens of the hire have, by virtue of the death of their legator, become more burdensome than their resources can sustain, or if it is in excess of them needs.
- (3) If the hire has been created solely by reason of the occupation of the lessee or for other considerations pertaining to his person, and he then dies, it shall be permissible for his heirs or for the lessor to require that the contract be terminated.

#### **Article 794**

- (1) It shall be permissible for either of the contracting parties, for some unforeseen reason connected with him, to require that the contract of hire be terminated, and he shall then be liable for any harm sustained by the other contracting party arising out of such termination, within the limits laid down by custom.
- (2) If it is the lessor who requires the termination of the contract, the lessee shall not be bound to return the thing hired until he is paid compensation or is given a sufficient guarantee.

#### **Article 795**

- (1) If the thing hired is sold without the consent of the lessee, the sale shall be effective as between the seller and the purchaser, but shall not affect the rights of the lessee.
- (2) If the lessee consents to or affirms the sale, the sale shall be effective as against him, and he shall be bound to deliver the thing hired unless he has paid the rent in advance, in which case he shall have the right to retain the thing hired until he recovers the equivalent of the

rent in respect of the balance of the period for which he has not had the enjoyment of the thing hired.

#### **Article 796**

A contract of hire over a house or the like shall not terminate if it becomes apparent that the lessee has used it for immoral purposes and the public prosecutor has taken it over in order to restrain the immoral use thereof, but if such use has not ceased the judge may expel him therefrom upon the application of the owner or neighbour, and he shall be bound to pay the rent therefor if by reason of such immoral use any harm has been sustained by the house or a neighbour, and he shall be bound to pay the rent in respect of the period during which he was evicted, prior to the reletting thereof.

### **Section 2**

#### **Certain types of hire**

##### **(1) Leases of agricultural land**

#### **Article 797**

A lease over agricultural land shall be valid if it is accompanied by a declaration of what is to be grown thereon or if the lessee has the option to grow on it what he wishes.

#### **Article 798**

It shall not be permissible to grant an immediate lease in possession over land while crops of another person are growing on it, if such crops have not matured, and it is cultivated by virtue of a right, unless the lessee is the owner of the crops.

#### **Article 799**

It shall be permissible to grant the lease over land with crops on it, and the owner thereof shall be bound to pick and deliver the crops to the lessee in the two following circumstances:

- (a) if it is sown by virtue of a right and the crops have matured at the time of the lease; or
- (b) if it is sown without right whether the crops have matured or not.

#### **Article 800**

It shall be permissible to grant a lease over land on which there are crops but deferred to a time at which the land is clear.

#### **Article 801**

- (1) If a person takes a lease of land for agriculture, the lease shall embrace all of the rights appurtenant thereto, but agricultural plant and machinery shall not be included therein, nor shall things affixed to the land, save by a provision in the contract.
- (2) If the contract of lease does embrace agricultural plant, equipment etc., the lessee must maintain the same and use it in such manner as is customary.

#### **Article 802**

If a person takes a piece of land on the basis that he may cultivate thereon what he wishes, he may cultivate it repeatedly during the year, both in summer and in winter.

#### **Article 803**

If the period of a lease over land expires before the crop matures for a reason beyond the control of the lessee, he shall be permitted to remain at a fair rent until the crop matures and is harvested.

#### **Article 804**

The lessee must exploit the agricultural land in accordance with the customary requirements of good husbandry, and he must ensure that the land is left in a suitable condition for profitable use, and he must not make any change which will have a permanent effect on the use that can be made thereof after the expiration of the lease.

#### **Article 805**

- (1) The lessor shall be obliged to make such repairs upon which the enjoyment intended depends.
- (2) The lessee must make such repairs as are required by the normal use of the land, and must maintain the irrigation equipment, ditches, roads, bridges and wells.
- (3) All of the above shall apply unless there is an agreement or a custom to the contrary.

#### **Article 806**

If the land leased is flooded so as to make it impossible to cultivate it or if the water is cut off so as to make it impossible to irrigate it or if the cost thereof becomes excessively onerous, or if an event of force majeure arises which precludes the cultivation thereof, the lessee may cancel the contract, and no rent shall be due from him.

#### **Article 807**

If the crop is destroyed prior to harvesting through a cause beyond the control of the lessee, he must pay rent in respect of the period up to the destruction of the crop, and he shall be released from the obligation to pay the balance unless it is within his power to cultivate a similar crop as before, and he shall pay the proportion of the balance of the period.

#### **Article 808**

It shall not be permissible to cancel the contract nor to annul the rent or any part thereof if the lessee has received compensation from any party in respect of the damage suffered by him.

### **(2) Muzara'a (share cropping contract)**

#### **(a) Definition of muzara'a**

#### **Article 809**

A muzara'a is a contract for the exploitation of agricultural land made between the owner of the land and another person who is to exploit it, with the condition that the produce shall be shared between them in such shares as they may agree.

#### **(b) The creation of a muzara'a**

#### **Article 810**

The following conditions must be satisfied in order for a muzara'a to be valid:

- (a) the land must be ascertained, and suitable for agriculture.
- (b) the type of crop or nature of seed must be specified, or the option must be left to the farmer (the non-owing party) to cultivate what he wishes; and
- (c) the share of each of the parties in the produce must be determined as between them.

#### **Article 811**

It shall not be permissible to make a stipulation that the seed or the tax due upon the land shall be excluded from the principal amount of the produce prior to distribution.

#### **Article 812**

In a muzara'a, the period over which the land is to be cultivated must be such as to coincide with the realization of the effect desired therefrom, and if it is not so specified the contract shall have effect only in respect of one agricultural period.

#### **(c) The effects of a muzara'a contract**

#### **Article 813**

If a contract of muzara'a is made, the produce shall be jointly owned between the contracting parties, and they shall share therein in the proportion agreed upon.

#### **Article 814**

- (1) If a third party right arises in the land subject to a muzara'a after it has been sown, and before the period of the harvest of the crop, and if the parties to the contract were acting in good faith and were unaware of the cause of the arising of the third party right, they may keep the land under the muzara'a until the termination of the season for the crop sown, and the person who provides the land shall be liable for a fair rent to the third party having the entitlement.
- (2) If both parties are acting in bad faith, the third party having the entitlement shall be entitled to remove the crops and to take the land free of any encumbrance, and he shall be under no obligation towards either of them.
- (3) If the person who has provided the land is alone acting in good faith and the third party having the entitlement does not leave the land to them both at a fair rent until the termination of the season, the following provisions shall apply:
  - (a) if the seed has been provided by the person who provided the land, then he shall be obliged to pay the fair rent to the farmer for his work together with compensation equivalent to the assets which he has put in together with the workers' wages and other expenses as custom may dictate if the contract binds him to perform the foregoing, and any person who has provided the land may protect his position by paying the farmer the value of his share in the crop as left in place until it matures;
  - (b) if the seeds belong to the farmer he shall have a claim, as against the person who provided the land, for the value of his share in the crop as left in place until it matures; or
  - (c) the farmer shall, in either event, whether the seeds were provided by him or by the person who provided the land, have the right to elect to take his share of the crop when picked, and in that event that is all he will be entitled to.

#### **(d) The obligations of the landowner**

#### **Article 815**

- (1) The landowner must deliver the land in a condition fit for cultivation together with the rights of easement thereof such as watering and passage, together with all things allocated for the exploitation thereof if they have become permanent fixtures.
- (2) He must also repair agricultural equipment if he has an obligation to deliver the same in working order, if they require repair as a result of ordinary use.

### **(e) The obligations of the share cropper**

#### **Article 816**

- (1) The farmer shall be bound to carry out the agricultural works, and to maintain and safeguard the crop; he shall also bear the cost of irrigation channels and the like until the time comes to harvest the crop.
- (2) With regard to the work involved in connection with the crop after it has reached the stage where it is harvestable and thereafter together with the costs to be incurred until the profits are divided, each of the contracting parties shall be liable therefor up to the amount of his share.

#### **Article 817**

- (1) The farmer must, in his husbandry and safeguarding of the land and the appurtenances thereto, and of the crop and yield, take the care of the reasonable man.
- (2) If he defaults in any of the above and damage arises out of such default, he shall be liable therefor.

#### **Article 818**

- (1) It shall not be permissible for the farmer to lease the land or to entrust the farming thereof to a third party, save with the consent of the landowner.
- (2) If the farmer is in breach of that obligation, the landowner shall have the right to cancel the contract, and if at the time of the cancellation the land is sown and the seeds belong to the landowner, he shall have the right to recover them and shall have a recourse against the farmer for such damage as he has suffered. If he not provided the seeds, he shall have the option either to recover the land cultivated and to give the value of the seeds to their owner, or to leave the crop to them until it is harvested, and to hold the first farmer liable for a reasonable rent and for such damage as he has suffered.

### **(f) The termination of the muzara'a**

#### **Article 819**

A contract of muzara'a shall terminate upon the expiration of the period thereof, and if the period thereof expires before the crop matures, the farmer may keep the crop there until it is mature, and he shall be liable to pay a fair rent for the land in the amount of his share in the proceeds in respect of the subsequent period, and the necessary expenditure on the crop shall be borne by each of the landowner and the farmer in the proportion of their respective shares.

#### **Article 820**

- (1) If the landowner dies before the crop matures, the farmer shall continue to work until the crop matures, and the heirs shall have no right to prevent him.
- (2) If the farmer dies before the crop matures, his heirs shall take his place in performing the work until the crop matures, notwithstanding any objection made by the landowner.

#### **Article 821**

- (1) If a contract of muzara'a is cancelled or if it appears that it is void, or if an order is made declaring it void, the whole of the proceeds shall belong to the owner of the seed, and if the owner of the seed is the landowner the farmer shall be entitled to a fair remuneration for his work, and if the owner of the seed is the farmer, the landowner shall be entitled to a fair rent for the land.
- (2) It shall not be permissible in either case for the amount of the consideration for the work or the land to exceed the value of the share of the owner thereof in the proceeds.

**(3) Musaqah (contract to perform work on another's agricultural land in consideration of part of the crop)**

**Article 822**

A musaqah is a contract between a worker and the owner of a tree or crop whereby the worker shall provide his services for the tree or crop for a specified period in consideration for a part share in the yield.

**Article 823**

In order for a musaqah to be valid, the share of each of the parties in the proceeds must be calculated according to the proportion of each.

**Article 824**

In order for a musaqah over a tree to be valid, it must be of a kind which will bear fruit in the year of the contract of musaqah, and the fruit must not have become unfit for consumption prior to the musaqah being entered into, nor must it leave any second crop which fruits prior to the earlier fruit being plucked without the cutting of the second crop, and if any of these three conditions is breached the musaqah shall not be valid unless the condition is ancillary to the joint purport of those conditions.

**Article 825**

If a contract of musaqah is made over a tree with a crop ancillary thereto, or vice versa, and the value of the ancillary amounts to one third or less of the principal object, the contract over the principal object shall necessarily require that the subsidiary object is brought into the contract, with the following results:

- (a) the worker under the musaqah must serve the ancillary as if it were the principal;
- (b) it shall not be valid to stipulate that the proceeds thereof shall belong to the owner and not the worker.
- (c) the proportion due to the worker from the proceeds must be the same as the proportion due from the principal object; and
- (d) the conditions for the validity of the musaqah shall be determined by (their applicability to) the principal object and not the ancillary object.

**Article 826**

Musaqah is a contract immediately binding upon both parties, and neither of the contracting parties shall have the right to cancel the same save for a reason which justifies that.

**Article 827**

- (1) The period of the musaqah must be specified by reference to the harvest time or the time at which the harvest would normally be gathered, and if the contract is silent as to the time, it shall continue until the harvest in the event that the fruit is by way of a single crop, or until the first crop if there are several crops which are distinguishable, save that if it is stipulated that the second crop should be incorporated within the period of the musaqah, the contract shall embrace the harvest thereof, and if there are several crops which are undistinguishable, the contract shall embrace the harvesting of the latest crop.
- (2) If the contract specifies a period in which it is expected that the fruit will appear and it does not appear at all, neither party shall have any rights as against the other.



### **Article 828**

The work and costs required for the musaqah shall be governed by the following provisions, unless a contrary agreement is made:

- (a) works required in the service of a tree, the development of the yield and quality thereof, and the preservation thereof until maturity, such as irrigation, grafting, and acclimatization shall be the responsibility of the worker, and fixed works not repeated annually such as digging wells and building storehouses for the preservation of the produce shall be the responsibility of the owner of the tree or the crop;
- (b) financial costs required in the course of exploitation or ordinary care, such as the cost of fertilizers and insecticides until the crop matures shall be borne by the owner of the tree or the crop; and
- (c) with regard to costs required after the maturity of the crop, such as the costs of harvesting and preservation, those shall be borne by each party in proportion of his share in the yield.

### **Article 829**

It shall not be permissible for the person providing work under a contract of musaqah to enter into a similar contract with a third party without the permission of the owner of the tree or the crop, and if he does so the owner of the tree or the crop shall have the option as he wishes either to take the whole of the yield and to give the person undertaking the work a quantum meruit reward, or to leave the yield to them both and have recourse against the first worker for reasonable recompense in respect of the subject matter of the musaqah, and to hold him liable for any damage suffered by reason of his act.

### **Article 830**

If there is a third party right over the tree, the fruit or the crop, and the contracting parties in the musaqah or either of them have expended money or done work such as to have an effect on the growth of the tree, the fruit or the crop, the following shall apply as the case may be:

- (1) if the third party having the right affirms the contract of musaqah, he shall take the place of the person providing the tree or the crop vis-à-vis the worker in respect of all rights and obligations arising out of the contract, and the third party having the right shall render unto the person providing the tree or the crop that same amount of useful expense which he has incurred in accordance with custom;
- (2) if the third party having a right does not affirm the contract and the musaqah has been made in good faith without the knowledge of either of the parties of the cause of the third party right, the third party having the right shall have the option either to take what is due to him and to pay to the worker a fair remuneration and to render unto the person who has provided the tree or the crop such useful expense as he has incurred according to custom, or to leave the yield to them both until the end of the season, and to take from the person who has provided the tree or the crop just compensation according to custom in respect of his loss of use resulting from his having had to wait;
- (3) if the two contracting parties to a musaqah have acted in bad faith at the time they made the contract, the third party having the right may take what is due to him, and he shall not owe anything to either of the other two parties; or
- (4) if one of the two parties was acting in bad faith and the other was acting in good faith, the person who was acting in good faith shall have a right to just compensation as against the third party having the right according to custom in respect of any money expended or work done on the tree, the fruit or the crop.

#### **Article 831**

If the worker is unable to work or if he is not to be trusted with the fruit, it shall be permissible for the owner of the crop to cancel the musaqah, and he must pay a quantum meruit consideration to the worker in respect of the period up to the cancellation.

#### **Article 832**

- (1) A contract of musaqah shall not terminate upon the death of the owner of the tree or the crop, neither shall his heirs have the right to prevent the worker from continuing to perform his work in accordance with the contract.
- (2) If the worker dies, his heirs shall have the option either to terminate the contract or to continue the work, and if they elect to determine and the fruit has not ripened, they shall, upon its ripening, be entitled to receive what is due to their legator in the proportion of the work which he performed prior to his death.
- (3) If it is a condition that the worker must carry out the work himself, the musaqah shall terminate upon his death, and his heirs shall, upon the fruits ripening, be entitled to what is due to him in respect of the work he has performed.

#### **Article 833**

If the worker defaults in carrying out the work which it is stipulated he must do, or as is required by custom, then a deduction shall be made from the proportion due to him out of the yield in proportion to his default in carrying out the work.

#### **Article 834**

The provisions governing muzara'a shall apply to musaqah save in respect of such matters as are governed by the foregoing provisions.

#### **(4) Mugharasa (variety of agricultural contract: joint ownership of the land and the crop)**

#### **Article 835**

Mugharasa is where a person gives his land to a person who will plant thereon a particular tree of his, on condition that they shall both be partners in the land and the tree in a specified proportion if the tree reaches a particular level of growth prior to fruiting.

#### **Article 836**

The following conditions must be satisfied in order for a mugharasa to be valid:

- (1) the mugharasa must be over the fixed roots of the palm or the tree, and not over the annual crop;
- (2) the type of plant to be planted in the land, whether it be palm or tree, must be specified at the time the contract is made;
- (3) the extent of participation in the land, and the palm or the tree, must be in an ascertained proportion; and
- (4) the commencement of the partnership over the tree or the land must be determined to coincide with the tree reaching a certain degree of growth prior to fruiting.

#### **Article 837**

The provisions governing musaqah shall apply to mugharasa to the extent that they are not inconsistent with the nature thereof.

## **(5) Lease of a waqf (charitable endowment)**

### **Article 838**

- (1) Whoever is entrusted with the administration of a Waqf shall also be entrusted with the leasing thereof.
- (2) If two persons are entrusted with a Waqf, neither one of them may, acting on his own, grant a lease without the other.

### **Article 839**

- (1) It shall not be permissible for a trustee to take a lease of Waqf property for himself, even though it may be at a fair rent, unless the lease is approved by the judge.
- (2) It shall be permissible for him to grant a lease to his ascendants or descendants at a rent exceeding a fair rent, if the judge consents.

### **Article 840**

A beneficiary may not grant a lease of the waqf nor may he take the rent therefor notwithstanding that he may be the sole person entitled, unless he has been so authorized by the donor or given permission by the person having the right to grant a lease.

### **Article 841**

- (1) Any conditions laid down by the donor as to the leasing of a waqf must be observed, and if he has specified a period of lease, it shall not be permissible to contravene the same.
- (2) If there is no person who wishes to take a lease thereof for the period laid down, and the guardian has not been given the right to grant a lease as may be beneficial to the waqf, the matter shall be referred to the judge in order for him to consent to the grant of the lease for such period as he deems most beneficial for the waqf.

### **Article 842**

- (1) If the donor has not specified the period, real estate shall be leased for a period of one year and land (without buildings) shall be leased for a period of three years at the most, unless the interests of the waqf require a different period, and the judge so permits.
- (2) If a lease is entered into for a period longer than one year even by concurrent contracts, it shall be reduced to the period laid down in the foregoing paragraph.
- (3) If the waqf requires development but there is no fund out of which it may be developed, it shall be permissible for the judge to permit that it be leased for such period as is sufficient for its development.

### **Article 843**

- (1) It shall not be permissible to grant leases over waqf property at less than a fair rent, and any lease granted at less than such a rent at the time it was made shall be cancelled, unless the lessee agrees to pay a fair rent, and the interests of the waqf are observed in so doing.
- (2) A fair rent shall be determined by experts as at the time at which the contract was made, and no regard shall be had to any unforeseen change during the period of the contract.

### **Article 844**

If an inherent improvement is made to the site of the waqf which results in the fair market rent being substantially increased, in circumstances where any money expended or new buildings or development created by the lessee have played any part therein, the lessee shall have the option

either to terminate the contract or to agree to a new fair rent as from the time of the improvement, whether the lease was for development or otherwise.

**Article 845**

- (1) If the period of the lease expires and the lessee has built or planted upon the waqf property at his own expense with the consent of the person having power to grant the lease, he shall have a prior right over any third party for a lease for a future period at a fair rent.
- (2) If he refuses to accept a fair rent and if the demolition of the building or the removal of the trees would damage the property leased, it shall be permissible for the waqf authority to take over ownership of what he has placed there for the value that it would have if removed, unless they agree that they should leave the building or the plants until such time as they cease to be of use, upon which the lessee may take what is left.
- (3) It shall be permissible for the administrator to grant a lease over waqf property, together with the buildings and plants thereon, with the permission of the owner of such buildings or plants, on condition that he is given such proportion of the rent as is attributable to his ownership (of such buildings or plants).

**Article 846**

If the period of the lease expires and the lessee has buildings or plants which he has placed on the waqf property at his own expense without permission, he shall be ordered to demolish the building or to uproot the plants if that would not cause any damage to the waqf property, but if the same would cause damage to the waqf property, he shall be compelled to wait until the building falls down or the tree becomes useless, and he shall bear the loss of value thereof, and in either case it shall be permissible for the waqf or the authority to take over ownership of what he has built or planted at a price not exceeding the lower of the two values of the demolished tree or the uprooted plant, or at their then value.

**Article 847**

In matters requiring the consent of the judge, the opinion of the Ministry having jurisdiction in waqf affairs shall be taken as to the best interests of the waqf, prior to the permission being given.

**Article 848**

The provisions governing contracts of lease shall apply to leases of waqf property in all matters which do not conflict with the foregoing provisions.

**Part 2**  
**Loans**

**Section 1**  
**General provisions**

**Article 849**

A loan is the conferring of ownership upon another of the use of a thing without consideration for a specified period or for a specified purpose, with a condition that that thing should be returned after use, and the thing lent shall mean the thing the use of which ownership has been conferred.

**Article 850**

A loan shall be effected by taking delivery of the thing lent, and a loan shall be of no effect prior to such taking of delivery.

**Article 851**

A loan must be of a particular thing, suitable for use without the substance thereof being destroyed, properly, and the use thereof must be lawful notwithstanding that it is not such as may be property sold.

**Article 852**

The lender must be the owner of the use of the thing notwithstanding that he may not be the owner of the thing itself, and he must not be under a restriction with regard to the use of the thing lent.

**Article 853**

The borrower must have the capacity to be the donee of the thing lent.

**Article 854**

- (1) If the period of the loan is restricted by time or by the use to be made, the lender may not retrieve the thing lent from the borrower prior to the expiration of the period of the loan, and if it is not restricted by time or by the use to be made, he may not retrieve it prior to the expiration of the usual period of the loan of such things.
- (2) The lender may recover it from the borrower in all circumstances if the use he makes of it is more onerous than the purpose for which it was lent, or if he unexpectedly comes to need the thing lent.

**Article 855**

A thing lent shall be a trust in the hands of the borrower, and if it is destroyed or lost or if the value thereof is diminished without any wrongful act or default on his part, he shall not be liable therefor unless a contrary agreement has been made.

**Article 856**

It shall not be permissible for a guardian or tutor to lend property of a person under his guardianship, and if either of such persons does lend it, the borrower shall be obliged to pay just remuneration, and if the thing lent is destroyed, the borrower shall be liable therefor.

**Article 857**

It shall not be permissible for a wife without the consent of her husband to lend anything owned by him, and which is not normally left under her control, and if she does so and the thing lent is destroyed or damaged, the husband shall have the option either to have a recourse against her or against the borrower for an indemnity.

#### **Article 858**

If a person borrows land to build a building or plant a tree on it for a specified period by (an agreed) condition or by custom, the lender shall, upon the expiration of such period, have the option either to require the borrower to demolish the building or uproot the tree and restore the land to its former condition, or to pay him the value of the building as removed or the value of the tree as uprooted, unless an agreement has been made to the contrary.

#### **Article 859**

The lender shall not have right to claim hire from the borrower in respect of the thing borrowed after the enjoyment of it has ceased.

#### **Article 860**

- (1) If there is a third party right over the thing borrowed while in the hands of the borrower, he shall not be liable to the lender in the absence of a contrary agreement or if he has deliberately concealed the cause of such third party right.
- (2) The lender shall be liable for any damage sustained by the borrower in respect of such third party right.
- (3) If the third party right arises after the destruction of the thing lent in the hands of the borrower, without any wrongful act or default on his part and the third party having the right elects to make him liable, the borrower shall have a right of recourse against the lender in respect of his liability to the third party.
- (4) The lender shall not be liable for any latent defects, unless he deliberately conceals such defect or guarantees that the thing is free of such defect.

**Section 2**  
**Obligations of the borrower**

**Article 861**

- (1) The borrower must preserve the thing lent and safeguard it as he would his own property, without in so doing falling below the standard of care that the reasonable man takes over his own property.
- (2) If he is guilty of a shortcoming in averting any damage to the thing lent which it was in his power to avert, he shall be liable therefor.

**Article 862**

The lender shall bear the costs expended on the thing lent, and shall be responsible for the expenses of returning and transporting it.

**Article 863**

- (1) The borrower may make such use of the thing lent as it is customary in an unconditional loan not restricted as to time, place or type of use.
- (2) If the loan is restricted by time or place, he must observe such restriction, and he may not, if the type of use if specified, exceed such amount of use, and in the least damaging way.

**Article 864**

- (1) If a defect arises in the thing lent as a result of use, the lender shall be bound to make good the loss of value, but he shall not be liable for such loss of value unless it arises out of the use of the thing in a manner contrary to custom.
- (2) If the borrower exceeds the customary limits applicable to a loan or if he uses it contrary to custom and it is destroyed or damaged, he shall be liable to the lender for such destruction or damage.

**Article 865**

It shall not be permissible for the borrower without the consent of the lender to dispose of the thing lent in such a way as to confer upon a third party any right of enjoyment or property right in the thing lent, or to pledge it, hire it out, or the like.

**Article 866**

The borrower may deposit the thing lent with a trustworthy person capable of preserving it, and he shall not be liable for the thing if it is destroyed in the hands of such person without any wrongful act or default.

**Section 3**  
**Termination of the loan**

**Article 867**

A loan shall terminate:

- (1) upon the expiry of the agreed period;
- (2) upon the enjoyment for which the loan was intended being fully derived; or
- (3) upon the death of the lender or the borrower, where the benefit of the loan does not pass to the heirs of the borrower.

**Article 868**

If the borrower dies having said nothing about the loan, and the thing lent is not found in his estate, the value thereof as at the time of the death shall constitute a liability against the estate.

**Article 869**

The borrower may return the thing lent prior to the expiration of the period of loan, but if such return is prejudicial to the lender, he shall not be obliged to accept it.

**Article 870**

- (1) If the loan is cancelled or terminates, the lender must return the thing lent to the owner, and he must make no further use of it unless the law permits him to retain it.
- (2) If the loan terminates by reason of the death of the borrower, his heirs shall be bound to deliver it to the lender upon demand.

**Article 871**

- (1) If the thing lent is a precious object, the lender must deliver it in person to the borrower, but so far as concerns other things, it shall be permissible to deliver them either in person or through people acting under him who are capable of delivering them.
- (2) The thing lent must be returned at the place agreed, or otherwise in the place in which it was lent, or as is dictated by custom.



**Section II**  
**Effects of a muqawala**  
**(1) Obligations of the contractor**

**Article 875**

- (1) If the employer stipulates that the contractor should provide the materials for the work, either in whole or in part, he shall be liable for the quality thereof in accordance with the conditions of the contract if any, or in accordance with current practice.
- (2) If it is the employer who is bound to provide the materials for the work, the contractor must take due care of them and observe proper technical standards in his work, and return the balance of the materials to the owner, and if he makes default and the materials are destroyed, damaged or lost, he shall be liable therefor.

**Article 876**

The contractor must provide at his own expense such additional equipment and tools as are necessary to complete the work, unless there is an arrangement or custom to the contrary.

**Article 877**

The contractor must complete the work in accordance with the conditions of the contract. If it appears that he is carrying out what he has undertaken to do in a defective manner or in a manner in breach of the agreed conditions, the employer may require that the contract be terminated immediately if it is impossible to make good the work, but if it is possible to make good the work it shall be permissible for the employer to require the contractor to abide by the conditions of the contract and to repair the work within a reasonable period. If such period expires without the reparation being performed, the employer may apply to the judge for the cancellation of the contract or for leave to himself to engage another contractor to complete the work at the expense of the first contractor.

**Article 878**

The contractor shall be liable for any loss or damage resulting from his act or work whether arising through his wrongful act or default or not, but he shall not be liable if it arises out of an event which could not have been prevented.

**Article 879**

- (1) If the work of the contractor produces (a beneficial) effect on the property in question, he may retain it until the consideration due is paid, and if it is lost in his hands prior to payment of the consideration, he shall not be liable to the loss, nor shall he be entitled to the consideration.
- (2) If his work produces no (beneficial) effect on the property, he shall not have the right to retain it pending payment of the consideration, and if he does so and the property is lost, he shall be liable in the same manner as if he had misappropriated it.

**Article 880**

- (1) If the subject matter of the contract is the construction of buildings or other fixed installations, the plans for which are made by an architect, to be carried out by the contractor under his supervision, they shall both be jointly liable for a period of ten years to make compensation to the employer for any total or partial collapse of the building they have constructed or installation they have erected, and for any defect which threatens the stability or safety of the building, unless the contract specifies a longer period. The above shall apply unless the contracting parties intend that such installations should remain in place for a period of less than ten years.
- (2) The said obligation to make compensation shall remain notwithstanding that the defect or collapse arises out of a defect in the land itself or that the employer consented to the construction of the defective buildings or installations.

- (3) The period of ten years shall commence as from the time of delivery of the work.

**Article 881**

If the work of the architect is restricted to making the plans to the exclusion of supervising the execution, he shall be liable only for defects in the plans.

**Article 882**

Any agreement the purport of which is to exempt the contractor or the architect from liability, or to limit such liability, shall be void.

**Article 883**

No claim for compensation shall be heard after the expiration of three years from the collapse or the discovery of the defect.

**(2) Obligations of the employer**

**Article 884**

The employer shall be bound to take delivery of the work done when the contractor has completed it and placed it at his disposal, and if, without lawful reason, he refuses, despite being given official notice, to take delivery, and the property is destroyed or damaged in the hands of the contractor without any wrongful act or default on his part, the contractor shall not be liable.

**Article 885**

The employer shall be obliged to pay the consideration upon delivery of the property contracted for, unless there is an agreement or a custom to the contrary.

**Article 886**

- (1) If a contract is made under an itemized list on the basis of unit prices and it appears during the course of the work that it is necessary for the execution of the plan agreed substantially to exceed the quantities on the itemized list, the contractor must immediately notify the employer thereof, setting out the increased price expected, and if he does not do so he shall lose his right to recover the excess cost over and above the value of the itemized list.
- (2) If the excess required to be performed in carrying out the plan is substantial, the employer may withdraw from the contract and suspend the execution, but he must do so without delay and must pay the contractor the value of the work he has carried out, assessed in accordance with the conditions of the contract.

**Article 887**

- (1) If a muqawala contract is made on the basis of an agreed plan in consideration of a lump sum payment, the contractor may not demand any increase over the lump sum as may arise out of the execution of such plan.
- (2) If any variation or addition is made to the plan with consent of the employer, the existing agreement with the contractor must be observed in connection with such variation or addition.

**Article 888**

If the consideration for the work is not specified in a contract, the contractor shall be entitled to fair remuneration, together with the value of the materials he has provided as required by the work.

**Article 889**

- (1) If the architect who has planned the building and supervised the performance thereof has not agreed upon a fee, he shall be entitled to fair remuneration in accordance with custom.
- (2) If any unforeseen event occurs which prevents the completion of the performance of the work in accordance with the plan prepared, he shall be entitled to fair remuneration for what he has done.

**Section 3**  
**Subcontracting**

**Article 890**

- (1) A contractor may entrust the performance of the whole or part of the work to another contractor, unless he is prevented from so doing by a condition of the contract, or unless the nature of the work requires that he do it in person.
- (2) The first contractor shall remain liable as towards the employer.

**Article 891**

A sub-contractor shall have no claim against the employer for anything due to him from the first contractor, unless he has made an assignment to him against the employer.

**Section 4**

**The termination of a muqawala**

**Article 892**

A contract of muqawala shall terminate upon the completion of the work agreed or upon the cancellation of the contract by consent or by order of the court.

**Article 893**

If any cause arises preventing the performance of the contract or the completion of the performance thereof, either of the contracting parties may require that the contract be cancelled or terminated as the case may be.

**Article 894**

If the contractor commences to perform the work and then becomes incapable of completing it for a cause in which he played no part, he shall be entitled to the value of the work which he has completed and the expenses he has incurred in the performance thereof up to the amount of the benefit the employer has derived therefrom.

**Article 895**

A party injured by the cancellation may make a claim for compensation against the other party to the extent allowed by custom.

**Article 896**

- (1) A contract of muqawala shall terminate upon the death of the contractor if it is agreed that he should perform the work himself, or if his personal qualifications are a material consideration in the contract.
- (2) If the contract contains no such conditions or if the personal qualifications of the contractor were not a material consideration in the contract, the employer may require that the contract be cancelled if the contractor's heirs do not provide sufficient guarantees for the proper performance of the work.
- (3) In either event, the value of the works carried out and the expenses incurred therein shall devolve upon the estate, in accordance with the conditions of the contract and the requirements of custom.

**Part 2**  
**Contracts of employment**

**Section 1**  
**The creation and conditions thereof**

**Article 897**

- (1) A contract of employment is a contract whereby one of the parties thereto undertakes to carry out work for the benefit of the other under his supervision or management in consideration of remuneration which the other party undertakes to pay.
- (2) If the worker is not prohibited to work for another employer or if he is not restricted to a specified time in his work for the employer, he shall not be subject to any contract of employment, but shall be entitled to his remuneration in accordance with the agreement.

**Article 898**

- (1) A contract of employment may be for a specified or unspecified duration, and for a specified job.
- (2) If the contract of employment is for the duration of the life of the worker or of the employer or for a period of more than five years, it shall be permissible for the worker, upon the expiration of a period of five years, to terminate the contract without compensation, but provided that he gives six months' notice to the employer.

**Article 899**

The period of employment shall commence as of the time specified in the contract, and if no time is specified then it shall commence as from the date of the contract, unless a contrary effect is dictated by custom or the circumstances of the contract.

**Article 900**

- (1) If the contract of employment is for a specified period it shall determine immediately upon the expiration of such period, but if both parties continue to perform the contract after the expiration of the period thereof, that fact shall be deemed to constitute a renewal of the contract for an unspecified period.
- (2) If the contract of employment is for the performance of a particular job of work, it shall terminate when that job is completed. If the work is of its nature such as is repeatable, and the contract continues to be performed after the completion of the work agreed upon, the contract shall be deemed to have been impliedly renewed for the period necessary to undertake the same work again.

**Article 901**

- (1) The remuneration of a worker is the property or benefit he receives under the contract, whatever form that may take.
- (2) If the remuneration is not assessed in the contract, the worker shall be entitled to a fair remuneration in accordance with custom, and if there is no such custom, the judge shall have jurisdiction to assess the same in accordance with the requirements of justice,

**Article 902**

- (1) The following sums shall be deemed to be an integral part of the remuneration of the worker and shall be taken into account in settling his rights and in determining the amount that may be retained:
  - (a) commission payable to commercial travellers representatives, canvassers and trade agents;

- (b) percentage proportions payable to employees of businesses in respect of the price of what they sell together with any cost of living allowances paid to them and;
  - (c) any benefit given to a worker in excess of his salary, loyalty bonus or recompense in respect of increased family burdens or the like, if such sums are laid down in the individual contracts of work or the regulations of the business, or if custom provides that they should be given, in such a way that the employees of the business regard them as part of their remuneration and not a gift, but provided that such sums are of an ascertained amount prior to the retention.
- (2) Anything given by way of gift shall not be regarded as part of the remuneration save in the case of any trade or industry where there is a custom to make a gift, and there are rules whereby they may be regulated.

A gift shall be regarded as part of the remuneration if it is such as is paid by customers to employees of a single business and is collected in a common fund for the employer to distribute it thereafter among such employees, either by himself or under his supervision.

It shall be permissible in certain trades such a hotel, restaurant, café and bar trade for a worker to have no remuneration save what he is given by way of tip, and the food he receives.

#### **Article 903**

If a person performs work at the request of another without any agreement as to remuneration, he shall be entitled to a just remuneration if he is a person who (normally) works for remuneration, but otherwise he shall not be entitled to any remuneration.

#### **Article 904**

If the work contracted for is the teaching of a thing in such a way that the learner assists the teacher, and the contract does not specify which of them is entitled to remuneration from the other, then the custom of those engaged in similar activities at the place of work shall be followed.

### **Section 2**

#### **The effects of a contract of employment**

##### **(1) Obligations of the employee**

#### **Article 905**

The employee must:

- (1) perform the work himself and take the care of the reasonable man in so doing;
- (2) observe the requirements of propriety and morals in his behavior;
- (3) obey the orders of the employer relating to the performance of the agreed work in all matters which may expose him to risk, and not act contrary to the law or morals;
- (4) preserve the things entrusted to him for the performance of his work; and
- (5) keep the industrial or trade secrets of the employer, including after the termination of the contract, as required by the agreement or by custom.

#### **Article 906**

The employer shall be bound by all customs relating to the work, notwithstanding that the same may not have been stipulated in the contract.

#### **Article 907**

It shall not be permissible for the employee to do any other work during his working hours, nor may he, during the period of the contract, work for another employer, otherwise it shall be permissible for the employer, to cancel the contract or to reduce his remuneration to the extent that the worker has defaulted in working for him.

#### **Article 908**

The employee shall be liable to the employer for any shortfall, damage or loss to the property of the latter by reason of any default or wrongful act on his part.

#### **Article 909**

- (1) If the work of the employee is such as to permit him to have access to work secrets or to make acquaintance with the customers of the business, it shall be permissible for both parties to agree that it shall not be permissible for the employee to compete with the employer or to engage in an employment which competes with him after the termination of the contract.
- (2) Provided that such agreement shall not be valid unless it is limited in time, place and type of work to such extent as may be necessary to protect the lawful interests of the employer.
- (3) It shall not be permissible for the employer to rely on that agreement if he terminates the contract without any act on the part of the employee justifying that course, and likewise it shall not be permissible for him to rely on the agreement if he commits any act which justifies the employee in terminating the contract.

#### **Article 910**

If both parties agree that the employee should be liable in the event that he is in breach of his agreement not to compete, and such liability is fixed at an exorbitant amount in such a way as to compel him to remain with the employer, such a provision shall be invalid.

#### **Article 911**

- (1) If the employee makes a new invention or discovery during the course of his work, the employer shall be entitled thereto only in the following circumstances:
  - (a) if the nature of the work agreed was to achieve such an object;
  - (b) if it has been expressly agreed in the contract that he shall have the right to have the benefit of any invention made by the employee; or
  - (c) if the employee makes such an invention through the materials, appliances, installations or any other means placed at his disposal by the employer for his use in achieving such an end.
- (2) Provided that if the invention or discovery referred to in the aforementioned cases is of major economic importance, it shall be permissible for the employee to require special recompense in accordance with the requirements of justice, and regard shall be had in assessing the same to the assistance provided by the employer.

The foregoing provisions shall be without prejudice to any special laws relating to inventions and discoveries.

## **(2) Obligations of the employer**

### **Article 912**

- (1) The employer must pay the agreed remuneration to the employee when he performs his work or holds himself in exclusive readiness, notwithstanding that no work may be given to him to do.
- (2) The payment of the remuneration to the employee shall be made at the time and place specified in the contract or dictated by custom.

### **Article 913**

The employer must:

- (a) provide full safety and security at his establishment and provide all means necessary to enable the employee to carry out his obligations;
- (b) attend to the fitness of the special appliances and equipment for the work, so that they will do no harm;
- (c) observe the requirements of morals and decorum in his relationship with the employee;
- (d) give to the employee at the termination of his services a certificate of the type of work, the date of commencement and termination, the amount of his remuneration, and any other matters that may be appropriate; and
- (e) return all of the employee's papers to him.

### **Article 914**

If an employer asks another person to perform work on the basis that he will be rewarded, he shall be obliged to give him just remuneration, whether such person is one who (normally) works for remuneration or not.

### **Article 915**

An employer shall be bound to feed his employee or to clothe him if custom so requires, whether the same is made a condition of the contract or not.

### **Article 916**

If the specified period of the contract of employment expires and there are reasonable grounds for extending the period thereof, the contract shall be extended so long as may be necessary, and the employer shall be liable to pay the remuneration for the additional period.

### **Article 917**

If the period of the work is specified in the contract and the employer cancels the contract prior to the expiration of the said period without (proper) excuse or without any shortcoming in the work of the employee, he shall be obliged to pay the wage until the period is completed if the employee makes himself available for service during such period.

### **Article 918**

Both the employer and the employee must abide by their obligations as laid down by special laws, as well as their obligations as laid down in the foregoing Articles.

**Section 3**  
**Termination of the contract of employment**

**Article 919**

- (1) A contract of employment shall terminate upon the expiration of the period laid down therefor unless it is stipulated that it should be renewed, and likewise it shall terminate upon the completion of the work agreed, without prejudice to the provisions of Articles 898 and 900.
- (2) If the period is not specified by agreement or determined by the nature of the work or the purpose thereof, either of the contracting parties may terminate the contract at any time on condition that he gives notice to the other party of his intention to do so within a reasonable period prior to the termination of the contract.

**Article 920**

- (1) It shall be permissible to cancel the contract if there is a reasonable cause preventing the performance of the subject matter thereof.
- (2) It shall be permissible for either of the contracting parties in the event of an unexpected cause relating to him to require that the contract be terminated.
- (3) In either of the cases referred to above, the person requiring the cancellation shall be liable for any damage caused to the other contracting party arising out of such cancellation.

**Article 921**

The contract shall terminate upon the death of the employee, and it shall likewise terminate upon the death of the employer, if the personality of either of them was a material factor in the conclusion of the contract.

**Article 922**

- (1) No claims arising out of a contract of employment shall be heard after the expiration of one year from the date of the termination of the contract.
- (2) Such period shall not apply to claims relating to breach of confidence in relation to trade secrets.

**Article 923**

- (1) The provisions relating to hire shall apply to a contract of employment in all matters not governed by a special provision.
- (2) The provisions governing contracts of employment shall not apply to employees' subject to the Labour Law, save to the extent that they do not expressly or impliedly conflict with the special legislation relating thereto.



**Part 3**  
**Contract of agency**

**Section 1**  
**General provisions**

**Article 924**

Agency is a contract whereby the principal puts another person in the place of himself in an ascertained, permitted dealing.

**Article 925**

- (1) The following conditions must be satisfied for an agency to be valid: -
- (a) the principal has the right to deal himself in the matters which he delegates;
  - (b) the agent is not prohibited in dealing in the matter delegated to him; and
  - (c) the subject matter of the agency must be ascertained, and must be such as is capable of being performed by proxy.
- (2) An agency to appear in legal proceedings does not require the consent of the opposing party.

**Article 926**

An agency may properly be absolute (general) of restricted (special), or dependent upon a condition, or deferred to a time in the future.

**Article 927**

- (1) An agency shall be particular (special) if it is restricted to one or more specified matters, and shall be general if it includes everything which may be done by proxy.
- (2) If it is particular, the agent may carry out only those matters specified in it, and things necessarily incidental to such matters required by the nature of the dealings delegated, or by current usage.
- (3) if it is general, the agent may make contracts and transact dealings, with the exception of making gifts, for which he must obtain authority.

**Article 928**

If the agency is granted by general words with no clear indication as to the purpose of it, then the agent will only be authorized to carry out administrative acts, and to hold property.

**Article 929**

Any act which is not an administrative act or the holding of property requires the grant of a special agency specifying the kind of act and the dealings to be performed under the agency.

**Article 930**

Subsequent permission for a dealing shall be regarded as a prior grant of agency.

**Section 2**  
**The effects of agency**  
**(1) Obligations of the agent**

**Article 931**

By virtue of the contract of agency the agent shall have the power to conduct dealings within the scope of the agency and may not go beyond those limits, save as may result in a greater benefit to the principal.

**Article 932**

- (1) If the agency is gratuitous, the agent must exercise in carrying it out such care as he would in his private affairs.
- (2) If the agency is for remuneration, the agent must exercise in carrying it out the care of the reasonable man.

**Article 933**

- (1) If there is more than one agent and each of them has an independent contract he shall operate exclusively in the matter delegated, but if the principal makes it a condition that there should be no independence, then none of them may act independently and the principal shall not be bound by what any of them does independently.
- (2) If several agents are appointed in one contract without any of them being given the power to act on his own, they must act jointly unless the work is such that it cannot be done jointly with another such as legal representation, but (the person acting on his own) must consult the others appointed with him or (sic) it is a matter which does not require the exchange of views such as the collection or payment of a debt.

**Article 934**

- (1) An agent may not delegate to another person all or part of what he has been appointed to do, unless he is so permitted by the principal or authorized to act as he thinks fit, and the second agent shall be deemed to be the agent of the original principal.
- (2) if the agent is authorized to appoint others as agents without limitation, he shall be responsible as against his principal in respect of his error in appointing another or in the instructions he gives to him.
- (3) It shall be permissible for the agent under a special agency if he has more than one act to perform to appoint others to assist him, but not to act independently.

**Article 935**

Contracts involving gifts, loans, pledges, deposits, partnerships, sleeping partnerships or composition of disputes after denial made by the agent shall not be valid unless made in the name of the principal.

**Article 936**

- (1) The contract need not be made in the name of the principal if it is a contract of sale, purchase, lease, or settlement by way of acknowledgement, and if the agent does not make such contracts in the name of the principal within the limits of the agency the rights arising thereunder shall accrue to the principal, and if he makes it in his own name without disclosing that he is acting in his capacity as an agent, the rights under the contract shall vest in him.
- (2) In both cases the benefit of the contract shall enure to the principal.

#### **Article 937**

Property collected by an agent on account of the principal shall be deemed to be a deposit, and if it is lost while in his possession without any infringement or default on his part, then he shall not be liable for it.

#### **Article 938**

A person appointed as agent to receive property shall not have the right to take legal proceedings, and an agent appointed to take legal proceedings shall not have the right to receive property, save with special permission from the principal.

#### **Article 939**

In legal proceedings it shall not be permissible to appoint an attorney who is the enemy of the opposing party.

#### **Article 940**

- (1) A person entrusted with the purchase of a thing at an unspecified price may purchase it for a fair price, or with a slight cheating, in the case of things which do not have a fixed price.
- (2) If a purchase is made of things which have a fixed price, and there is a slight cheating, or if any purchase is made and there is gross cheating, the contract shall not be effective as against the principal.

[Note: "Cheating" in this context is a reference to an unfair price taken or given by one party where the other party is ignorant of that market. It does not indicate fraud].

#### **Article 941**

- (1) It shall not be permissible for an agent instructed to buy a specified thing to buy it for himself, and the purchase shall be for the principal even if he has given authorization that (the agent) may purchase it for himself.
- (2) It shall not be permissible for a purchasing agent to sell his own property to his principal.

#### **Article 942**

The purchase shall be for the agent if: -

- (a) the principal has specified the price and the agent has purchased at a higher price;
- (b) the agent has purchased at a grossly unfair price; or
- (c) he is authorized to purchase the property for himself in the presence of the principal.

#### **Article 943**

- (1) If a purchasing agent pays the price of the goods bought out of his own money, he shall have a right of recourse for it against his principal together with the reasonable amount of expenses incurred in carrying out the agency.
- (2) He may retain what he has purchased until he receives the price.

#### **Article 944**

- (1) The agent who is instructed to sell the property of his principal without the price being specified may sell it at an appropriate price.
- (2) If the principal specifies a sale price to him, he may not sell it at a lower price.

- (3) If he sells the property at a lower price without prior consent or subsequent ratification from the principal and delivers it to the purchaser, then the principal shall have the option between recovering the thing sold, and recovering the amount of the shortfall from the agent.

**Article 945**

- (1) It shall not be permissible for a selling agent to purchase for himself that which he is instructed to sell.
- (2) He may not sell it to his ascendants, descendants or spouse, or to a person out of dealing with whom he derives an advantage, or to whom he pays a premium, save at an amount greater than the fair price.

It shall be permissible to sell to such persons at a fair price if the principal has authorized him to sell to whomever he wishes.

**Article 946**

- (1) If a selling agent is not restricted to a cash sale, he may sell the property of his principal for cash or on credit in accordance with custom.
- (2) If the agent sells on credit, he may take a pledge or security from the purchaser for the goods sold on credit, notwithstanding that the principal may not have authorized him to do so.

**Article 947**

- (1) The principal shall have the right to receive the price of the goods sold from the purchaser even if he receives it in the name of the agent, and the purchaser may refuse to pay the principal, but if he does pay him, he shall be discharged.
- (2) If the agent is not being remunerated, he shall not be obliged to recover or get in the price of the thing sold, but he shall be obliged to authorize the principal to collect the price.
- (3) If the agent is being remunerated, he shall be obliged to get in the price.

**Article 948**

The agent shall be obliged to provide his principal with the necessary information as to the result achieved in the carrying out of his agency, and to provide him with an account of it.

**(2) Obligations of the principal**

**Article 949**

The principal must pay the agreed remuneration to the agent when he carries out the work, and if no remuneration has been agreed and the agent is the one who does such work for remuneration he shall be paid fairly, otherwise the agency shall be gratuitous.

**Article 950**

The principal must reimburse to the agent the reasonable expenses he has incurred in carrying out his agency.

**Article 951**

- (1) The principal shall be responsible for all of the obligations devolving upon the agent in the course of the normal carrying out of the agency.
- (2) He shall be responsible for all loss suffered by the agent by reason of the ordinary carrying out of the agency, unless it arises out of the agent's default or error.

### **Article 952**

- (1) If any person instructs another to settle his debt out of that other's own money and he does so, that shall be deemed to be an agency and the person instructed shall have a right of recourse against the person instructing him in respect of the money he has paid, whether or not the person giving the instructions has stipulated that there should be such a right.
- (2) If he instructs him to perform an act at his expense or at the expense of his relatives or family, he shall have right of recourse against him for the customary amount notwithstanding that no such recourse has been stipulated.

### **Article 953**

The provisions relating to contracting by proxy laid down in this law shall apply to the relationship between the principal and the agent with another who deals with the agent.

### **Section 3**

### **Termination of the agency**

### **Article 954**

The agency shall terminate: -

- (a) upon the completion of the work which was delegated;
- (b) upon the expiration of the time fixed for it;
- (c) upon the death of the principal or his ceasing to have legal capacity, notwithstanding that third party rights may have arisen in respect of the agency, save in the case of an agency for selling or pledging if the pledgor has deputed the relevant court official or the pledgee to sell the thing pledged upon the expiration of the period of the pledge; or
- (d) upon the death of the agent or upon his ceasing to be of legal capacity, notwithstanding that third party rights may have arisen in respect of the agency. However, an heir or guardian must, if he knows of the agency and is of full capacity, notify the principal of the death and take such steps as the circumstances require in the principal's interests.

### **Article 955**

The agent may dismiss or restrict (the powers of) the agent if he wishes, unless third party rights have arisen in respect of the agency or if the agency has been created for the benefit of the agent, in which case the principal may not terminate or restrict it without the consent of the person for whose benefit it was created.

### **Article 956**

The principal must indemnify the agent against any loss suffered by him arising out of his being dismissed at an inappropriate time or without acceptable justification.

### **Article 957**

The agent may dismiss himself from the agency if no third party rights have arisen in respect thereof. He must so notify his principal and must continue any work he has begun until it reaches a stage at which there is no fear that the principal will be prejudiced.

### **Article 958**

- (1) The agent must give an indemnity for any damage to the principal arising out of his abandoning the agency at an inappropriate time or without justification, if the agency was for remuneration.

- (2) If there are third party rights subsisting in respect of the agency, the agent must do that which he was instructed to do unless there are serious reasons justifying the abandonment. He must in that event notify the person having the right and defer (the abandonment) to such time as will enable him to protect his interests.

**Article 959**

The agent for legal proceedings shall be dismissed if he makes an admission against his principal otherwise than before the court, and he shall likewise be dismissed if his agency does not entitle him to make such admission and he does in fact make it either before the court or elsewhere.

**Article 960**

If an agent for legal proceedings acts in that which he was instructed to do after learning of his dismissal, he shall be bound to indemnify (in respect of the results), and if he acts therein before learning of his dismissal his acts shall be valid.

**Article 961**

An agent of an agent shall be dismissed upon the death or bankruptcy of the original principal or upon his being dismissed by the principal or the (intermediate) agent, but he shall not be dismissed as a result of the death or dismissal of the intermediate agent.

**Part 4**  
**Contracts of bailment**

**Section 1**  
**General provisions**

**Article 962**

- (1) Bailment is a contract whereby the bailor authorizes another person to take care of his property and whereby that other person is obliged to take care of the property and to return the thing itself.
- (2) The subject of the bailment is the property deposited with a bailee for safekeeping.

**Article 963**

In order for the contract to be valid, the thing bailed must be property which is capable of being possessed.

**Article 964**

Bailment shall be effected by actual or constructive taking possession of the thing bailed.

**Article 965**

The bailee may not require any remuneration for the safekeeping of the property bailed or rent for the place in which it is kept unless it is so stipulated upon the bailment being made, or there is a special custom in that regard.

**Section 2**  
**The effects of the contract**

**(1) Obligations of the bailee**

**Article 966**

The property bailed shall be held in trust by the bailee, and he shall be liable for it if it perishes through his wrongful act or default in the safekeeping thereof, unless a contrary agreement is made.

**Article 967**

- (1) The bailee must, in the safekeeping of the property bailed, take the care of the reasonable man in and about the safekeeping of his own property, and he must place it in a place of safety appropriate to such property.
- (2) He may keep it himself, or entrust the safekeeping to a person of such reliability as he would entrust his own property to him.

**Article 968**

- (1) The bailee may not bail the property bailed to another person without the consent of the bailor unless he is compelled to do so, and he must recover the property after the cause of such compulsion has ceased.
- (2) If he deposits the property with another person with the consent of the bailor, the latter shall assume the obligations of the first bailee and shall become the bailee.

**Article 969**

The bailee may not use the property bailed or create any third party right over it without the consent of the bailor, and if he does so and the thing is damaged or the value thereof is diminished, he shall be liable therefor.

#### **Article 970**

If the bailee travels with the property bailed without the consent of the bailor in circumstances where it was possible for him to bail it with a trustworthy person and the goods are lost or damaged during the journey, he shall be liable for them, and if he travels with the property because there was no trustworthy person with whom he could leave it, and the property is lost or damaged without any wrongful act on his part, he shall not be liable for it, and if he returns it in good condition to the place where the bailment was made after the journey and it is thereafter lost or damaged without any wrongful act on his part, he shall not be liable.

#### **Article 971**

- (1) If the bailee lends or trades in the property bailed without the consent of the bailor, he shall be liable for it and his liability shall not be discharged save by returning like property to the place at which the bailment was made if it is a fungible, or by returning the value thereof to the bailor, and not at the place of bailment if it is a non-fungible, and any profit shall belong to the bailee in the event that he has traded with it.
- (2) If he lends or trades in it with the consent of the bailor, then the property shall change its status from being bailed to being a debt owed by the bailee, and he shall not be discharged from it save by returning similar property if it is fungible or the value thereof if it is non-fungible to the bailor, and not to the place at which the bailment was made.
- (3) If he lends or trades in part of the property bailed, he shall be liable as aforesaid in accordance with the circumstances, and the remainder of the property shall retain its status as property bailed.

#### **Article 972**

- (1) The bailee must return the property bailed and deliver it to the bailor on demand at the place where the bailment was made unless the contract contains a condition to the benefit of both or either of the parties, in which event such condition must be observed.
- (2) If the property bailed perishes or suffers a diminution in value without any wrongful act or default on the part of the bailee, he must make good to the bailor such liability as he has come under, and must assign to him any third party rights that may have arisen by reason thereof.

#### **Article 973: -**

The bailee must return the profits and yields of the thing bailed to the bailor.

#### **Article 974**

If the property bailed is damaged in the hands of the bailee through his fault, he shall be liable therefor.

#### **Article 975**

- (1) If the bailee mixes the property bailed with something else from which it is impossible to distinguish it and the other goods are not similar to the goods bailed in type or description, he shall be liable therefor as soon as it becomes mixed, but if it is not impossible to distinguish it or if the mixture is with goods of a similar type and description, he shall not be liable therefor.
- (2) In that event, if part of the mixed goods is destroyed, they shall be divided between the two parties in the proportion owned by each of them until the good has become separated from the damaged, and the loss shall be borne by the owners (in their respective proportions).



#### **Article 976**

If the property bailed is lost or stolen from the bailee by reason of his failure in the manner of safekeeping either agreed upon or dictated by custom for the safekeeping of such property or by his forgetting it in the place where he has left it or if he has gone somewhere with it notwithstanding that it was possible for him to place it in his house or with a trustworthy person prior to going to such other place, he shall in all circumstances be liable.

#### **Article 977**

- (1) If the bailee goes with the property bailed to return it to the bailor or if he sends it to him without his consent, then in either event if it is lost or damaged in his hands or in the hands of the messenger while on the way he shall be liable for it.
- (2) If they are in dispute as to whether permission had been given or not, the evidence of the bailor or his oath shall be preferred.

#### **Article 978**

- (1) If the bailee alleges that the property bailed was lost or damaged without any wrongful act on his part, that allegation shall be believed but the bailor shall have the right to demand that he take the oath as to what he has alleged if he accuses him of lying or if he attributes lying to him, and if he refuses to take the oath in the event of an accusation of lying, he shall become liable for the property bailed as soon as he so refuses, and the bailor may not be compelled to take the oath in return, and if the bailee refuses to take the oath if it is alleged that he is lying he shall not be liable until after the bailor takes the oath in return and makes a sworn statement as to the lie.
- (2) If the bailor (sic) stipulates at the time the bailment is made that he shall not be obliged to take the oath in an action for loss or damage, such stipulation shall not be valid.

#### **Article 979**

If the bailee denies (knowledge of) the property bailed when it is demanded from him and the bailor produces evidence of the bailment and makes a claim for the return of the property, and the bailee alleges that he has returned it to him or that it was damaged without any wrongful act on his part, he shall be liable for it and no evidence that it has been returned or damaged shall be accepted from him.

#### **Article 980**

If there are several bailees and the property bailed is indivisible, it shall be permissible for it to be kept with one of them with the consent of the rest or kept alternately by each of them, and if it is divisible it shall be permissible to divide it between them, for each to keep his portion.

#### **Article 981**

If the bailor goes missing and cannot be found, the bailee must safeguard the property bailed until it is ascertained whether the bailor is alive or dead, and if the property bailed is such as will perish by the passage of time, he must make an application to the judge for the sale thereof and must keep the price in trust with the court treasury.

#### **Article 982**

- (1) If two people bail property owned in common between them with another person and one of those two persons demands the return of his portion in the absence of the other, he must return it if the property is fungible, and must refuse to return it if the property is non-fungible, unless the other of the two agrees.
- (2) If the property bailed is the subject of a dispute between the two bailors, he may not return the property to either of them without the consent of the other or without the order of the court.

#### **Article 983**

- (1) If the bailee dies and the actual property bailed is found in his estate, it shall be held in trust in the hands of the heir, and he must return it to the owner.
- (2) If the actual property bailed is not found, there shall be no liability on the estate:
  - (a) if the heir proves that the bailee has made a declaration as to what has happened to the property bailed, such as that it has been returned, or was lost or destroyed while in his hands without any wrongful act or default on his part; or
  - (b) if the heir knows the property and can identify it, and shows that it was lost or destroyed after the death of the legator without any wrongful act or default on his part.
- (3) If the bailee dies and it is not known what has happened to the property bailed and it is not found in his estate, the property shall constitute a liability as against the estate, and the owner shall rank with the ordinary creditors.

#### **Article 984**

- (1) If the bailee dies and his heir sells the property bailed and delivers it to the purchaser and it is lost, the owner of the property shall have the election to hold either the seller or the purchaser liable for the value thereof as at the date of the sale if it is a non-fungible, or for similar property if it is fungible.
- (2) If the property bailed is still in existence in the hands of the purchaser, the owner shall have the option as he wishes either to retrieve it and reject the sale, or to affirm the sale and receive the price thereof.

#### **Article 985**

If there is found in the estate of the deceased property on which it is written in the hand of the deceased or of the bailor that it is property bailed and is owned by the bailor, and the amount thereof is specified and it is found to be short of that amount, the shortfall shall be recoverable from the estate of the deceased if it is known that he has disposed of (part of) the property bailed.

#### **(2) Obligations of the bailor**

#### **Article 986**

The bailor must pay the agreed remuneration if the bailment was for reward.

#### **Article 987**

- (1) The bailor must reimburse to the bailee such monies as have been expended in the safekeeping of the property bailed with the permission of the bailor.
- (2) If the bailor is absent, the bailee may raise the matter before the judge for such order to be made if the judge thinks fit.

#### **Article 988**

- (1) If the bailee expends money on the property bailed without the consent of the bailor or the judge, that shall be regarded as a gift.
- (2) Save that the bailee may in compelling or urgent circumstances expend money on the property bailed to a generally acceptable amount and shall have a recourse against the bailor for monies he has expended out of his own pocket.

#### **Article 989**

- (1) The bailor must bear the expenses of the return of the property bailed, and the costs of delivery.
- (2) He shall be liable to the bailee for any damage the latter may have suffered by reason of the property bailed, unless arising out of any wrongful act or default on his part.

#### **Article 990**

If there is a third party right over the goods bailed and the bailee satisfies that right, he shall have a right of recourse against the bailor in respect thereof.

#### **Article 991**

If the bailor dies, the property bailed shall be delivered to his heir unless his estate is insolvent, in which event the property may not be delivered without the consent of the judge.

### **Section 3**

#### **Provisions relating to certain types of bailment**

#### **Article 992**

If the property bailed is a sum of money or a thing which can be destroyed by use and the bailor permits the bailee to use it, it shall be regarded as a contract of loan.

#### **Article 993**

The deposit of property belonging to guests at hotels or the like shall be deemed to be accompanied by a provision of liability, and the owners of such establishments shall be liable for any loss or damage occurring therein.

- (2) With regard to valuables, money or valuable securities, there shall be no liability in respect thereof in the absence of any wrongful act or default, unless the owners of the said establishments agree to preserve them with knowledge of their value or unless they refuse without justification to hold them in safekeeping or if they or those working under them have been instrumental through their own gross default in the loss suffered, and in that event they shall be liable up to a generally accepted extent.

#### **Article 994**

- (1) Guests at hotels or the like must notify the owners of any loss or theft from them before they leave the establishment.
- (2) No claim of liability for loss or theft shall be heard after the expiration of six months from the date the guest leaves.

#### **Article 995**

- (1) Either the bailor or the bailee may terminate the contract when he wishes, but provided that such termination must not be at an inappropriate time.
- (2) If the bailment is for reward, neither of the parties shall have the right to terminate it prior to the due date, but the bailor may require the return of the property bailed at any time if he pays the full balance of the consideration due, and there is no stipulation preventing him from so doing.

#### **Article 996**

- (1) If the bailee becomes insane without hope of cure or recovery and the bailor proves the bailment to the guardian or protector and the specific property is found, it shall be returned to the owner, but if it is not found then the bailor shall recover compensation out of the property of the insane person, on condition that he furnishes suitable security.
- (2) If the bailee recovers from his insanity and he alleges that the property bailed has been returned or destroyed without any wrongful act or default on his part, he shall be believed upon his oath and any property taken in lieu of the property bailed shall be recovered from the bailor or his surety.

### **Part 5**

#### **Custodianship (stakeholders)**

##### **Section 1**

##### **General provisions**

#### **Article 997**

Custodianship is a contract whereby two parties in dispute entrust property to another for him to safeguard and manage it on condition that he returns it together with any yield therefrom to the person whose right thereto is established.

#### **Article 998**

If the contracting parties agree to place the property in the hands of two or more persons, it shall not be permissible for any one of them acting individually to keep it or to dispose of the yield thereof without the consent of the remaining persons.

#### **Article 999**

Either of the parties to a dispute over property may, in the absence of agreement, make an application to the judge in order to avert an imminent risk or in reliance on a just cause to appoint a guardian to take delivery of such property to safeguard and manage it, and for him to be entrusted with the exercise of any right which the judge regards as being in the interests of both parties.

#### **Article 1000**

Judicial custodianship over waqf property shall be permissible in the following circumstances if it becomes apparent of the custodianship is a necessary step for the preservation of the rights of the persons concerned:

- (1) if the office of trustee is vacant or if there is a dispute between the trustees or a trustee and an overseer as to the waqf property, and an action has been brought for the dismissal of the trustee, and in such cases the custodianship shall cease if a trustee is appointed over the waqf property, whether provisionally or finally;
- (2) if the waqf is in debt; or
- (3) if the person entitled is bankrupt and it appears that custodianship is necessary to preserve the rights of the creditors, in which event the custodianship shall be over his portion (alone) unless it is impossible to separate such portion, in which event the custodianship shall be over the whole of the waqf property.

### **Article 1001**

If the parties to the dispute do not agree upon the person of the custodian, such person shall be appointed by the court.

### **Section 2**

### **Obligations and rights of the stakeholders**

### **Article 1002**

Property in the hands of the custodian shall be held by him in trust, and he may not in the exercise of his duties exceed the limit laid down for him, otherwise he will be liable.

### **Article 1003**

The agreement or the order of the court creating the custodianship shall specify the rights, obligations and powers of the custodian, failing which the provisions governing bailment and agency shall apply to the extent that they do not conflict with the nature of custodianship and the provisions of this Part.

### **Article 1004**

The custodian must preserve the property entrusted to him, and attend to the management thereof, and must, in so doing, exercise the care of the reasonable man.

### **Article 1005**

The custodian may not, otherwise than in the course of safeguarding or administering the property, make any disposition there over save with the consent of the parties to the dispute or by leave of the court, unless there is a compelling necessity giving rise to a fear that the produce or moveable property may be damaged or destroyed.

### **Article 1006**

The custodian shall be bound to provide the persons concerned with the necessary information concerning the execution of his function, and he must give an account thereof at the times and in the manner agreed by the parties or ordered by the court.

### **Article 1007**

A custodian shall be entitled to proper recompense for the monies he has expended in the performance of his duties.

### **Article 1008**

If the custodian stipulates that he should be entitled to remuneration for carrying out his work, notwithstanding that he has not fixed the exact sum, and he is a person of a type who works for remuneration, he shall be entitled to just remuneration.

### **Article 1009**

The custodian may discharge himself of his functions when he wishes, provided that he gives notice to the parties concerned and continues to carry out the work he has commenced until it reaches a stage where his ceasing will not cause any prejudice to the parties to the dispute.

### **Article 1010**

If the custodian dies or becomes incapable of carrying out the duties entrusted to him, or if a dispute arises between him and any of the parties concerned and the two parties do not agree to elect a substitute for him, the court may appoint a custodian appointed by it upon the application of one of the parties, in order to continue to carry out the task.

**Section 3**  
**Termination or the custodianship**

**Article 1011**

Custodianship shall determine upon the completion of the work, the agreement of the persons concerned, or by or der of the court, and the custodian must then take steps to return the property entrusted to him to such person as the persons concerned may agree, or to the person appointed by the court.

**CHAPTER IV**  
**Contracts of hazard (gharar)**

**Part 1 Betting**  
**and gambling**

**Article 1012**

A competition (for reward) is a contract whereby a person is obliged to pay a sum of money or gives some other thing by way of agreed recompense to a person who succeeds in achieving the object specified in the contract.

**Article 1013**

Competitions with prizes shall be permissible in running, shooting, sports, or preparation for trials of strength.

**Article 1014**

The following conditions must be satisfied for a contract of competition to be valid:

- (a) the prize must be known and the person who is obliged to give it must be specified in person; and
- (b) the description of the subject matter of the contract must be sufficient for the avoidance of uncertainty, as in a race, where the distance between the start and the finish must be specified, and, in the case of a shooting match, the number of shots and the winning hit must be defined.

**Article 1015**

The prize may be specified property, or a debt which is immediately payable or deferred, or partly payable immediately and partly deferred.

**Article 1016**

If a race takes place for a prize, the race shall be a contract immediately binding on the participants, and neither of them may dissolve such contract save by mutual consent.

**Article 1017**

If the competition is between two persons or groups, the prize may be provided by one of them or by a third party, and each team shall be regarded as a single person so far as concerns the obligation to provide the prize.

**Article 1018**

If the competition is between two persons or teams and it is desired to allocate some of the prize to a person other than a participant, the share of such person must be less than the share going to the participant.

**Article 1019**

If the prize is provided by one of the participants or by another person with the condition that it should go to the winner, that shall be permissible, but if it is stipulated that the winner should have the stake prior to the other, that is not permissible because the contract would then be one of gambling.

**Article 1020**

If the arrow of one of the contestants strikes an obstacle in its passage to the target, or if his horse or camel is struck on the face or if his whip with which he is spurring the animal is wrested from his grasp, and the horse or camel is slowed down, he shall not be deemed in those circumstances to have been beaten, but if he forgets his whip before mounting or if it falls from his hand and the speed of his mount is thereby reduced, he shall be regarded as having been beaten.

**Article 1021**

- (1) Any contract of gambling or for a prohibited competition shall be void.
- (2) Whoever loses a bet or a prohibited competition may recover what he has paid within a period of six months commencing from the time at which he paid over what he lost, notwithstanding that there may be an agreement to the contrary, and he may prove his claim by all proper means.

**Part 2**  
**Payments for life**

**Article 1022**

- (1) It shall be permissible for a person to undertake to another to pay him a periodical income so long as he lives, without consideration.
- (2) If the obligation relates to teaching, medical treatment or an agreement, it must be performed in accordance with custom, unless the obligation contains a contrary stipulation.
- (3) The contract must be written in order to be valid.

**Article 1023**

- (1) It shall be permissible for the obligation to pay the income to be for the life of the obligor or the obligee or of another person.
- (2) If the obligation is silent on the point, it shall be deemed to extend for the life of the obligor, unless a contrary agreement is made.

**Article 1024**

If the obligor does not comply with his obligation, the other party may require that the contract be enforced.

**Article 1025**

If the income is stipulated to be for the life of the promisor and the promisor dies before the obligee and the due time for payment of the periodical income has not yet arrived, the obligee shall receive a pro rata part of the income for the period which had expired as at the death of the promisor, within the customary limits, and he shall have recourse against the estate in the same manner as for a bequest in the absence of a contrary agreement.



**Part 3**  
**Contracts of insurance**

**Section 1**  
**General provisions**

**Article 1026**

- (1) Insurance is a contract whereby the assured and the insurer cooperate in facing the insured risks or events, and whereby the assured pays to the insurer a specified sum or periodical instalments, and if the risk or the event set out in the contract materializes, the insurer pays to the assured or the person stipulated as the beneficiary a sum of money or a regular income or any other pecuniary right.
- (2) The law shall lay down provisions governing those bodies which may carry on insurance business and matters relating to their legal form, the manner of their establishment, the manner in which they carry on their business, and supervision thereof, in such a manner as to achieve the cooperative aims of insurance, and the definitive laws and basic principles shall not conflict with the Islamic Sharia.
- (3) If the law referred to in foregoing paragraph is not passed, the rules and customs currently in force shall remain so with regard to insurance and the bodies which carry on the business of insurance.

**Article 1027**

Without prejudice to the provisions of the foregoing Article, it shall be permissible to effect insurance against risks arising out of personal accidents, accidents at work, theft, breach of trust, insurance for vehicles, civil liability, and all events which by custom and the special laws may be insured against.

**Article 1028**

- (1) Any of the following provisions appearing in a policy of insurance shall be void:
  - (a) any provision which provides that the right to insurance shall lapse by reason of a breach of the law, unless the breach involves a felony or a deliberate misdemeanor;
  - (b) a provision whereby the right of the assured shall lapse by reason of his delay in giving notice of the incident insured against to the parties which should be notified or to provide documents in the event that it appears that there is a reasonable excuse for the delay;
  - (c) any printed clause not shown conspicuously, if it relates to any circumstance leading to the avoidance of the contract or the lapse of the right of the assured;
  - (d) an arbitration clause unless contained in a special agreement separate from the general printed conditions in the policy of insurance; and
  - (e) any arbitrary clause breach of which it appears would have no effect on the occurrence of the incident insured against.

**Article 1029**

- (1) It shall be permissible for the insurer to be exempted from liability if the beneficiary has paid an indemnity to the injured party without the consent of the insurer.
- (2) It shall not be permissible to rely on such agreement if it is shown that the payment of the indemnity was made for the benefit of the insurer.

**Article 1030**

It shall be permissible for the insurer to take the place of the assured in respect of any indemnity paid to him for loss, in bringing the claim of the assured against the person who caused the loss out of which the liability of the insurer arose, unless the person who caused the loss was an ascendant or descendant of the assured, or his spouse, or somebody living in one household with him, or a person for whose acts the assured is responsible.

### **Article 1031**

Special provisions governing various contracts of insurance not contained in this law shall be dealt with by special laws.

## **Section 2**

### **Effects of the contract (1)** **Obligations of the assured**

#### **Article 1032**

The assured shall be obliged as follows:

- (a) to pay the sums agreed at the time stipulated in the contract;
- (b) to declare, at the time the contract is made, all information knowledge of which is of concern to the insurer to estimate the risk which he is assuming;
- (c) to notify the insurer of any matters occurring during the period of the contract which lead to such risks being increased.

#### **Article 1033**

- (1) If the assured acting in bad faith conceals any matter or provides incorrect information such as to lessen the degree of the risk insured against, or to vary the subject matter thereof, or if he fraudulently fails to discharge any obligation he has undertaken, the insurer may require that the contract be cancelled, and he shall be entitled to keep any instalments which fell due prior to such requirement.
- (2) If fraud or bad faith is disproved, then the insurer must, when he requires that the contract be cancelled, return to the assured the premiums he has paid, or return such part thereof in respect of which the insurer was not on risk.

### **(2) Obligations of the insurer**

#### **Article 1034**

The insurer must pay the indemnity or the sum due to the assured or the beneficiary in the manner agreed upon, when the risk materializes or when the time specified in the contract comes.

#### **Article 1035**

The obligation of an insurer under an insurance against civil liability shall only become effective when the injured party makes a claim against the beneficiary after the occurrence of the incident out of which such liability arose.

#### **Article 1036**

- (1) Claims arising out of contracts of insurance shall not be heard after the expiration of three years from the occurrence of the incident out of which the claim arose, or from the person concerned having knowledge of the occurrence thereof.
- (2) That time limit shall, in the event of the assured concealing particulars relating to the risk assured or providing false particulars, only begin to run as from the date the insurer had knowledge thereof.

**Section 3**  
**Special provisions relating to certain types of insurance**

**(1) Fire insurance**

**Article 1037**

An insurer under a fire insurance shall have the following liabilities:

- (a) for damage arising out of the fire notwithstanding that the fire arose out of earthquake, storm, winds, hurricane, household explosions and disturbances caused by the falling of flying objects and other flying craft, and all matters which are customarily regarded as falling within that type of insurance;
- (b) for damage which is the direct and certain result of the fire;
- (c) for damage sustained by the property insured through steps taken in the course of rescue to prevent the spread of the fire; and
- (d) for loss or disappearance of property insured during the fire, unless it is proved that that was the result of theft.

**Article 1038**

An insurer shall be liable for fire damage arising through the error of the assured or the beneficiary.

**Article 1039**

An insurer shall not be liable for damage deliberately or fraudulently caused by the assured or the beneficiary, notwithstanding any agreement to the contrary.

**Article 1040**

An insurer shall be liable for fire damage caused by those working under the assured, whatever may be the nature of their default.

**Article 1041**

The insurer shall be liable for damage arising out of the fire, notwithstanding that such fire arose out of a defect in the property insured.

**Article 1042**

- (1) Any person who insures property or an interest with more than one insurer must notify all of them of the other contracts of insurance, the amount of each of them, and the names of the other insurers.
- (2) If there are several insurers, the amount of the insurance must not exceed the value of the property or interest insured.

**Article 1043**

If insurance is placed over property or an interest with more than one insurer in sums exceeding in the aggregate the value of the property or interest insured, each of the insurers shall be bound to pay a part equivalent to the proportion of the sum insured to the total of the contracts of insurance, without the amount payable to the assured exceeding the value of the fire damage.

**Article 1044**

Fire insurance placed over the moveable property of the assured as a whole which at the time of the fire is in places occupied by him, shall also cover property owned by the members of his family and persons working in his service if they are living with him in one household.

#### **Article 1045**

- (1) If the property insured is encumbered by a mortgage or other security in rem, such rights shall attach to the insurance money due to the assured under the policy of the insurance.
- (2) If such rights are registered or have been notified to the insurer by registered letter, it shall not be permissible for him to pay the money he owes to the assured, save by the consent of those obligees.

#### **(2) Life Insurance**

#### **Article 1046**

The insurer under a policy of life insurance must pay to the assured or the beneficiary the sums agreed upon the occurrence of the insured event or at the time stipulated in the contract, without the need for proof of any loss suffered by the assured or the beneficiary.

#### **Article 1047**

In order for there to be a valid life insurance for the life of another, he must consent thereto in writing prior to the placing of the insurance, and if he is not of legal capacity, then the insurance shall be valid only upon the consent of his legal representative.

#### **Article 1048**

- (1) The insurer shall not be obliged to pay the amount of the insurance if the assured has committed suicide, and he must return to the beneficiary a sum equivalent to the reserve value of the insurance unless the beneficiary proves that the purpose of the suicide was not to obtain the insurance money, and in that event the premiums must be repaid, with a deduction for proper expenses.
- (2) If the suicide occurs without choice or unconsciously or through any other cause leading to loss of free choice, the insurer shall be bound to pay the full sum insured, and the beneficiary must prove that the life assured was not in possession of free choice at the time of the suicide.

#### **Article 1049**

- (1) The insurer shall be discharged of his obligation in the case of insurance over the life of another where the assured has deliberately caused the death of a third person or if the death has been incited by the assured.
- (2) If the insurance is in favor of a person other than the assured and such person deliberately causes his death or if the death takes place at his instigation, he shall be deprived of the benefit of the insurance money. If the event is a mere attempt to cause death, the assured shall have the right to substitute an alternative beneficiary.

#### **Article 1050**

- (1) The assured may stipulate that the insurance money be paid to person specified in the contract or to such persons as he may thereafter specify.
- (2) If the insurance is in favor of the spouse, children, descendants or heirs of the assured, the insurance money shall be payable to any person who proves that he falls within that description at the time of the death of the assured, and if the heirs are the beneficiaries, the insurance money shall be divided between them in accordance with their lawful portions in the estate.

#### **Article 1051**

An assured who is bound to pay periodical premiums may terminate the contract at any time provided that he notifies the insurer of his intention in writing, and he shall be released of the obligation to pay subsequent premiums.

**Article 1052**

- (1) Any erroneous information as to the age of the life assured or an error therein shall not result in the policy of insurance becoming void, unless the true age of the assured exceeds the limit laid down in the insurance policy.
- (2) If the effect of the erroneous information or the mistake is such that a lesser premium has been paid than should have been paid, the insurance must be reduced to the proportion which the agreed premium bears to the premium which should have been paid on the basis of the true age.
- (3) If the agreed premium is greater than would have been payable on the basis of the true age of the life assured, the insurer must return the excess which has been paid for him and reduce the subsequent premiums to a level appropriate to the true age.

**Article 1053**

If a life insurer pays the amount of the insurance, he shall not have the right to become subrogated to the rights of the assured or the beneficiary with regard to the person who caused or was responsible for the insured event.

**Article 1054**

The insurance money receivable by the assured or the beneficiary at the end of the period agreed in the contract must not contain any usurious interests.

**Article 1055**

The sums agreed to be payable on the death of the assured shall not be included in his estate.

**CHAPTER V**  
**Contracts of personal guarantee**

**Part 1**  
**Suretyship**

**Section 1**  
**Elements of suretyship**

**Article 1056**

Suretyship is the joining of the liability of a person called the surety with the liability of the obligor in the performance of his obligations.

**Article 1057**

- (1) Suretyship may arise through use of that word, or words indicating a guarantee.
- (2) For a suretyship to arise and to be effective it is sufficient for the surety to make the offer, unless the obligee rejects it.

**Article 1058**

It is a prerequisite of a suretyship arising that the surety should be competent to make gifts.

**Article 1059**

The suretyship shall be void if the surety makes a condition in his own favor that he should have the option to make it conditional.

**Article 1060**

It is valid for a suretyship to be accomplished, or restricted by a valid condition, or dependent upon an appropriate condition or for it only to become operative in the future or for a limited period.

**Article 1061**

In order for the suretyship to be valid, the principal debtor must be indebted to the obligee in respect of a debt or property or a known person, and it should be within the capacity of the surety to discharge the obligation.

**Article 1062**

Suretyship in respect of the expenses of a wife or relatives shall be valid, notwithstanding that there has been no judgment or agreement thereon.

**Article 1063**

The suretyship of the agent of the seller to a purchaser in respect of the payment of the price at which he was appointed to sell the property is invalid, and there shall be no suretyship on the part of a guardian with regard to the price at which he sells the property of the infant, nor shall there be any suretyship of a trustee for the price for which he has sold waqf property.

**Article 1064**

- (1) Suretyship for a person suffering from a terminal illness shall not be valid if the debtor owes a debt greater than the amount of his property.
- (2) Suretyship shall be valid if the debt is not greater than the amount of the property, and the provisions relating to wills shall apply thereto.

**Article 1065**

Suretyship conditional on the discharge of the principal obligor is an assignment. An assignment which provides that the assignor should not be discharged is a suretyship.

### **Article 1066**

The surety under suretyship subject to a suspensive condition or a deferred suretyship may revoke the suretyship before the obligation becomes actual.

### **Article 1067**

The suretyship shall cover the incidentals of the debt and costs of claiming, unless the contrary has been agreed.

## **Section 2**

### **Certain types of suretyship**

#### **(1) Securing the attendance of a person**

### **Article 1068**

- (1) Surety for the person obliges the guarantor to produce the person guaranteed at the time stipulated at the request of the beneficiary of the guarantee, and if he does not do so it shall be permissible for the judge to impose an exemplary fine, but it shall be permissible for him to exempt him if he proves that he was unable to secure the attendance of the person guaranteed.
- (2) If the surety for a person has undertaken to pay a specified sum by way of a penalty clause in the event that he does not secure the attendance of the person guaranteed, he shall be bound to pay that sum, and the judge may exempt him from it either in whole or in part if it appears that that course is justified.

### **Article 1069**

If the surety undertakes to pay the debt upon his failure to deliver the person guaranteed, he must pay it if he fails to deliver up the person.

### **Article 1070**

- (1) A surety for a person shall be released if he delivers the person guaranteed to the beneficiary, or if he performs that for which he stood surety.
- (2) He shall likewise be released upon the death of the person guaranteed, but shall not be released upon the death of the obligee beneficiary, whose heirs shall have the right to require the surety to deliver up the person guaranteed at the time specified.

### **Article 1071**

The person guaranteed must be delivered at the place specified by the surety, and if no place is specified then he shall be delivered up at the place where the contract was made.

### **Article 1072**

If the surety has paid what is due by virtue of the absence of the person guaranteed and it is impossible to secure his attendance and it is then proved that the person guaranteed died before the payment was made, the surety shall recover what he has paid.

### **Article 1073**

If it does not appear from the contract of guarantee that it is a guarantee for property or guarantee for a person and there is no circumstantial evidence either way, it shall be presumed to be a guarantee for property, and if the surety claims that the intention was that it should be a surety for a person and the obligee claims that the intention was that it was a surety for property, the evidence of the guarantor or his oath shall be preferred.

### **Article 1074**

A husband may revoke a surety for the person if it was issued by his wife without his consent notwithstanding that the debt secured is less than one-third of her property.

## **(2) Darak Suretyship (guarantee to give indemnity if goods sold are owned by a third party)**

### **Article 1075**

A darak suretyship is a suretyship to pay the price of property sold if there are third party rights subsisting in that property.

### **Article 1076**

No claim shall be made against the surety of a seller by way of darak, unless judgment is given that a third party right subsists in the thing sold and the seller is ordered to return the price.

## **Section 3** **Effects of suretyship**

### **(1) Between the surety and the obligee**

#### **Article 1077**

- (1) The surety must discharge his obligation when the time falls due.
- (2) If the obligation is conditional, it must be discharged when the condition is fulfilled.

#### **Article 1078**

- (1) The obligee may claim against the principal obligor or the surety, or may claim against them both.
- (2) If the surety has a surety the obligee may claim against the either of them as he wishes.
- (3) Provided that if he makes a claim against one of them, his right to claim against the other shall not lapse.

#### **Article 1079**

It shall be permissible for the suretyship to be conditional upon the discharge of the debt out of the property of the obligor deposited with the surety, on the condition that obligee agrees thereto.

#### **Article 1080**

If the suretyship is unqualified, the obligation of the surety shall follow the obligation of the principal obligor, whether immediate or deferred.

#### **Article 1081**

If one of them guarantees an immediate debt by way of deferred suretyship, the debt as against both the surety and the principal obligor shall be deferred, unless the surety stipulates that the deferment shall apply to himself alone or the obligee stipulates that the debt should be deferred with regard to the surety only. In that event the debt shall not be regarded as deferred with regard to the principal obligor.

#### **Article 1082**

If a debt is secured by a security in rem prior to the suretyship arising, and the surety has made it a condition that recourse should be had against the principal obligor first, it shall not be permissible to execute against the property of the surety prior to executing against the property standing as security for the debt.

#### **Article 1083**

It shall be permissible for the surety of a surety to make it a condition that the obligee should have recourse against the other surety first. If the surety or the obligor dies before a deferred debt falls due, the debt shall be recoverable out to the estate of the deceased.



#### **Article 1084**

If the surety or the debtor dies before a deferred debt falls due, the debt shall be payable out of the estate of the deceased.

#### **Article 1085**

If there are several sureties for one debt it shall be permissible to make a claim against each of them for the whole debt, unless they have all become sureties under one contract which does not provide that they should be jointly liable, and no claim may be made against any of them save in respect of the amount of his share.

#### **Article 1086**

If the sureties are jointly liable as between themselves and one of them discharges the debt upon its falling due, he shall have the right to have recourse against all of the remaining sureties for his share of the debt and his share in the proportion of any one of them who is bankrupt.

#### **Article 1087**

Any suretyship imposed by a provision in the law or by an order of the court shall, upon becoming unqualified, have the effect of the sureties being jointly liable.

#### **Article 1088**

If the creditor receives satisfaction of his debt by (accepting) another thing, the principal obligor and the surety shall both be discharged unless third party rights subsist in that thing.

#### **Article 1089**

If his debtor becomes bankrupt, the creditor must prove for his debt in the bankruptcy, otherwise his right of recourse against the surety shall lapse to the extent of the loss sustained by his not having so done.

#### **Article 1090**

- (1) The surety shall not have any right of recourse against the principal obligor in respect of any obligation which he has discharged on his behalf, unless the suretyship arose at the request or with the consent of the principal obligor, and the surety has discharged the obligation.
- (2) He shall not have any right of recourse of early payment of a deferred debt until such time as the debt would have fallen due.

#### **Article 1091**

- (1) The obligee must deliver to the surety upon discharge by him of the debt all necessary papers to enable him to exercise his right of recourse against the principal obligor.
- (2) If the debt is secured by a security over other property, the obligee must release it to the surety if it is a chattel, or transfer his rights to him if the property is real property, and provided that the surety shall bear the costs of such transfer, and may have recourse for those costs against the principal obligor.

#### **Article 1092**

If a debt is due, the creditor must claim for it within six months from the date which it fell due, otherwise the surety shall be deemed to have been discharged.

### **(2) Between the surety and the principal obligor**

#### **Article 1093**

- (1) If the surety gives any other thing in lieu of the debt, then his recourse as against the principal obligor shall be for that which he stood surety for and not for that which he in fact gave.

- (2) If the obligee accepts a proportion of the debt in settlement, then the recourse shall be only for the amount paid by way of settlement and not for the entire debt.

**Article 1094**

- (1) If the principal obligor pays the debt before the surety pays it or if he learns of any reason preventing the obligee from making a claim, he must notify the surety, and if he does not do so and the surety discharges the debt, he may then at his election have recourse against the principal obligor or the obligee.
- (2) If a claim is made against the surety he must join the principal obligor therein, and if he does not do so it shall be permissible for the principal obligor to raise as against him any defenses which it would have been competent for him to raise in the claim brought by the obligee.

**Article 1095**

A surety for property or for the delivery up of the body of a person may make an application for an order preventing the person for whom he stands surety from travelling abroad if the suretyship arose through his order and there is evidence giving rise to a fear that the surety will suffer loss.

**Article 1096**

The surety shall have a right of recourse against the principal obligor for expenses incurred by him in carrying out his obligations under the suretyship.

**Article 1097**

If the principal obligors are jointly liable, then the person standing surety for them shall have the right to require all of them to have recourse against any one of them for the total amount of the debt which he has discharged.

**Article 1098**

It shall not be permissible for a surety to receive any consideration for his suretyship, and if he does so he must return it to the owner, and his capacity as surety shall lapse if he accepts such thing from the obligee or the principal obligor or from a third party with the knowledge of the obligee, and if he accepts it without his knowledge he shall be bound by his suretyship and shall be obliged to return that which was given in consideration.

**Section 4**

**Termination of suretyship**

**Article 1099**

Suretyship shall terminate as follows:

- (a) by discharge of the debt;
- (b) by the loss of the thing held by the person for whom he stands surety by reason of force majeure and before a claim is made;
- (c) by the cessation of the contract by virtue of which the right against the principal obligor arose;
- (d) if the obligee discharges the surety from his suretyship or the principal obligor from the debt;
- (e) upon the death of the principal obligor;

- (f) by the principal obligor being brought to the place of delivery after the deferred period matures, notwithstanding that the obligee refuses to accept delivery, unless he is unlawfully prevented from so doing;
- (g) by bringing the principal obligor before the period falls due, and the obligee suffers no loss through taking delivery of him; and
- (h) by handing over the principal obligor himself.

#### **Article 1100**

The surety for the price of a thing sold shall be discharged from his suretyship if the sale is avoided or if there is defect in title in the thing sold or if it is rejected by reason of a defect.

#### **Article 1101**

If the surety or the principal obligor makes a composition with the obligee for part of the debt, they shall both be discharged from the balance, and if it is stipulated that the surety alone should be discharged, the obligee may at his election take the amount agreed upon from the surety and the balance from the principal obligor, or he may if he wishes take no action against the surety and make a claim for the whole debt against the principal obligor.

#### **Article 1102**

The rights of the obligee shall be transferred to his heirs upon his death.

#### **Article 1103**

If the obligee dies and he leaves the whole of his estate to the principal obligor, the surety shall be discharged from his suretyship, and if he has another heir the surety shall be discharged in respect of the share bequeathed to the principal obligor only.

#### **Article 1104**

No claim may be made against a surety in respect of a suretyship for a limited period, save for the obligations arising during the period of the suretyship.

#### **Article 1105**

- (1) If the surety or the original creditor assigns the debt secured or part thereof to another person by way of assignment accepted by the assignee or the debtor whose debt was so assigned, the principal obligor and the surety shall be discharged to the extent of such assignment.
- (2) If it is a condition of the assignment that the surety alone should be discharged, he alone shall be discharged to the exclusion of the principal obligor.

### **Part 2**

### **Assignments**

#### **Section 1**

#### **The creation of an assignment**

#### **Article 1106**

An assignment is the transfer of a debt and claim from the liability of the transferor to the transferee.

#### **Article 1107**

An assignment is an immediately binding contract, unless one of the parties reserves to himself the option to rescind.

#### **Article 1108**

- (1) An assignment shall be limited or absolute.
- (2) A limited assignment is one the execution of which is restricted to a (particular) debt owed by the transferor to the responsibility of the transferee or (liability in respect of) particular property in his possession by way of trust or guarantee.
- (3) An absolute assignment is one which is not restricted to any of the foregoing, even though such (debt or property) may be in existence.

#### **Article 1109**

- (1) In order for an assignment to be valid, there must be the consent of the transferor, the transferee and the creditor.
- (2) A transfer made between the transferor and the transferee is dependent upon the consent of the creditor.

#### **Article 1110**

In order for an assignment to be valid, the transferor must be indebted to the creditor, but it is not necessary that the transferee be indebted to the transferor. If he consents to the transfer, he shall be bound by the debt to the creditor.

#### **Article 1111**

An assignment by a person having an entitlement in respect of a waqf to his creditor shall be valid if it is an assignment limited to the amount due from the guardian of the waqf, if the accrued yield of the waqf is in his hands prior to the assignment.

#### **Article 1112**

The consent of a father or guardian to an assignment to a third party shall be permissible if it benefits the minor in that the transferee is more solvent than the transferor, but shall not be permissible if he is equally or nearly equally as solvent as the transferor.

#### **Article 1113**

In addition to the general conditions, the following conditions must also be satisfied in order for an assignment to be valid:

- (a) it must be completed and dependent on no condition other than an appropriate or customary condition, nor must any future contract be dependent on it;
- (b) the performance thereof must not be deferred to an unknown future date;
- (c) it must be limited in time to a specific time limit;
- (d) the property transferred must be a known debt which is capable of being satisfied;
- (e) the property transferred to the transferee in a restricted transfer must be a debt or specific property which cannot be compounded, and both types of property must be equal in type, amount and description; and
- (f) it must not involve any conditional or substantial additional consideration in favor of any of the parties, and the assignment shall be unaffected by such additional consideration agreed upon after the assignment was made, and it shall not be payable.

#### **Article 1114**

- (1) An assignment shall be void if one of the conditions necessary therefor is not present, and the debt shall revert to the transferor.
- (2) If the transferee has made payment to the creditor before it becomes apparent that the transfer is void, he shall have the option of recourse against either the transferor or the creditor.

#### **Article 1115**

A transfer shall become void upon the reason for the debt transferred or the reason for the transfer itself becoming void.

### **Section 2**

#### **Effects of an assignment**

##### **(1) Between the creditor and the transferee**

#### **Article 1116**

The creditor shall not have the right to make a claim against the transferee, and the transferor shall be discharged from the debt and claim together if the transfer is validly made.

#### **Article 1117**

The debt shall be transferred to the transferee retaining the same characteristics as it had in the hands of the transferor. If it is immediately payable, it shall remain immediately payable after the transfer, and if it is deferred, it shall retain its deferred status.

#### **Article 1118**

It shall be permissible for the creditor and the transferee after the assignment is made to agree mutually to part of the debt or less thereof or a deferment of an immediately payable debt or to the immediate payment of the deferred debt or to take some other consideration for the debt unless the same amounts to riba<sup>al</sup>nasi'a (see Article 733(4)).

#### **Article 1119**

The debt transferred shall retain all of the guarantees attaching thereto despite the fact that the person of the debtor has changed, but nevertheless a guarantor, whether in rem or in personam, shall not remain liable to the creditor unless he has agreed to the transfer.

#### **Article 1120**

The transferee may, vis-à-vis the creditor, rely on all defenses relating to the debt which he would have had as against the transferor, and he may rely on all defenses available to the transferor vis-à-vis the creditor.

#### **Article 1121**

The transferor shall have the right to claim against the transferee for any debt or property owned by him if the transfer is not restricted specifically to either of them, and the transferee shall not have the right to detain such property until making payment to the creditor.

#### **Article 1122**

The right of the transferor to claim against the transferee for the property of his that the latter has by way of debt or specific property shall lapse if the transfer is restricted to either of such type of property and the conditions thereof are satisfied, and the transferee shall not be discharged as against the creditor if he pays either of them to transferor.

### **Article 1123**

It shall not be permissible for the transferee in a valid assignment of either type to refuse to make payment to the creditor, notwithstanding that the transferor may have recovered his debt from the transferee or retrieved his property held by the transferee.

### **Article 1124**

- (1) If an absolute assignment is made with the consent of the transferor and if a debt and if a debt is owed to him by the transferee, there shall be a set-off of his debt after payment.
- (2) If he is owed no debt by him, the transferee shall have recourse after payment.

## **(3) Between the creditor and the transferor**

### **Article 1125**

The transferor must deliver to the creditor the document of title relating to the obligation transferred and any necessary evidence or means to enable him to obtain his right.

### **Article 1126**

If the transferor guarantees of the creditor the solvency of the transferee, such guarantee relates only to his solvency at the time of the transfer unless a contrary agreement is made.

### **Article 1127**

- (1) If the transferee dies before discharge of the debt under a limited transfer, the creditor shall be entitled to the property owned by the transferee or in his possession during the lifetime of the transferor.
- (2) If a debt of either type being transferred is deferred and the transferor dies, that deferred date shall hold good but shall be advanced to the date of the death of the transferee.

### **Article 1128**

- (1) A limited transfer shall be void if the debt lapses or if there are third party rights in the specific property arising through some prior matter, and the creditor shall have a recourse in respect of his right against the transferor.
- (2) A limited transfer shall not be void if the debt lapses or third party rights arise in the specific property by virtue of an occurrence taking place after the transfer, and the transferee shall have a recourse against the transferor, after making payment, in respect of what he has paid.

### **Article 1129**

The creditor shall have recourse against the transferor in the following circumstances:

- (a) if the assignment is cancelled by the agreement of the parties thereto;
- (b) if the transferee denies the assignment, and there is no evidence to prove it, and he swears that it is non-existent; or
- (c) if, in the case of a limited assignment, the specific property is lost and is not guaranteed.

#### **(4) Between the creditor and third parties**

##### **Article 1130**

- (1) If there are several assignments in respect of one right, the first assignment shall take priority and be effective with regard to third party rights.
- (2) An assignment shall not be effective with regard to third parties, unless official notice thereof is given to the transferee or is accepted by him by a document of certain date.

##### **Article 1131**

- (1) If the property in question is impounded while in the hands of the transferee before the transfer becomes effective as against third parties, then the transfer shall, with regard to the impounding party, have the status of an impoundment made by another person.
- (2) In that event, if the impounding takes place after the transfer has become valid as against third parties, the debt shall be divided between the earlier impounding party, the creditor, and the latter impounding party, by way of division as between creditors, but provided that there shall be taken from the share of the latter impounding party such amount as supplements the value of the assignment due to the creditor.

#### **Section 3**

##### **Termination of the assignment**

##### **Article 1132**

An assignment shall terminate by the subject matter thereof being discharged to the creditor, either in fact or de jure.

**BOOK THREE**  
**ORIGINAL RIGHTS IN REM**

**CHAPTER 1**  
**Rights of ownership**

**Part 1**  
**The right of ownership generally**

**Section 1**  
**Scope, means (of acquisition), and protection**

**Article 1133**

- (1) The right of ownership is the power of the owner to dispose absolutely of his property, whether of the property itself, or of the benefit or exploitation of it.
- (2) The owner of a thing alone has the right to the beneficial use of the thing owned, and to its yield, fruits and produce, and to dispose of it in any manner permitted under the law.

**Article 1134**

- (1) The owner of a thing owns that which is regarded as the essential elements of it if such cannot be separated from it without the thing being destroyed, damaged or altered.
- (2) Any person who owns land owns that is above and beneath it to the extent useful in enjoying it, upwards and downwards, unless the law or an agreement provides to the contrary.

**Article 1135**

- (1) No person may be deprived of ownership without lawful cause.
- (2) Expropriation of ownership for the public benefit shall be against just compensation and in accordance with the provisions of the law.

**Section 2**  
**Restrictions on rights of ownership**  
**(1) General Provisions**

**Article 1136**

The owner may dispose of his property absolutely, unless his disposition causes gross harm to another or is contrary to the laws and regulations relating to public or private interests.

**Article 1137**

Gross harm is that which is causative of the weakening or destruction of a building or which prevents essential use, i.e. the benefits intended, being made of a building.

**Article 1138**

If a third party right subsists in property, the owner may not dispose of it in such a way as to harm the owner of that right, save with his consent.

**(2) Restrictions on neighbours**

**Article 1139**

To impede the passage of light to a neighbour shall be deemed to be gross harm, and no person shall have the right to make a building whereby the windows of his neighbours house are blocked in such a way as to prevent the passage of light to him, otherwise it shall be permissible for the neighbour to require that the building be removed to remove the damage.



#### **Article 1140**

If a person has property which he is lawfully enjoying and another person makes a new building close to it which is harmed by the former position, the person making the new building shall not have the right to claim for damages arising therefrom, and he shall be responsible for the elimination of such damage.

#### **Article 1141**

- (1) The owner of the air space or the benefit thereof through which the branches of another person's tree extend shall have the right to require the removal of that which extends into his air space, notwithstanding that no harm may be caused to him thereby, and if he refuses he shall give an indemnity for any damage arising by reason of it and he may, without the need for a court order, remove that which extends into his property even by cutting it if there is no other way of removing it, and he shall not be liable.
- (2) This provision shall apply to the roots of a tree extending into another's land.

#### **Article 1142**

The owner of a building may require that his neighbour be prevented from planting a tree next to his building if the tree is of a kind that has spreading roots, and he may require that it be uprooted if it has been planted.

#### **Article 1143**

- (1) A neighbour may not compel his neighbour to put up a wall or anything else on the boundary of his property nor to cede part of the wall or the ground on which the wall stands.
- (2) The owner of a wall may not destroy it without strong justification if to do so would cause damage to the neighbour whose property is screened by the wall.

#### **Article 1144**

- (1) An owner may not excessively exercise his right to an extent causing harm to the property of the neighbour.
- (2) A neighbour shall not have recourse against his neighbour for the customary and unavoidable detriments of neighbourhood, but may only require that such detriments be removed if they exceed the customary extent, providing that regard therein shall be had to custom and the nature of the real property, the location of the properties in relation to each other, and the purpose for which they have been appropriated. A permission issued by the competent authorities shall not derogate from the exercise of that right.

### **(3) Restriction on rights of the donee**

#### **Article 1145**

The owner may not, in making a disposition, whether by contract or bequest, impose conditions restricting the rights of the donee, unless such conditions are lawful and the purpose thereof is the protection of a lawful interest in the donor or the donee or third party, for a limited period.

#### **Article 1146**

Any condition preventing the donee from disposing (of the subject matter of the disposition) shall be void, unless the conditions laid down in the foregoing Article are met.

#### **(4) Rights of way**

##### **Article 1147**

A private road, like jointly owned property, belongs to the persons who have a right of passage over it, and no person enjoying such right may build anything upon it without the permission of the others.

##### **Article 1148**

- (1) Persons passing along a public way shall have the right to enter a private way if necessary.
- (2) The owners of a private way may not agree to sell it, divide it, or block the entrance to it.

##### **Article 1149**

No persons other than those together owning a private way may open doors open it, or pass over it.

##### **Article 1150**

If one of the owners of a private way blocks his door leading on to it, his right to pass over it shall not lapse and it shall be permissible for him and his successors to reopen it.

##### **Article 1151**

The costs of repairing a private way shall be borne by all of the owners in proportion to the benefit each derives from it.

#### **Section 3**

##### **Co-ownership**

##### **(1) General provisions**

##### **Article 1152**

Without prejudice to the provisions relating to shares in an inheritance, each heir shall, if two or more acquire ownership of a thing by virtue of one of the ways by which ownership may be acquired without splitting the share of each of them in it, be joint owner and the shares of each of them shall be counted as equal in the absence of any evidence to the contrary.

##### **Article 1153**

- (1) Each of the partners in property may dispose of his share as he wishes without the consent of the remaining partners, on condition that the rights of the other partners are not prejudiced.
- (2) If the disposition is of a discrete part of co-owned property and that part does not, at the time of the division, fall to the lot of the disponor, the right of the disponent shall as from the time of the disposition be transferred to the part allotted to the disponor by way of division, if the disponent did not know that the disponor did not own the property disposed of separately at the time of the contract, and he shall likewise have the right to cancel the disposition.

##### **Article 1154**

A co-owner of property owned in common may not dispose of his share without the consent of the other co-owner if the property has blended and merged.

##### **Article 1155**

- (1) In the absence of any agreement to the contrary, the management of property owned in common shall vest jointly in the co-owners.
- (2) If one of the co-owners undertakes the management without any objection to be their agent.

#### **Article 1156**

- (1) The wishes of the majority of the co-owners as to the management of the property shall be binding upon them all, and the majority shall be determined by the proportion of shares.
- (2) If the co-owners do not agree, they may elect a manager and may lay down rules for the management and enjoyment of the property which will apply to all of the co-owners and their successors, whether general or special, and any of them may apply to the judge to take such steps as are necessary for the preservation of the property, and to appoint a manager over it.

#### **Article 1157**

- (1) Co-owners who own at least three quarters of the co-owned property may decide, in order to enhance the benefit of that property, to make basic changes and to alter the purpose for which it was intended beyond the scope of ordinary management, provided that they notify their decisions to the remainder of the co-owners by official notice, and any person who objects shall have the right to make an application to the judge within two months from the date of the notification.
- (2) The judge may, upon application being made to him, and if he agrees with the decision of the majority, order the taking of such measures as he thinks fit, and he may in particular decide that the dissenting co-owner be given a guarantee securing payment of such compensation as may be due to him.

#### **Article 1158**

Any co-owner shall have the right to take steps to preserve the co-owned property, even without the agreement of the remainder of the co-owners.

#### **Article 1159**

The costs of management and preservation of the co-owned property, any taxes payable thereon, and all other expenses arising out of the co-ownership or which are payable on the property shall be borne by all of the co-owners in proportion to the shares of each.

### **(2) Termination of co-ownership**

#### **Article 1160**

Division shall be the separation and specification of a co-owned share, and may take place by mutual agreement or by order of the court.

#### **Article 1161**

The property divided must be such as is capable of division, and owned by the co-owners when the division takes place.

#### **Article 1162**

Without prejudice to the provisions of other laws, any person wishing to leave the co-ownership may, if no agreement in that behalf has been made with the other co-owners, make an application for judicial division.

#### **Article 1163**

In order for a division by consent to be valid, all of the participants must agree.

#### **Article 1164**

- (1) In order for a judicial division to be valid, it must be made upon the application of one of the owners of the co-owned shares.
- (2) A judicial division may take place notwithstanding the objection of one of the co-owners.

#### **Article 1165**

The co-owned property must be capable of division in such a way that the division does not destroy the benefit intended.

#### **Article 1166**

If it is not possible to divide the property in specie or if such division would cause harm or a substantial diminution in the value of the property intended to be divided, any of the co-owners may sell his share to another co-owner or may apply to the judge for the sale thereof in such manner as is laid down by law, and the auction shall be restricted to the co-owners if they unanimously require that.

#### **Article 1167**

- (1) The obligees of any co-owner may object to the division, whether by consent or by order of the court, by giving notice to all of the co-owners if the division is to be by consent, or by intervening in the court proceedings if it is to be by court order.
- (2) The division shall not be effective as against the obligees if the co-owners have not included them in all the proceedings.
- (3) If the division has been effected an obligee who has not been joined may not challenge it, save in the event of fraud.

#### **Article 1168**

If it should appear that there is a debt owed by a deceased after the division of his estate, the division shall be cancelled unless the heirs discharge the debt or they are released from it by the obligees, or the deceased has left other undivided property and the obligation is discharged out of it.

#### **Article 1169**

A co-owner participating in the division shall be regarded as the independent owner of the share developing on him after the division.

#### **Article 1170**

A division may not be resiled from after it has been perfected, save that it shall be permissible for all of the co-owners to cancel and annul the division by consent and to restore the divided property to co-ownership between them as before.

#### **Article 1171**

The provisions governing the options of conditionality, sight and defect shall apply in the division of heterogeneous and homogenous non-fungibles, but in the case of fungibles, the provisions of the option for defect shall apply to the exclusion of the options of conditionality and of sight.

#### **Article 1172**

- (1) Any person who has been the victim of gross cheating in division by consent may apply to the judge to cancel the division and to redivide the property equitably.
- (2) In determining the degree of the cheating, the criterion shall be the value of the divided property at the time of the division.

#### **Article 1173**

Claims for cancellation and redivision may not be heard, unless they are brought within one year from the date of the division.

#### **Article 1174**

A partition shall be void if there is a third party right over the whole or part of the co-owned property divided and in that event there shall be a redivision of the balance.

#### **Article 1175**

Division by a voluntary agent shall depend upon the confirmation of the co-owners of the property divided, whether by word or act.

### **(3) Division of benefits of co-ownership (joint use)**

#### **Article 1176**

Joint use is the division of the benefits, which may be divided according to time or place, and in the former case the co-owners shall take turns in enjoying the whole of the co-owned property for a period proportionate to the share of each of them, and in the latter case each of them shall enjoy a specified proportion of the co-owned property.

#### **Article 1177**

- (1) If joint use is determined by time, the period must be specified, but it need not be specified in the case of use of a part.
- (2) The co-owners shall agree upon the duration of the joint use, and if they do not agree the court may specify such duration as it thinks fit in accordance with the nature of the dispute and the co-owned property, and it may also conduct a ballot to determine the commencement of the joint use in time, and to determine that part of the property in the event of joint use of the part.

#### **Article 1178**

The provisions governing the division of joint use with regard to the effectiveness thereof against third parties, the capacity of the participants, their rights and obligations, and means of proof, shall be subject to the provisions of contracts of leasing if such provisions do not conflict with the nature of such division.

#### **Article 1179**

- (1) The co-owners may, during the proceedings for final division, agree that the property of which the use is co-owned be divided among them pending the final division.
- (2) If the co-owners cannot agree on the division of use, the court may, upon the application of any of the co-owners, make an order as to such division and may seek the assistance of experts if appropriate.

#### **Article 1180**

- (1) If one of the owners of co-owned property which is capable of being divided requires that the property itself be divided up, and the other wishes to have shared use, the claim for division (of the property itself) shall prevail.
- (2) If one of them requires that there should be shared use without any of them requiring division (of the property itself) and the others object, there must be shared use.
- (3) If one of the co-owners requires shared use of co-owned property which cannot be divided up, and the other objects, then the request for shared use shall prevail.

#### **Article 1181**

Shared use shall not become void upon the death of one of the owners of shares or upon the death of them all, and the heirs of the deceased shall take his place.

### **(4) Mandatory co-ownership**

#### **Article 1182**

Subject to the provisions of Articles 1165 and 1166 of this Law, the co-owners of co-owned property

may not require that it be divided up if it appears that the purpose for which such property was intended is such that it must always remain under co-ownership.

#### **(5) Family ownership**

##### **Article 1183**

Members of a single family all having a common business or interest may agree in writing to establish a family ownership, and such ownership may consist either of an estate which they have inherited and which they have agreed to place in whole or in part in family ownership, or of any other property known to them which they have agreed to bring into such ownership.

##### **Article 1184**

- (1) It shall be permissible to agree to the establishment of family ownership for a period not exceeding 15 years, but provided that each co-owner may apply to the court for leave to withdraw his share from such ownership prior to the expiration of the period agreed upon, if there is strong justification for that course.
- (2) If there is no fixed period laid down for the said ownership, each co-owner may withdraw his share therefrom after the expiration of six months from the day on which he gives notice to the other co-owners of his intention to withdraw his share.

##### **Article 1185**

- (1) The co-owners may not require that the property be divided up so long as the family ownership remains in existence, and no co-owner may dispose of his share to an outsider to the family save by the unanimous consent of the other co-owners.
- (2) If an outsider to the family acquires the ownership of the share of one of the co-owners with his consent or if that happens compulsorily, he shall not be a co-owner in the family ownership save by his consent and the consent of the remainder of the co-owners.

##### **Article 1186**

- (1) The owners of a majority of the shares in a family ownership may appoint one or more of their number to manage the co-owned property, and the manager of the family-owned property may effect changes in the use for which the co-owned property was intended whereby the means of enjoyment of such property are enhanced, in the absence of an agreement to the contrary.
- (2) The manager may be dismissed in the same manner in which he was appointed, and the court may likewise dismiss him on the application of any co-owner if there is a strong reason justifying such dismissal.

##### **Article 1187**

With the exception of the foregoing rules, the rules relating to co-ownership, agency and inheritances shall apply to family ownership.

#### **(6) Ownership of floors and apartments**

##### **Article 1188**

- (1) If there are several owners of storeys in a building or of different apartments, they shall be deemed to be co-owners of the land and of the parts of the building intended for common use by them all or any other part registered under such description for which, by the nature of the building, must be in common ownership, including in particular the following:
  - (a) foundations and structural walls;
  - (b) party walls, walls of entrances, and walls supporting the roof;

- (c) ventilation ducts for amenities;
  - (d) roof supports, gangways, entrances, yards, ceilings, stairs and stairwells, corridors and passages, floor supports, lifts, and porters' rooms; and
  - (e) heating and cooling appliances and other pipes, nozzles, drains, and installations and extensions used in common such as lighting and water appliances and appurtenances, and all that forms part of the building, save those parts inside any particular floor or apartment.
- (2) All of the above shall apply in the absence of any contrary provision in the title deeds or the law.

#### **Article 1189**

The common parts of buildings provided for in the foregoing Article may not be divided up, and the share of each owner in them shall be in proportion to his share in the building, and no owner may dispose of his share independently from the other.

#### **Article 1190**

Party walls between two apartments shall be co-owned by the owners of such apartments if they are not counted as a co-owned part (of the building as a whole).

#### **Article 1191**

Each owner may enjoy the use of the common parts for the purpose for which they were intended, provided that such use does not interfere with the exercise by the remaining co-owners of their rights.

#### **Article 1192**

Each owner shall share in the costs of preserving, maintaining and managing the common parts, and his share of the costs shall be in proportion to the value of the property that he owns, unless there is a contrary provision in the rules for the management of the building, and any owner who causes an increase in the expenses of the building shall be responsible therefor.

An owner may not dispose of his share in the common parts in order to avoid paying his share of the expenses.

#### **Article 1193**

No owner may make any alteration in the common parts without the consent of all of the owners even when the building is being renewed, unless the alteration he makes is such as to increase the benefit of such parts and is not such as will alter its purpose or cause any prejudice to the owners.

#### **Article 1194**

- (1) The owner of a lower floor must carry out such works and repairs as are necessary to prevent the collapse of upper floor.
- (2) If he fails to carry out such repairs, the court may, upon the application of an injured party order that the necessary repairs be carried out, and the injured party shall have a right of recourse against the owner of a lower floor for any costs borne by him.

#### **Article 1195**

- (1) If a building collapses, the owner of the lower floor must rebuild his lower floor as before, and if he fails to do so and it is built by the owner of an upper floor with his consent or by leave of the court, he shall have a right of recourse for the share of the owner of the lower floor in the expense.

- (2) If the owner of a lower floor fails to repair it and it is repaired by the owner of an upper floor without the leave of the court or consent of the owner of the lower floor, he shall have a right of recourse against the owner of the lower floor for his share of the value of the building at the time of the repair.
- (3) If the owner of an upper floor repairs a lower floor without reference to the owner of the lower floor and without ascertaining that he is failing (to repair it himself), the owner of the upper floor shall be deemed to have made a gift, and he shall have no right of recourse.
- (4) The owner of an upper floor may, in the first two cases, prevent the owner of a lower floor from disposing of it or using it until he satisfies his right, and he may also let it by leave of the court and recover what is due to him out of the rent.

#### **Article 1196**

The owner of an upper floor may not increase the height of the building in such a way as to cause prejudice to the owner of the lower floor.

### **(7) Associations of owners of storeys and apartments**

#### **Article 1197**

- (1) Wherever there is co-ownership of real property divided into floors or flats, the owners may form an association as between them for the management thereof, and to ensure proper enjoyment thereof.
- (2) The purpose of the formation of the association may be to build on land or to purchase it for the distribution of the ownership of the parts thereof among the members.
- (3) The composition, regulations, management, powers and other associated matters of such association shall be subject to the provisions of the special laws made in that behalf.

### **(8) Party walls**

#### **Article 1198**

If a wall is co-owned by two or more persons, none of the co-owners may make any new building on top of it without the consent of the others.

#### **Article 1199**

- (1) A co-owner of a party wall may, if he has a serious interest in heightening it, heighten it at his own expense on condition that he causes no substantial prejudice to the other co-owner, and he must maintain the wall and make it fit to bear the load arising out of the heightening, and must not adversely affect its fitness for that purpose.
- (2) If the party wall is not sufficiently strong to withstand the heightening, the co-owner who wishes to heighten it must rebuild the whole wall at his own sole expense, and any necessary thickening must be on his side of the wall so far as possible, and the rebuilt wall shall, with the exception of the heightened part, remain in co-ownership without the neighbor who carried out the heightening having any right to compensation.

#### **Article 1200**

A neighbor who has not shared in the costs of heightening may become a co-owner of the heightened part if he pays one half of the costs and the value of one half of the land on which the extra thick- ness stands, if it has been thickened.



### **Article 1201**

- (1) The owner of a party wall may use it for the purpose for which it was intended and may place beams on it to support the roof without subjecting the wall to an excess load.
- (2) If a party wall is not fit for the purpose for which it is usually intended, the costs of repairing or renewing it shall be borne by the co-owners in proportion to the share of each of them in it.

### **Article 1202**

A wall which at the time it was built divides two buildings shall be deemed to be co-owned up to the middle line in the absence of any contrary indication.

## **Part 2**

### **Means of acquisition of ownership**

#### **Section 1**

#### **Acquisition of ownerless ("permitted") things.**

##### **(1) Moveables**

#### **Article 1203**

Whoever takes possession of an ownerless moveable with the intention of becoming the owner, shall in fact become the owner thereof.

#### **Article 1204**

- (1) A moveable shall become ownerless if the owner thereof abandons it with the intention of abandoning his ownership.
- (2) Wild animals shall be deemed to be ownerless so long as they remain at liberty, and domesticated animals in the habit of returning to the place allocated for them but which then lose that habit shall become ownerless.

#### **Article 1205**

- (1) Treasures found in land belonging to a particular person shall be owned by him, but he must give one fifth thereof to the state.
- (2) Treasures found in land owned by the state shall be owned by the state in their entirety.
- (3) In respect of land subject to a valid waqf, property discovered on it shall belong to the waqf authority.

#### **Article 1206**

Minerals found in the ground shall belong to the state, notwithstanding that such minerals are on (privately) owned property.

#### **Article 1207**

Special laws shall be passed governing treasures and minerals, and likewise rights of hunting and fishing, lost property, and antiquities.

#### **Article 1208**

Articles washed up by the sea which no owner comes forward to claim shall belong to the person finding them and who has initially taken possession of them, and if they were formally owned by a Muslim or a dhimmi (a non-Muslim lawfully resident in a Muslim jurisdiction), then one fifth of such property shall go to the treasury and the remainder shall belong to the finder, and if the former owner was a Muslim or a dhimmi, ownership shall revert to him if he is known, and if he is not known the provisions relating to lost property shall apply.

## **(2) Immoveables**

### **Article 1209**

- (1) Uncultivated (and ownerless) land shall belong to the state.
- (2) It shall not be permissible to acquire ownership or take possession of such land without the permission of the state in accordance with the law.

### **Article 1210**

Undeveloped land is land which is not allocated to any ownership or any particular use, but it may become so allocated by being developed or becoming part of the precincts of a town, well, tree or house.

### **Article 1211**

- (1) Whoever cultivates or develops undeveloped land with the consent of the appropriate authorities shall be the owner thereof.
- (2) The competent authority may permit the development of land subject to a grant only of the right of use but not of ownership.

### **Article 1212**

If a person develops part of land he has been authorized to develop and leaves the rest, he shall be the owner of the developed part to the exclusion of the remainder, unless the part left is encircled by land which he has developed.

### **Article 1213**

By the development of undeveloped land shall be meant the erection of buildings or planting there- on, boring for water, or the like, and it shall, by the development thereof, become the property of the person who has developed it, and if the work done is obliterated thereafter and the land is developed by another person a substantial time after the obliteration, the land shall become the property of the second person to develop it, and it shall likewise become his property if he develops it prior to the expiration of a substantial length of time after the obliteration, and the original developer remains silent without any reasonable cause after he becomes aware (of the new development), and if he does not remain silent or there is a reasonable cause for his remaining silent, the land shall remain his property and the second developer shall be entitled to the value of his development which remains in place if he was unaware of the original developer, but he shall be entitled to nothing if he had such knowledge.

### **Article 1214**

The precincts of a town shall include the entrances and exits, places for gathering firewood, and the pastures, and the precincts of a house shall consist of such part as the persons' resident there make use of, and a compound on which a house stands shall be used by the residents of each house in such a way as not to prejudice the enjoyment of their neighbors. The precincts of a well is the area used by those who come to drink at it or draw water from it, and shall include the area where the erection of anything towards it would disturb those who come to use it or would affect the water. The precinct of a tree is such area as is required to water it, and over which its roots and branches spread, and on which the erection of any thing would affect its growth. The people living in a town or a house, or the owner of a well or a tree, shall be the owners of the precincts, and they may prevent other people using it or erecting anything on it.

### **Article 1215**

- (1) Whoever owns land by purchase, inheritance or gift from a person who has developed it, in circumstances where the development has become obliterated, shall remain the owner thereof notwithstanding the obliteration, and notwithstanding the passage of a long time after the obliteration.

- (2) If another person develops such land, he shall not by developing it become the owner thereof, save by prescriptive rights of possession where the conditions necessary therefor are satisfied.

#### **Article 1216**

- (1) The fencing off of undeveloped land shall not be regarded as a development thereof.
- (2) If any person does fence off undeveloped land, he shall be regarded as having better right to it for a period of three years, but if he does not develop it within that period it shall be permissible to give it to another person on condition that he does develop it.

#### **Article 1217**

If a person digs a well on undeveloped land with the consent of the appropriate authority, he shall be the owner thereof.

### **Section 2** **Guarantees**

#### **Article 1218**

Property guaranteed shall become owned by virtue of the guarantee, such ownership being retrospective to the time at which the cause of ownership arose, provided that the subject matter must have been capable of being owned at the commencement of such period.

### **Section 3** **Inheritance and liquidation of estates**

#### **(1) General provisions**

#### **Article 1219**

- (1) An heir shall acquire by way of inheritance land, chattels and rights vested in the estate.
- (2) The definition of heirs and the determination of their shares in the inheritance, as well as the transfer of the estate, shall be subject to the provisions of the Islamic Sharia and the laws passed giving effect thereto.

#### **(2) The estate** **(a) General provisions**

#### **Article 1220**

- (1) If the testator has not appointed an executor for his estate, any person concerned may apply to the court for the appointment of an executor unanimously elected by all of the heirs from among their number, or a third party, and if the heirs are not unanimous in the election of any person, the court shall make such election after hearing their representations.
- (2) Regard shall be had to the application of special laws if the heirs include an unborn baby, a person of no capacity or defective capacity, or an absent person.

#### **Article 1221**

If the testator has appointed an executor for the estate, the court must, upon the application of any of the persons concerned, confirm such appointment.

#### **Article 1222**

- (1) A person appointed as the executor of an estate may withdraw from his function in accordance with the rules governing agency.
- (2) The court may, upon the application of any party concerned or of the public prosecutor, or without an application being made, dismiss an executor and appoint another person if it is shown that such a course is justified.

#### **Article 1223**

- (1) The court must make a note in a special register of orders made appointing executors of an estate, or confirming them if they are appointed by the testator, or orders made in respect of their dismissal or withdrawal.
- (2) Such entries shall be effective in respect of third parties dealing with the heirs in connection with real property forming part of the estate.

#### **Article 1224**

- (1) The executor of an estate shall take delivery of the property thereof after his appointment, and he shall liquidate it under the supervision of the court. He may require to be paid remuneration as assessed by the court.
- (2) The estate shall bear the costs of the liquidation, and such costs shall have the same priority status as judicial expenses.

#### **Article 1225**

The judge must, where required, take all necessary steps to preserve the estate, and he may order that cash or financial securities and other valuables be deposited with the court within the jurisdiction of which the assets of the estate are situated whether in whole or in part, until the liquidation is completed.

#### **Article 1226**

The executor of an estate must pay out of the assets of the estate:

- (a) funeral costs;
- (b) sufficient and reasonable costs out of such assets to a needy heir until the liquidation is completed, after obtaining the order of the court for such expenditure, and provided that the expenditure shall be deducted from the portion due to each heir out of his share of the estate; and
- (c) The judge shall determine any dispute arising in this regard.

#### **Article 1227**

- (1) The creditors may not, at the time of the appointment of the executor of an estate, take any proceeding against the estate, nor may they continue any proceeding already taken, save against the executor of the estate.
- (2) All proceedings already commenced against the deceased shall be suspended until all of the debts of the estate are settled, in the event that any party concerned so applies.

#### **Article 1228**

No heir may prior to receiving a declaration of his share in the net estate dispose of the assets of the estate, nor may he demand any debts due to the estate or create a debt against it by way of set-off for a debt owed by it.

#### **Article 1229**

- (1) The executor of an estate must take all steps to preserve the assets thereof, and must manage the same, represent the estate in claims, and must get in the debts owed to it.
- (2) The executor of an estate shall have the same liability as an agent for reward notwithstanding that he may not in fact be working for remuneration, and the court may require him to submit an account of his management at specified times.

#### **Article 1230**

- (1) The executor of an estate must summon the creditors and debtors thereof to submit particulars of the debts due to or from them within a period of two months from the date of publication of such summons.
- (2) The summons must be posted on the notice board of the court within the jurisdiction of which the last residence of the testator was situated, and the court in which the assets of the estate is situated, whether in whole or in part, and it must also be published in one of the daily newspapers.

#### **Article 1231**

- (1) The executor of an estate must, within three months of the date of his appointment, deposit with the court ordering his appointment an inventory of the assets and liabilities of the estate, and an estimate of the value of such assets, and he must notify the persons concerned of such deposit by registered letter.
- (2) He may apply to the court to extend that time if such a course is justified.

#### **Article 1232**

The executor of an estate may, in assessing the value of the assets of the estate and making an inventory thereof, use the services of an expert, and may provide proof of what is shown by the papers of the testator and what comes to his knowledge in connection therewith, and the heirs must notify him of any debts owed by or rights due to the estate.

#### **Article 1233**

Any breach of trust on the part of any person who commits a fraud against the assets of the estate, notwithstanding that he may be an heir, shall be punishable by the penalties laid down in the criminal law.

#### **Article 1224**

Any dispute as to the correctness of the inventory shall be raised before the court having jurisdiction within thirty days from the date on which the inventory was deposited with the court.

#### **(b) Settlement of debts of the estate**

#### **Article 1235**

- (1) After the expiration of the time limit for hearing disputes as to the inventory, the executor of the estate shall, after obtaining the leave of the court, pay the debts in respect of which there is no dispute.
- (2) With regard to disputed debts, they shall be settled after a final determination as to the validity thereof.

#### **Article 1236**

The executor of an estate must, in the event that the estate is bankrupt or will probably be bankrupt, suspend the settlement of any debt notwithstanding that it may not be disputed, until a final determination is made on all of the disputes relating to the debts of the estate.

**Article 1237**

- (1) The executor of an estate shall pay its debts out of the rights due to it which he receives, and out of the cash and value of the moveables forming part of the estate, and if such value is insufficient, then payment shall be made out of the real property.
- (2) Moveables and immoveables belonging to the estate shall be sold by auction in accordance with the procedures and times laid down for compulsory sales in the Code of Procedures before the Civil Courts, unless the heirs decide upon another means, and if the estate is bankrupt, all of the creditors must agree to such other means agreed upon by the heirs, and in all cases the heirs shall have a right to participate in the auction.

**Article 1238**

The court may, upon the application of all of the heirs, order that a debt secured on property shall become immediately payable, and may determine the amount of the debt due to the creditor.

**Article 1239**

Any heir may, after distribution of the deferred debts secured on property, pay the relevant amount prior to the date of maturity.

**Article 1240**

Creditors who have not obtained their rights on the grounds that they have not been proved on the inventory, and who have no securities on the assets of the estate, shall have the right of recourse against persons who have acquired a right in rem in good faith over such assets, and they shall also have a right of recourse against the heirs up to such part of the estate as has devolved upon them.

**Article 1241**

The executor of an estate shall, after settling the debts, give effect to the dispositions of the testator and other encumbrances.

**(c) Delivery and division of the assets of the estate**

**Article 1242**

After the obligations of the estate have been dealt with, the balance of the assets shall devolve upon the heirs, each in accordance with his lawful proportion.

**Article 1243**

- (1) The executor of the estate shall deliver to the heirs such part of the assets as have developed upon them.
- (2) The heirs may, immediately upon the expiration of the period laid down for disputes relating to the inventory of the estate, demand that the property and money not requiring to be liquidated, or part thereof, be delivered to them, by way of a provisional arrangement against submission of a guarantee, or without a guarantee.

**Article 1244**

The court shall, upon the application of any of the heirs or persons concerned, issue a certificate allocating the portions of the estate, and setting out the lawful proportion due to each heir.

**Article 1245**

Each heir may require the executor of the estate to deliver his portion of the inheritance to him after dividing it from the rest unless such heir is bound to remain a co-owner by way of agreement or by virtue of a provision in the law.

#### **Article 1246**

- (1) If the application for division is accepted, the executor of the estate must make such provision, but provided that such division shall not become final until all of the heirs have consented.
- (2) The executor of the estate must, in the absence of a unanimous agreement as to the division, make an application to the court to make such division in accordance with the provisions of the law, and the cost of such application to divide shall be deducted from the portions due to the heirs.

#### **Article 1247**

The provisions laid down in respect of the division of property shall apply to the division of an estate, and the provisions of the following articles shall likewise apply thereto.

#### **Article 1248**

If the assets of the estate include property which is exploited agriculturally, industrially or commercially, and is properly to be regarded as an independent economic unit, then, in the event that the heirs do not agree that it should continue to be so used and there is no third party right subsisting over such property, it must be allocated in whole to such of the heirs as demanded if they are the persons most capable of dealing with it, on condition that the value thereof is ascertained and deducted from the proportion of such heir in the estate, and if all of the heirs are equally capable of managing it, it shall be allocated to such one of them as gives the greatest value, but provided that it shall not be less than the fair value.

#### **Article 1249**

If upon the division of the estate one of the heirs has a debt against it, the remainder of the heirs shall not guarantee that debt if he becomes bankrupt after the division, unless a contrary agreement is made.

#### **Article 1250**

A testamentary disposition as to the division of the assets of the estate among the heirs shall be valid provided that it makes an appointment in favor of each heir or some of the heirs as to his proportion, and if the value of any property appointed in favor of one of them exceeds his entitlement to the estate, such appointment shall be regarded as a special testamentary disposition in his favor.

#### **Article 1251**

It shall be permissible to resile from a division deferred until after death, and such division shall become binding upon the death of the testator.

#### **Article 1252**

If the division does not include the whole of the property of the testator at the time of his death, the assets which are not included in the division shall become the co-owned property of the heirs in accordance with the rules of succession.

#### **Article 1253**

If one or more of the probable heirs include in the division die before the death of the testator, the separate share falling to the lot of such deceased person shall devolve as co-owned property upon the remainder of the heirs in accordance with the rules of succession, without prejudice to the mandatory provisions of succession.

#### **Article 1254**

The rules governing division generally shall apply to divisions deferred until after the death, with the exception of the rules relating to cheating.

#### **Article 1255**

If the property divided does not include the debts of the estate, or if it does include them, but the creditors do not agree to such division, it shall be permissible for any heir, in the absence of agreement with the creditors, to apply to the court for a division and for settlement of the debts, provided that so far as is possible the division provided for by the testator, and the considerations upon which it is founded, shall be applied.

### **(3) Provisions relating to unliquidated estates**

#### **Article 1256**

If the estate has not been liquidated in accordance with the foregoing provisions, the ordinary creditors of the estate may enforce their rights or such as have been bequeathed to them against the real property of the estate which has been disposed of, or over which third party rights in rem have arisen if they have placed a restriction on it for their debts prior to the registration of the dispositions.

### **Section 4** **Wills**

#### **Article 1257**

- (1) A will is a disposition by a person over his estate, deferred until after his death.
- (2) A legatee shall acquire ownership over the property bequeathed to him by virtue of the will.

#### **Article 1258**

The provisions of the Islamic Sharia and the legislative provisions deriving therefrom shall apply to wills.

#### **Article 1259**

In the event of the denial of a claim under a will or an oral resilement therefrom after the death of the testator, such claim shall not be heard unless there are official documents or documents all written in the hand of the deceased, bearing his signature, and the same shall apply if the will itself or the resilement therefrom contains a certification of the signature of the testator.

#### **Article 1260**

- (1) Any legal act done by a person in a terminal illness of which the intention is to make a gift shall be regarded as a disposition to take effect after the death, and the provisions governing wills shall apply thereto, by whatever name the act may have been called.
- (2) The heirs of the disponor must prove by all means that the disposition was made by their testator during the terminal illness. No deed of disposition may be relied on as against the heirs, unless the date thereof is officially proved.
- (3) If the heirs prove that the disposition was made by their legator during a terminal illness, the disposition shall be deemed to have been made by way of gift unless the person to whom the disposition was made proves the contrary, or if there are special provisions to the contrary.

#### **Article 1261**

If a person makes a disposition to one of his heirs but retains possession of the property which he has disposed of and of his right to use it throughout his life, the disposition shall be deemed to take effect after the death, and the provisions relating to wills shall apply thereto unless there is evidence to the contrary.



**Section 5**  
**Acquisition by accretion**

**(1) Accretion to real property (a)**  
**Accretion by operation of nature**

**Article 1262**

Silt carried by (naturally) moving water to the land of any person shall be owned by him.

**Article 1263**

The owner of soil which has become displaced through an act of God may make a claim for it if it can be ascertained, and the owner of the land of greater value shall indemnify the owner of the land of lesser value for the value thereof, and he shall become the owner of such soil.

No such claim shall be heard after the expiration of one year from the occurrence of the incident.

**Article 1264**

Islands, both large and small, which are naturally formed in watercourses, shall be deemed to be part of the property of the state.

**Article 1265**

Islands, both large and small, which are formed in lakes, and likewise the silt of lakes and of the sea shall be deemed to be the property of the state.

**Article 1266**

Land rising over the sea, lakes, pools and ponds which have no owner shall be the property of the state.

**(b) Accretion by act of persons.**

**Article 1267**

Any building, plant or work standing upon land shall be deemed to have been put there by the owner of the land at his own expense and to belong to him, unless there is evidence to the contrary.

**Article 1268**

If an owner of land builds on his land with materials owned by a third party but without his consent, then, if the materials are still in existence and the owner demands their return, the land owner must return them to him, but if they have been destroyed or wasted, he must pay the value thereof to their owner, and in either event the owner of the land must pay compensation if appropriate.

**Article 1269**

If a person places a building, plant or other installation using materials he has, on land which he knows belongs to another, without the consent of the owner thereof, the owner may require that what has been placed there be removed at the expense of the person who placed it there, and if the removal would damage the land, he may become the owner thereof for the value which they would have had if removed.

**Article 1270**

If a person places a building, plant or other construction with materials of his on the land of another claiming a lawful cause, then, if the value of the things placed and still existing is greater than the value of the land, the person who has placed them there may acquire ownership of the land at a fair value, and if the value of the land is not less than the value of the things placed there, the owner of the land may acquire ownership thereof at their existing value.

#### **Article 1271**

If a person erects installations with materials of his on the land of another with the consent of the other, then, if there is no agreement between them as to what shall happen to the installations, the owner of the land may not require that they be removed, and he must, if the owner of the installations does not require them to be removed, pay him the existing value thereof.

#### **Article 1272**

If a person plants or makes another installation with materials owned by another on the land of any person, the owner of the materials may not require them to be returned, but he shall have a right of recourse for compensation against the person who placed them there, and likewise he shall have a right of recourse against the owner of the land for an amount not exceeding the balance of the debt owing to the constructor out of the value of such installations.

#### **Article 1273**

If one of the owners of shares builds for himself on co-owned property capable of being divided up without the consent of the others, and the property is then divided up, then, if the built-up part falls to his lot he shall be the owner of it, and if it falls to the lot of another he may acquire the ownership thereof for the value which it would have if removed, or he may require the builder to demolish it.

### **(2) Accretion to chattels**

#### **Article 1274**

If moveables accrue to different owners in such a way that they cannot be separated without damage and there is no agreement between the owners, the court shall decide upon the dispute in accordance with custom and the rules of equity, having regard to any damage which may occur the state of both parties, and the good faith of each of them.

### **Section 6** **Contract**

#### **Article 1275**

Ownership and other rights in rem over moveables and real property may be transferred by contract if the elements and conditions thereof required by law are satisfied, but without prejudice to the provisions of the following Articles.

#### **Article 1276**

Ownership of moveables not specified by type may only be transferred by specific appropriation.

#### **Article 1277**

Ownership of real property or other rights in rem over real property may not be transferred between the two contracting parties so as to be valid against the third party, save by registration in accordance with the special laws.

#### **Article 1278**

An undertaking to transfer ownership of real property shall be limited to an obligation to pay compensation if the undertaker is in breach of his undertaking, whether the undertaking contains a provision to pay compensation or not.

**Section 7**  
**Pre-emption**

**(1) General provisions**

**Article 1279**

- (1) Pre-emption is the entitlement of an owner of a share in co-owned property to take the share of his fellow co-owner for the price negotiated in a financial commutative contract, or for its value in a non-financial commutative contract for the equivalent of the customary market price.

**Article 1280**

The following shall be deemed to be pre-emptors: -

- (1) the overseer of a co-owned waqf in jointly owned real property if the donor has given him the right to take the share of another co-owner by way of pre-emption for retention; or
- (2) a person having a reversionary interest in a waqf after the expiration of the period thereof or after the beneficiaries have ceased to have the status, if the waqf is co-owned and part of jointly owned property and the co-owner sells his share.

**Article 1281**

The following persons shall not have a right of pre-emption:

- (1) the beneficiary of a waqf in respect of part of property co-owned by the donor and another if the other co-owner sells his share, notwithstanding that the beneficiary has given as a waqf the share of the co-owner which he wishes to take by pre-emption, unless he is the person having the reversionary interest in the share endowed to him, in which case he shall have a right of pre-emption over it and become the owner thereof;
- (2) a neighbor in the event of the sale of adjoining land, notwithstanding that he may have a right of way over such land by way of lease or easement, or
- (3) the overseer of a waqf in co-owned real property, if a non-endowed part is sold, notwithstanding that the overseer intends to make an endowment of the share which he wishes to take by pre-emption, unless the donor has given him the right to acquire the donated property by way of pre-emption for the waqf, in which case he may do so.

**Article 1282**

A co-owner shall have no right of pre-emption in the following cases:

- (1) crops, whether sold separately or with the land, and in the event of a sale with the land the right of pre-emption shall attach to the land alone at the price agreed for it, and the crops shall remain for the purchaser.
- (2) a well in the event that the land it waters is divided with the well remaining in joint ownership, and if the land is not divided then there shall be a right of pre-emption over it whether the co-owner sells his share thereof separately or together with his share in the land;
- (3) the precincts of a house or a passageway giving access to it, whether the co-owner sells his share of the whole of it separately or together with his share in the house if the house is divided, and the precincts or the passageway shall remain jointly owned by the co-owners, and if the house is not divided the right of pre-emption over the precincts and the passage shall exist and be appurtenant to the house; and

- (4) animals, unless they belong to jointly owned property for use to be made of them in tilling or irrigation or the like, and the co-owner sells his share in the property and the animals together, in which case the right of pre-emption shall exist and be appurtenant to the property.

**Article 1283**

The preemptee is a person who owns the share of one of the co-owners by way of full ownership supervening upon the ownership of the other co-owner by way of commutative contract, whether for money consideration or not.

**Article 1284**

Property subject to pre-emption is real property capable of division disposed of by contract by one of the co-owners notwithstanding that such contract was by way of exchange for similar property, or if the real property is a building or tree owned by two co-owners on waqf land, and if the land is not capable of division, then there shall be no right of pre-emption over it.

**Article 1285**

- (1) If one of the co-owners sells his share in co-owned real property and the others take that share by pre-emption, it shall be divided between them in accordance with the amount of the portion of each and not on a per capita basis, and if the purchaser is one of them, they shall leave him his share of the pre-emption in it at the price for which he bought it, and they shall not take the whole of the share from him.
- (2) Shares shall be calculated as at the date of the arising of the right of pre-emption and not the date of sale.

**Article 1286**

- (1) If there are several degrees of pre-emptors, the right of pre-emption shall belong to the person participating with the seller of the real property subject to pre-emption in the distribution of an estate, and if his right thereto lapses it shall devolve on the heir who does not participate in the distribution of the estate, and if his right lapses it shall devolve upon the legatee. In the event of the lapse of that last right, the right of pre-emption shall belong to the co-owner who is a stranger (to the inheritance).
- (2) Each one of such persons shall give way to the person below him in the chain of pre-emption and not vice versa and the heirs of each one of them shall take his place in his right to pre-emption, and in giving way to the person next below him in the chain of pre-emption.

**Article 1287**

- (1) If there are several sales of real property subject to a right of pre-emption, and the pre-emptor is unaware of those several sales or if he knows of them but is absent, he shall have the right to elect either to take by pre-emption at the price of sale of any part or to pay the price at which the purchaser in whose possession the land was has taken it, notwithstanding that it is less than the price at which he purchased it, and the purchaser shall have a right of recourse for the excess against the seller, and if the pre-emptor knows of the several sales and is present, he shall take at the last sale price only.
- (2) If a pre-emptor takes by sale, all subsequent rights shall be cancelled and all prior dispositions shall be affirmed, and any person whose purchase has been annulled shall have a right of recourse against the seller for the price which he has paid to him, and not for the value of the property.
- (3) In all cases, if any defect appears in the land or if there is a third party right there over the purchaser shall be liable for the price at which he accepted the sale.

#### **Article 1288**

A pre-emptor shall exercise the right of pre-emption for himself and not for a third party, and if he does so for a third party in order to make a gift or a charitable donation to him, the pre-emption shall be void and his right to take the property for himself thereafter shall lapse.

#### **Article 1289**

- (1) The pre-emption shall become final after sale with the arising of the cause creating the right of pre-emption.
- (2) A gift with a stipulation for consideration shall be treated as a sale.

#### **Article 1290**

Real property subject to right of pre-emption must belong to the pre-emptor at the time of the sale of such property.

#### **Article 1291**

If there is an established right of pre-emption, it shall not lapse upon the death of the seller, the purchaser or the pre-emptor.

#### **Article 1292**

There shall be no pre-emption in the following circumstances:

- (a) property acquired by a gift with no consideration, charitable donation, inheritance, or by testamentary disposition; and
- (b) in respect of buildings and trees deliberately sold without the land upon which they stand, or in respect of buildings or trees on land owned by the state.

#### **Article 1293**

The right of the pre-emptor to pre-emption shall lapse in the following circumstances:

- (a) if the purchaser of the share of his co-owner makes a division or if he purchases the share from him or takes a lease of it, notwithstanding that he did not know that such act would cause the right of pre-emption to lapse.
- (b) if he sells his share notwithstanding that he sold it in ignorance of the fact that his co-owner had earlier sold his share;
- (c) if he fails for two months without good reason to demand his share in the pre-emption, being aware that buildings or plants have been placed upon the land by the purchaser; or
- (d) if without good cause he fails to demand his right of pre-emption for a period of two months from the time he learns of the sale by his co-owner of his share if he is present in the country, and from the time he returns from abroad and learns of the sale by his co-owner if he is abroad at the time of the sale, and if he denies his knowledge of the sale and the purchaser alleges that he was aware of it, his denial of knowledge shall be accepted on his oath.

#### **Article 1294**

If the real property subject to a right of pre-emption is sold in one deal, the pre-emptor shall have the option either to take the whole of it or to leave it to the purchaser, but he may not take part of it to the exclusion of another part save by the consent of the purchaser whether the land sold was one share or several shares, and whether there was one purchaser or seller, or several.

#### **Article 1295**

If any of the pre-emptors waives his right to take by pre-emption or if he is absent before taking his right of pre-emption, the remainder or those of them who are present may take the whole of the property subject to pre-emption or may leave the whole of it, and they may not take part to the exclusion of another part save with the consent of the purchaser.

In the event that the person present elects to take the whole of the land subject to the right of pre-emption, the provisions of the following Article shall be observed.

#### **Article 1296**

- (1) If any of the pre-emptors is absent before exercising his right of pre-emption and those who are present take the whole of the real property subject to that right, and then one of those absent arrives, he may take his share in the property from those who were present on the basis of such property being divisible into two parts only, and if a third pre-emptor arrives, he may take his share on the basis that the property is divisible into three parts, and if a fourth pre-emptor arrives he may take his share on the basis that the property is divisible into four parts, and so on.
- (2) The liability for the price of what they have taken in the event of the existence of any third party right or of a defect appearing shall be that of the purchaser, notwithstanding that the seller has discharged him from the sale before he takes the property purchased from him, by way of pre-emption.

#### **Article 1297**

Claims for pre-emption shall not be heard:

- (1) if the sale has taken place by public auction under procedures laid down by law;
- (2) if the sale has been by ascendants and descendants, or between two spouses, or between relatives up to the fourth degree, or between relatives by marriage up to the second degree;
- (3) if the pre-emptor has waived his right expressly or by implication.

#### **(2) Procedures for pre-emption**

#### **Article 1298**

- (1) A claim for pre-emption must be brought within two months from the date on which the pre-emptor learned of the sale.
- (2) In no case shall a claim for pre-emption be heard after the expiration of six months from the date of registration.

#### **Article 1299**

- (1) A claim for pre-emption against a purchaser shall be brought before the court within the jurisdiction of which the property is situated.
- (2) The court shall decide every dispute relating to the true price of the land subject to the pre-emption, and it may grant the pre-emptor a period of grace of one month to pay what is due, failing which the right of pre-emption shall lapse.

#### **Article 1300**

- (1) The purchaser may bring an action against the pre-emptor before the court for an order either that he exercise the right of pre-emption or that such right should lapse, and if the pre-emptor takes either of the aforesaid courses, he shall be bound by that course, and if he does not make any election, the court shall terminate his right of pre-emption.

- (2) If the pre-emptor applies for extra time to consider whether to exercise the right or allow it to lapse, the purchaser shall not be obliged to agree to such application.
- (3) A person who wishes to purchase may not make a claim against the pre-emptor either to exercise or to waive his right prior to the purchase notwithstanding that he may have had made such a request prior thereto, and the re-emptor has forfeited his right of pre-emption, and in that event such forfeiture shall not be binding upon him.

#### **Article 1301**

Without prejudice to the rules relating to registration, the title of the pre-emptor in the sale shall be established by order of the court or by his taking delivery from the purchaser by consent.

### **(3)Procedures for pre-emption**

#### **Article 1302**

The yield of real property exploited by a purchaser before it is taken from him by pre-emption shall belong to him until the time it is taken, and if he has leased to a third party before it is taken by pre-emption and the rent is payable by a lump-sum or monthly and the lessee has paid the rent, the pre-emptor may not cancel the lease. The rent shall belong to the purchaser if the balance of the period of the lease after the land is taken by pre-emption does not exceed one year, and if the rent is payable monthly and the lessee has not paid the rent or if the balance of the period is greater than one year, then the pre-emptor may cancel the lease or affirm it, in which latter case the rent shall belong to him after the land is taken by pre-emption.

#### **Article 1303**

- (1) The acquisition of land subject to preemption by order of the court or by mutual consent shall be deemed to be a new sale giving rise to the options of inspection and defect in favor of the pre-emptor, notwithstanding that the purchaser may have waived the same.
- (2) The pre-emptor shall not have the benefit of any delay in payment granted to the purchaser save by the consent of the seller.
- (3) If a third party right over the land arises after it is taken by pre-emption, the pre-emptor shall have a right of recourse for the price against the person to whom he paid it, whether the seller or the buyer.

#### **Article 1304**

- (1) If the purchaser adds to the property subject to pre-emption any of his own property, or if he builds or plants trees on it before the claim of pre-emption is made, the pre-emptor may elect either to abandon his right of pre-emption or to assume ownership of the property at the price thereof plus the value of what has been added or the new building or plant.
- (2) If the addition, building or planting has taken place after the claim has been made, the pre-emptor may abandon his right of pre-emption or require the removal of what has been added if appropriate, or may keep what has been added and pay the value of the added land, or the value that the things newly placed on it would have had if removed.
- (3) If the land subject to a right of pre-emption has been diminished otherwise than by the act of the purchaser, or by his act but for the public benefit, the pre-emptor may take it at its full price and shall have no claim in respect of the diminution, or he may leave it to the purchaser, and if the land has diminished by his act otherwise than for the public benefit then the price at which it is sold to the pre-emptor shall be reduced up to the amount of the diminution.

#### **Article 1305**

The pre-emptor may set aside all dispositions made by the purchaser notwithstanding that he may have endowed the pre-empted land as a waqf, or turned it into a place of worship.

#### **Article 1306**

No mortgage for security or any priority right created by or against the purchaser against the land subject to pre-emption shall be valid as against the pre-emptor if such right arose after the claim for pre-emption had been made, and the rights of the obligees shall remain as against the proceeds of sale of the land.

### **Section 8**

#### **Possession**

#### **(1) General provisions**

#### **Article 1307**

- (1) Possession is actual control by a person through himself over a thing or a right which may be dealt in.
- (2) Possession by an intermediary shall be valid if the intermediary exercises it in the name of the possessor and if his relationship with the possessor binds him to comply with his directions in connection with such possession.
- (3) A person not of the age of discretion shall acquire possession through the person representing him at law.
- (4) Possession may not be based on an act done by a person on the grounds only that it is permitted, or an act not objected to by a third party by way of toleration.

#### **Article 1308**

If possession is accompanied by duress or obtained secretly or by a trick, such possession shall have no effect as against the person subjected to the duress, or from whom the possession was concealed, or who was tricked, save from the time at which such defects ceased.

#### **Article 1309**

- (1) Possession shall be deemed to be continuous as from the time it becomes apparent by the use of the thing and the right by way of normal and regular use.
- (2) A person claiming to have acquired ownership by passage of time may rely on possession by a person under whom he has derived title to land.
- (3) No lessee, usufructuary, bailee, or borrower, or the heirs of such persons, may make a claim (to ownership) by reason of the passage of time.

#### **Article 1310**

Possession shall pass from the possessor to a third party if they both agree thereto, and if it is possible for the person to whom possession had passed to exercise control over the thing or the right the subject of the possession, notwithstanding that it has not been delivered to him.

#### **Article 1311**

- (1) If several persons dispute the possession of a thing or right, the possession shall be provisionally deemed to be that of the person having physical possession, unless it is proved that he has obtained such possession in a manner tainted by a defect.



- (2) The possession shall retain the same status as it started with when obtained, unless there is evidence to the contrary.

#### **Article 1312**

A person in possession of a thing shall be deemed to be acting in good faith if he is ignorant that he is infringing the rights of another person, and good faith shall be presumed unless there is evidence to the contrary.

#### **Article 1313**

- (1) Good faith shall continue to be presumed in favor of the possessor, save from the time at which he becomes aware that his possession amounts to an infringement of a third party's right.
- (2) Likewise, the quality of good faith shall cease as from the time the possessor is notified of the defects in his possession in a statement of claim.
- (3) A person who has improperly acquired possession by duress from a third party shall be deemed to be acting in bad faith.

#### **Article 1314**

Possession shall cease if the possessor abandons his actual control over the thing or right, or if he loses it by any other means.

#### **Article 1315**

- (1) Possession shall not cease by virtue of a temporary obstacle interfering with the exercise of actual control over the thing or right.
- (2) No claim in respect thereof shall be heard if such obstacle continues for a whole year and arises out of a new possession taking place either against the will or without the knowledge of the possessor.
- (3) The year shall be calculated from the time at which the new possession commenced if such time is evident, and from the time the first possessor became aware of it if it commenced secretly. If there is any fundamental obstacle to bringing a claim, the year shall be calculated as from the time when it could have been brought.

#### **Article 1316**

If a possessor brings a claim for delivery up and recovery of his possession, he may apply for an order restraining the defendant from placing any buildings or planting any trees on the disputed land so long as the claim continues, provided that he submits sufficient security against any damage the defendant may suffer if it appears that the claimant was unjustified in bringing his claim.

### **(2) Effects of possession**

#### **(a) Passage of time in prescription**

#### **Article 1317**

Whoever is in possession of chattels or unregistered land as owner thereof or who possesses a right in rem over moveables or an unregistered right in rem over real property shall, if his possession has continued uninterrupted for 15 years, be free of any claims, if he denies the same, for ownership or claims for a right in rem from any person not having a lawful excuse (for having delayed bringing such claim).

#### **Article 1318**

- (1) If possession arises over land or an unregistered right in rem over land, then, if the possession is accompanied by good faith and is at the same time based on valid cause, the period of prescription for bringing claims shall be seven years.

- (2) A valid cause is a document or event proving possession of real property, and the following shall be deemed to be valid causes:
- (a) transfer of property by inheritance or testamentary disposition;
  - (b) gifts inter vivos with or without consideration; or
  - (c) sale and barter.

**Article 1319**

- (1) No claims for the principal property of a waqf or for property inherited shall be heard if they could have been brought and for the failure to bring which there is no lawful excuse, against a person in possession of real property who has treated it as an owner without dispute or interruption for a period of thirty-three years.
- (2) Ownership may not be acquired of moveables or real property owned by the state or public bodies of the state, nor against moveables or real property owned by charitable endowments, nor may any right in rem over such property be acquired by prescription.

**Article 1320**

- (1) No claim for absolute ownership or claim for an inheritance or for a waqf bestowed on progeny shall be heard against a person in possession of real property, if such property has been in the possession of him and the person from whom he acquired it by sale, gift, testamentary disposition or otherwise for the period laid down for the prescription of claims.
- (2) If possession exists and it is proved that it existed at a previous time, that fact shall be evidence that it continued between those two times, unless there is proof to the contrary.

**Article 1321**

No person may rely on the passage of time as a bar to a claim for absolute ownership being brought if the cause by which he is in possession of the land is not a cause conferring ownership, nor may he by his own act alter the cause of his possession nor the original act on which it is founded.

**Article 1322**

Passage of time barring proceedings for ownership shall not apply, if the person having the right and the right to claim has a lawful excuse for not having done so.

**Article 1323**

The passage of time shall not be interrupted if possession of real property ceases, in the event that the owner recovers it or makes a claim for the recovery thereof within one year.

**Article 1324**

Subject to the foregoing provisions the rules for the prescription of claims by passage of time relating to rights of possession shall apply in the calculation, cessation or interruption of and reliance on such time limit before the courts, waiver thereof, and agreement to vary the time, to such extent as these rules do not conflict with possession.

**(b) Possession of moveables**

**Article 1325**

- (1) No claim of ownership shall be heard against a person in possession of a moveable or a right in rem over a moveable or a bearer bill, if his possession is based on a valid cause and he is acting in good faith.
- (2) Possession shall of itself be indicative evidence of ownership, unless the contrary is proved.

#### **Article 1326**

- (1) By way of exception to the provisions of the foregoing Article the owner of a moveable or a bearer bill may, if he has lost it, or it has been stolen or misappropriated from him, recover it from the person in possession of it in good faith within a period of three years from the date of the loss, theft or misappropriation, and the provisions relating to misappropriated moveables shall apply to the recovery.
- (2) If the person in possession of the stolen, lost or misappropriated thing has bought it in good faith in the market, by public auction, or by a person trading in similar things, he may require the person recovering that thing from him to pay the price which he has paid.

#### **(c) Acquisition of fruits by possession**

#### **Article 1327**

A person in possession in good faith shall be the owner of the fruits and benefits arising during the period of his possession.

#### **Article 1328**

- (1) A person in possession in bad faith shall be liable in respect of all of the fruits which he has received or failed to receive from the time at which he began to act in bad faith.
- (2) He may recover what he has spent in producing such fruits.

#### **(d) Recovery of expenses**

#### **Article 1329**

- (1) An owner to whom his ownership is restored must pay to the person formerly in possession all of the necessary expenses which he has incurred in preserving the property from destruction.
- (2) With regard to (unnecessary but) beneficial expenses, the provisions of Articles 1270 and 1272 of this Law shall apply.
- (3) The owner shall not be bound to reimburse expenses of a luxurious character, and the possessor may remove what he has installed by reason of such expenses, provided that he restores the thing to its original condition, and the owner may retain such thing for the value it would have had if removed.

#### **Article 1330**

If a person acquires possession from an owner or a previous possessor and it is proved that he has reimbursed to his predecessor the expenses incurred by him, he may make a claim therefor from his predecessor or the person recovering possession.

#### **(e) Liability for destruction**

#### **Article 1331**

- (1) If a person in possession in good faith enjoys the thing in the belief that it is his right to do so, he shall not be liable towards another person having a right to the thing in respect of such enjoyment.
- (2) A person in possession in good faith shall not be liable for any destruction or damage sustained by the thing, save to the extent of any compensation he may have recovered or security obtained in respect of such destruction or damage.

### **Article 1332**

If a person is in possession in bad faith, he shall be liable for the destruction or loss of a thing, notwithstanding that the same may have occurred through no fault of his.

## **CHAPTER II**

### **Rights deriving from ownership**

#### **Part 1**

#### **Rights of enjoyment, use, residence, use of the land of another (musataha) and physical occupation.**

#### **Section 1**

#### **Rights of enjoyment**

#### **(1) General provisions**

#### **Article 1333**

Enjoyment is a right in rem in favor of the usufructuary to use property of another and to exploit it provided that it remains in its original condition.

#### **Article 1334**

A right of enjoyment may be acquired by operation of law, pre-emption, inheritance, or by passage of time.

#### **Article 1335**

The provisions relating to rights of enjoyment over land owned by the state shall be governed by a special law.

#### **(2) Effects of a right of enjoyment**

#### **Article 1336**

In respect of the rights and obligations of the usufructuary, regard shall be had to the cause by which the right of enjoyment arose, and regard shall likewise be had to the provisions laid down in the following Articles.

#### **Article 1337**

The fruits of the thing enjoyed shall belong to the usufructuary for the period of the usufruct.

#### **Article 1338**

- (1) The usufructuary may deal with the property enjoyed in the usual manner if the document giving rise to the usufruct imposes no restriction.
- (2) If is subject to a restriction, the usufructuary may exercise the enjoyment by use of his own property, or similar property, or without it.
- (3) The owner of the reversion may object to any unlawful use or any use inconsistent with the nature of the thing enjoyed, and may apply to the court to terminate the right of usufruct and to return the property to him, without prejudice to third party rights.

#### **Article 1339**

- (1) The usufructuary shall, during the period of his enjoyment, be responsible for the usual

expenses required for the preservation of the property enjoyed, and for the maintenance thereof.

- (2) With regard to unusual expenses and major repairs other than those necessitated by the act of the usufructuary, they shall be borne by the owner, unless there is an agreement to the contrary.

#### **Article 1340**

- (1) The usufructuary must exercise the care of the reasonable man in preserving the usufruct.
- (2) If the property is damaged or destroyed without any wrongful act or default on the part of the usufructuary, he shall not be liable therefor.

#### **Article 1341**

The usufructuary shall be liable for the value of the thing enjoyed if it is damaged or destroyed after the termination of the period of the usufruct in the event that he does not return it to the owner in circumstances where he could have done so, notwithstanding that he did not use the property after the termination of the period, and notwithstanding that the owner may not have claimed it back.

#### **Article 1342**

- (1) The usufructuary must notify the owner:
  - (a) if a third party claims a right over the property enjoyed, or if it is misappropriated;
  - (b) if the property is destroyed or damaged or requires major repairs of a kind for which the owner is responsible; and
  - (c) if it is necessary to take steps to avert a danger which has been hidden.
- (2) If the usufructuary does not give such notice, then he shall be liable for any damage sustained by the owner.

#### **Article 1343**

- (1) The usufructuary may consume movables enjoyed if they are such as cannot be enjoyed without the substance of them being consumed, and he must return similar property or the value thereof after the termination of the right of enjoyment, and shall be liable therefor if they are destroyed before being enjoyed, notwithstanding the absence of any wrongful act on his part on the grounds that the movables were the subject of a loan.
- (2) If the person having the enjoyment of the movables referred to dies before returning them to the owner, his estate shall be liable to return similar property or the value thereof.

### **(3) Termination of the right of enjoyment**

#### **Article 1344**

The right of enjoyment shall terminate:

- (1) upon the expiration of five years, unless the document giving rise to the right of enjoyment specifies a different period;
- (2) on the destruction of the property enjoyed;
- (3) by waiver by the usufructuary;
- (4) by termination by order of the court on the grounds of misuse; and
- (5) if an event occurs whereby the owner and usufructuary become the same person, unless

the owner has an interest in maintaining the existence of such right, as where the reversion is pledged.

#### **Article 1345**

If the period laid down for the right of enjoyment expires while there are still crops standing on the land subject to the usufruct, the land shall be left in the possession of the usufructuary at a fair rent until the crop matures and is harvested, unless the law contains a contrary provision.

#### **Article 1346**

- (1) If the right of enjoyment terminates by reason of the destruction of the thing and compensation is paid or security given, the right of enjoyment shall attach to the compensation or the amount of the security.
- (2) If the destruction is not attributable to any default on the part of the owner, he shall not be compelled to restore the property to its original condition, but if he does so restore it the right of use shall revert to the usufructuary unless he was the cause of the destruction, in the absence of an agreement to the contrary.

#### **Article 1347**

An assignment by the usufructuary of his right of enjoyment shall not affect his obligation towards the owner of the property subject to enjoyment, nor third party rights.

#### **Article 1348**

A claim for an enjoyment of right shall become time barred if a period of fifteen years elapses without the usufructuary making use of the property.

### **Section 2**

#### **Rights of use of residence**

#### **Article 1349**

Rights of usufruct may exist over a right of use or right of occupation, or over both of them.

#### **Article 1350**

The extent of the right of use or occupation shall be determined by the needs of the owner of that right and his family for themselves alone, subject to the provisions of the document giving rise to that right.

#### **Article 1351**

A right of use or occupation may not be assigned to another save by express provision in the document creating the right, or by compelling necessity.

#### **Article 1352**

The provisions governing rights of usufruct shall apply to rights of use and occupation to the extent that they are not inconsistent with the foregoing provisions and the nature of the two rights aforesaid.

### **Section 3**

#### **Rights of musataha (user of the land of another)**

#### **Article 1353**

A right of musataha is a right in rem conferring upon the owner thereof the right to build a building or to plant on the land of another.

**Article 1354**

- (1) A right of musataha may be acquired by agreement or by the passage of time.
- (2) It may be transferred by inheritance or testamentary disposition.
- (3) The document creating the right shall govern the rights and obligations of the person having the right.

**Article 1355**

- (1) It shall be permissible to assign or pledge a right of musataha.
- (2) It shall also be permissible to create rights of easement there over, provided that they do not conflict with the nature thereof.

**Article 1356**

- (1) The period of a right of musataha may not exceed fifty years.
- (2) If no period is specified, either the owner of the right or the owner of the reversion may terminate the contract by giving two years' notice in that behalf to the other.

**Article 1357**

The owner of the right of musataha shall be the owner of any buildings or plants which he has placed upon the land, and he may dispose of them along with the right of musataha.

**Article 1358**

A right of musataha shall cease;

- (1) upon the expiration of the period;
- (2) if an event occurs whereby the owner of the property and the owner of the right become the same person; or
- (3) if the owner of the right fails to pay the agreed consideration for a period of two years, unless an agreement to the contrary has been made.

**Article 1359**

A right of musataha shall not cease by virtue of the removal of the buildings or plants prior to the expiration of the period.

**Article 1360**

Upon the termination of a right of musataha, the provisions of Article 785 of this Law shall apply to the buildings and plants, unless an agreement to the contrary has been made.

**Part 2**  
**Waqf (Charitable trusts)**

**Article 1361**

The provisions laid down in a special law shall apply to Waqf.

**Part 3**  
**Rights of easement**

**Section 1**  
**Creation of rights of easement**

**Article 1362**

- (1) An easement is a right restricting the enjoyment of real property in favor of other real property owned by another person.
- (2) Rights of easement may exist over public property if they are not inconsistent with the use for which such property is intended.

**Article 1363**

- (1) Rights of easement may be acquired by consent or by legal disposition or by inheritance.
- (2) Openly enjoyed rights of easement may likewise be acquired by passage of time, including rights of way, and canal rights and Rites of passage of water, unless it is established that the right is unlawful, in which case the damage must be made good, for however long it has existed.

**Article 1364**

Any person who has given permission for the enjoyment of a right of easement over real property owned by him may withdraw that permission whenever he wishes.

**Article 1365**

- (1) Restrictions imposed upon the right of an owner of real property to build shall be regarded as rights of easement against such property in favor of other real property for the benefit of which such rights exist, unless a contrary agreement has been made.
- (2) Any transgression of those rights shall give rise to a claim that they be made good by specific performance or by compensation, if such a course is shown to be appropriate.

**Article 1366**

If the owner of two separate properties creates an open and evident easement between them, the right of easement shall remain if either or both of the two properties are transferred to other owners without any alteration in their condition, unless an agreement to the contrary is made.



**Section 2**  
**Scope of rights of easement**

**Article 1367**

The extent of rights of easement shall be defined in the document whereby they are created and by the custom prevailing in the place where the property concerned is, and it shall likewise be subject to the following provisions.

**Article 1368**

The owner of the dominant property may exercise his rights within lawful limits, and must do what is necessary for the use and maintenance of his right, without increasing the degree of burden of the easement, and he may use that right in such a manner as to cause no more than minimal damage.

**Article 1369**

- (1) The cost of works necessary for the enjoyment for a right of easement and the maintenance thereof shall be borne by the owner of the dominant property.
- (2) If the works also benefit the servient property, the costs of maintenance shall be borne by both parties in proportion to the benefit derived therefrom by each of them.
- (3) If the owner of the servient property is the person having the obligation to carry out those works at his expense, he shall always have the right to discharge himself of such obligation by abandoning the servient property either in whole or in part to the owner of the dominant property.

**Article 1370**

The owner of the servient property may not do any act such as to affect the use of right of easement nor may he alter its character, unless the right of easement existing over an old place has become more onerous for the owner of the servient property, or if he is prevented from carrying out useful repairs, and in that event the owner of such property may require that the right be transferred to a different place in which it may be enjoyed as easily as in the previous place.

**Article 1371**

- (1) If the dominant property is divided up, the right of easement shall remain in existence in favor of each part of it, provided that that does not increase the burden to the servient property.
- (2) If the right benefits only some of such parts, the owner of the servient property may require that it be terminated in respect of the other parts.

**Article 1372**

- (1) If the servient property is divided up, the right of easement shall remain in existence over each part of it.
- (2) However, if the right is not in fact used over some of such parts and it is not possible to use it over those parts, the owner of each part thereof may require that the right be terminated in respect of his part.

**Section 3**  
**Termination of rights of easement**

**Article 1373**

A right of easement shall terminate upon the expiration of the period laid down therefor, or by virtue of the subject matter of it ceasing to exist.

#### **Article 1374**

A right of easement shall terminate if the dominant and servient properties come into one ownership, and shall arise again if the reason for the termination, attributable to a past event, ceases to exist.

#### **Article 1375**

A right of easement shall terminate if it is impossible to exercise it by reason of a change in the condition of servient and dominant properties, and shall arise again if the condition reverts to what it was previously.

#### **Article 1376**

A right of easement shall terminate if the owner of it annuls his use of it, and notifies the owner of the dominant property that he has withdrawn from the use of such right.

#### **Article 1377**

A right of easement shall terminate if the purpose for which it existed in favor of the dominant land ceases, or if only a limited benefit remains which is incommensurate with the burdens imposed upon the servient property.

#### **Article 1378**

- (1) No claim for a right of easement will be heard if fifteen years elapse without the right being exercised.
- (2) If there are a number of co-owners of the dominant property, use of the easement made by any one of them shall interrupt the period of prescription for the benefit of the remainder of them, and if the period of prescription stops in favor of one of the co-owners, it shall likewise stop for the benefit of the others.

### **Section 4**

#### **Certain types of easement**

##### **(1) Rights of way**

#### **Article 1379**

If a right of way is established in favor of any person over land owned by another, the owner of that land may not prevent him from using it unless his passing over the land is an act performed by consent.

#### **Article 1380**

The owner of land not connected to a public highway, or land which could only be joined to a public highway at exorbitant or oppressive expense, shall have a right of way over neighbouring land to the customary extent in respect of payment of reasonable consideration, and such right may only be exercised over such part of the neighbouring land as causes the least amount of damage, and over such part as will achieve the necessary purpose.

#### **Article 1381**

If connection with a public highway is prevented by reason of the dividing up of the land by a legal disposition, a right of way may only be required over parts of that land.

##### **(2) Right to draw water**

#### **Article 1382**

The right to draw water is the taking of turns to have the use of water for the irrigation of land or crops.

### **Article 1383**

Each person may have the use of the water sources, courses and canals which are for the public benefit, in accordance with the provisions laid down by special laws and regulations.

### **Article 1384**

- (1) If a person makes a stream or water course for the irrigation of his land, no other person shall have the right to use it save by his consent.
- (2) Nevertheless, it shall be permissible for neighbouring owners to use a stream or water course as required for the irrigation of their land after the owner has satisfied his need therefrom, and the neighbouring owners must, in that event, share in the costs of making and maintaining the stream or water course in proportion to the area of their land in respect of which they benefit from it.

### **Article 1385**

No co-owner of a source of water or of a co-owned stream may create another channel from it, save by the consent of the other co-owners.

### **Article 1386**

If the owners of the right to draw water do not agree to carry out necessary repairs to the source of the water or tributaries or a co-owned stream, it shall be permissible to compel them to do so in proportion to the shares of each of them upon the application of any of them.

### **Article 1387**

The right to draw water may be inherited, and the benefit thereof disposed of by testamentary disposition, but may not be sold save with the land, nor may it be given by gift, or leased.

## **(3) Rights of passage of water**

### **Article 1388**

- (1) A right of passage of water is the right of a landowner to have water for irrigation flow over the land of another, in order to reach his land from a source remote from it.
- (2) If such right is established in favor of any person, the owners of land over which the water flows may not block its passage.

### **Article 1389**

If a right of passage of water is established in favor of any person over the property of another and it causes damage to him, the owner of the right of passage must repair it to remove the damage, and if he fails to do so the owner of the other land may do so at the expense of the owner of the right of passage, up to the customary limit.

### **Article 1390**

- (1) Any owner of land wishing to irrigate his land from either natural or artificial sources which he has a right to use may create a passage of water over the land situated between his land and such sources, provided that he pays immediate compensation therefor and on condition that such act does not substantially interfere with the enjoyment of the intermediate property by the owner thereof, and if the land does sustain damage as a result thereof, the owner of the land may require compensation for such damage as he has sustained.
- (2) The owner of land must grant permission for the placing of the installations necessary for the right of passage of water to neighbouring land in consideration of compensation to be paid in advance, and he may have the use of such installations provided that he bears the costs of their erection and the use he makes of them in proportion commensurate with the benefit he derives therefrom.

#### **Article 1391**

If an owner of land suffers damage by reason of the installation referred to in the foregoing paragraph, he may require the persons having the benefit thereof to make good the damage caused.

#### **(4) The right to free flow**

#### **Article 1392**

Free flow is the flowing or drainage of water which is either unusable or exceeds the requirement of the land of another over which it flows.

#### **Article 1393**

- (1) Low ground is subject to an accumulation of water naturally flowing from high ground without any human intervention in the flow.
- (2) The owner of the lower ground may not make a dam preventing such flow.
- (3) Likewise, the owner of the higher ground may not do anything which increases the burden on the lower ground.

#### **Article 1394**

An owner of agricultural land shall have the right to draw off unusable water or water which is in excess of the requirements of the land over which it flows, in consideration of appropriate compensation.

#### **Article 1395**

The owners of land over which water flows naturally may make use of installations for the drawing off of such water, provided that each of them bears the cost of erecting, modifying and maintaining such installations in proportion to the benefit derived therefrom by each of them.

#### **Article 1396**

No person may create a harmful flow of water on to land owned by another or on to a public or private road, and the damage shall be made good notwithstanding that it may have been continuing for a long time.

#### **Article 1397**

Owners of new installations may not divert the flow of water produced thereby on to the land of another without his consent, unless they have a right to do so.

#### **Article 1398**

- (1) An owner of land may modify the surface thereof in such a way that rain water flows on his land or on to a public highway, subject to the special laws and regulations.
- (2) It shall not be permissible for him to create a flow of water on to neighbouring land, unless he has an old established right to do so.

**BOOK FOUR**  
**SECURITIES OVER PROPERTY**

**CHAPTER I**

**Pledge (or mortgage) by way of security**

**Part 1**

**Definition and creation of a pledge by way of security**

**Article 1399**

A pledge by way of security is a contract whereby an obligee acquires, over real property allocated for the satisfaction of his debt, a right in rem whereby he shall take precedence over ordinary obligees and obligees subsequent in rank to him in the satisfaction of his right out of the proceeds of such land, in the possession of whomsoever it may be.

**Article 1400**

A pledge by way of security may only be made by registration thereof, and the pledgor shall be bound to pay the costs of the contract, unless a contrary agreement is made.

**Article 1401**

- (1) The pledgor must be the owner of the land pledged, and capable of making dispositions there over.
- (2) It shall be permissible for a pledgor to be the debtor or guarantor of a specific right providing a pledge in favor of the obligor.

**Article 1402**

It shall not be permissible to pledge the property of a third party, save with the consent of the true owner by a notarized instrument.

**Article 1403**

- (1) It shall be permissible for a father to pledge his property to his minor child, and in the event that there is no father, the true grandfather may pledge his property held by such minor.
- (2) If the father is owed a debt by his minor son, he may take a pledge of the property of his child for himself.
- (3) The father or true grandfather may pledge the property of a minor for a debt owed by the minor himself.
- (4) He may also pledge the property of one of his minor children for another minor son of his for a debt owed to him by such other.
- (5) Neither the father nor the true grandfather may pledge the property of the minor child for a debt owed to a person who is a stranger to the father or grandfather.
- (6) The consent of the court must be obtained in the circumstances referred to in paragraphs 2,3 and 4.

**Article 1404**

- (1) It shall be permissible for a guardian with the consent of the court to pledge property of a minor or a person under a restriction to a stranger for a debt owed to him by either of them.
- (2) It shall not be permissible for him to pledge his property held by a minor or person under a restriction, nor to take a pledge of the property of either of such persons for himself.

#### **Article 1405**

The real property pledged by way of security pledge must be present and in existence when the pledge is made.

#### **Article 1406**

- (1) It shall not be permissible for there to be a security pledge save over real property, which may be dealt in and sold by public auction or a right in rem over real property.
- (2) It shall be permissible for the court to set aside a contract of pledge by way of security, if the land pledged has not been sufficiently described.

#### **Article 1407**

A pledge by way of security shall include the appurtenances of the land by way of buildings, growing things, and things which have become part of the land of affixation, and any new buildings erected on the land after the contract was made.

#### **Article 1408**

- (1) A co-owner of co-owned property may pledge his share, and the pledge shall be transferred, after division, to the separate share falling to his portion, having regard to the registration thereof with the land registry.
- (2) Sums owing to him out of the shares or the proceeds of sale of the land shall be appropriated towards satisfaction of the debt for which the pledge was made.

#### **Article 1409**

The consideration for a pledge by way of security must be an ascertained debt owed or promised, specified at the time of the pledge, or specific property which is guaranteed.

#### **Article 1410**

A pledge by way of security shall be indivisible, and each part of the real property pledged shall stand as security for the whole of the debt and each part of the debt secured by the real property pledged.

#### **Article 1411**

The provisions relating to pledges by way of security shall apply to moveable property which the special laws provide must be registered.

### **Part 2**

### **Effects of a pledge by way of security**

#### **Section 1**

#### **Effects of the pledge as between the contracting parties**

##### **(1) In relation to the pledgor**

#### **Article 1412**

A pledgor may dispose of his real property which is pledged by way of security without the same affecting the rights of the pledgee.

#### **Article 1413**

- (1) The pledgor shall have the right to manage the property pledged and to obtain the yield thereof up to the date on which he is compulsorily divested of ownership upon his failure to pay the debt.

- (2) The yield of the real property pledged shall attach to such property as from the date of divesting of ownership.

#### **Article 1414**

The pledgor shall be the guarantor of the property pledged and he shall be liable in full for its safety until the date the debt is paid. The pledgee may make objection to any shortfall in his security and may take such steps as will preserve his right, and shall have recourse against the pledgor for the costs of so doing.

#### **Article 1415**

- (1) If the property pledged is destroyed or damaged through the default of the pledgor, the pledgee shall have the right to require that his debt be paid immediately or that sufficient security for his debt be provided.
- (2) If the loss or damage occurs through a cause with which the pledgor had nothing to do, he may elect between providing sufficient security for the debt or discharging the debt prior to the maturity date thereof.
- (3) If acts take place which are such as to expose the property pledged to destruction or damage or which may render the property insufficient as a security, then the pledgee may apply to the court for an order that such acts cease and that steps be taken to prevent any damage occurring.

#### **Article 1416**

A pledge by way of security shall, upon the destruction of or occurrence of damage to the land, be transferred to the property which takes its place by way of compensation or insurance monies or consideration for expropriation for the public benefit, and the pledgee may satisfy his right out of such property in accordance with the rank which he holds.

#### **Article 1417**

If the pledgor is a guarantor in rem, it shall not be permissible to recover the debt otherwise than out of the property pledged, and he may not exercise a recourse against the debtor prior to execution against his property.

### **(2) In relation to the obligee-pledgee**

#### **Article 1418**

A pledgee of a pledge by way of security may assign his right to another person provided that the debtor consents, and the deed of assignment shall be registered with the land registry.

#### **Article 1419**

- (1) A pledgee may satisfy his debt out of the land pledged upon the debt falling due in accordance with the rank which he holds after taking the steps laid down in the law of procedures before the civil courts, and special laws.
- (2) If the land is insufficient to satisfy his debt, he may have recourse for the balance of his debt against the assets of the debtor as an ordinary creditor.

#### **Article 1420**

- (1) If it is a condition of the contract of pledge by way of security that the ownership of the property pledged be vested in the pledgee in consideration for his debt in the event that the pledgor does not pay at the specified time, or if there is a condition that it be sold regardless of the legal procedures, the pledge shall be valid but the condition shall be void.

- (2) The condition shall also be void notwithstanding that it may have been made by subsequent agreement.

**Article 1421**

- (1) A lease already granted by the pledgor shall be of no effect as against the pledgee, unless it is proved that it antedated the pledge.
- (2) A lease granted commencing after the expiration of a lease already granted shall be of absolutely no effect as against the pledgee unless it is recorded in the contract of pledge.

**Section 2**

**Effects of a pledge by way of security in relation to the non-contracting parties**

**(1) General provisions**

**Article 1422**

A pledge by way of security shall be effective as against the non-contracting parties as from the date of registration thereof prior to third parties acquiring rights in rem over the property pledged.

**Article 1423**

The effect of a pledge by way of security shall be restricted to the sum specified in the deed of pledge registered with the land registry, unless there is a contrary stipulation in the law or by way of agreement.

**Article 1424**

Neither an assignment of a pledge by way of security nor a waiver thereof or of the status thereof shall be effective as against the non-contracting parties, unless the same is noted on the original instrument giving rise to the right, and registered.

**(2) Order of priorities**

**Article 1425**

- (1) Debts owing to obligee-pledgees under pledges by way of security shall be paid out of the proceeds of the land pledged or the property which takes its place in accordance with the ranking of each of them, notwithstanding that they may have affected the registration on the same day.
- (2) Such rank shall be noted by serial number on the registration, and if several persons come forward at the same time to register their pledges against one obligor and over the same land, such pledges shall be registered under one number, and those creditors shall be regarded as being of equal rank upon distribution.

**Article 1426**

It shall be permissible for an obligee-pledgee to assign the rank of his pledge up to the amount of his debt to another obligee-pledgee over the same property pledged, and it shall be permissible to rely, in respect of such ranking, as against that other creditor on all arguments upon which it would have been permissible to rely as against the original creditor, save in respect of those matters connected with the expiration of the rights of the first creditor if such expiration took place subsequent to the assignment of his rank.

**Article 1427**

- (1) A pledge by way of security shall rank as from the date of registration thereof.
- (2) It shall retain its rank until an entry is made at the land registry indicating that it has expired.



### **Article 1428**

Registration of a pledge by way of security shall result in the costs of the contract and registration being implicitly included in the debt covered by the pledge, and at the same rank which it has.

### **(3) Rights of following**

### **Article 1429**

An obligee-pledgee by way of security shall have the right to follow the property pledged into the hands of whomsoever may be in possession of it in order to obtain satisfaction of his debt upon maturity, in accordance with his rank.

### **Article 1430**

An obligee-pledgee by way of security may take steps to divest the ownership of the property pledged and to sell the same if the debt has not been paid at the due time, after giving notice to the debtor and the person in possession of the land in accordance with the procedures laid down in the Law of Procedures before the Civil Courts, and special laws.

### **Article 1431**

Any person in whom ownership of or another right in rem over the property pledged has become vested for any reason shall be deemed to be a person in possession, without his being personally obliged in respect of the debt covered by the pledge.

### **Article 1432**

A person in possession of land pledged by way of security may pay the debt covered by the pledge together with expenses after notification being given to him, and provided that he shall have a right of recourse against the debtor in respect of what he has paid and he may also take the place of the creditor who has obtained satisfaction of his debt, in respect of such rights as he has.

### **Article 1433**

A person in possession of land pledged by way of security shall have the right to disencumber the land which has passed to him of any right in rem over it attaching by way of security for a registered debt, by paying the debt prior to proceedings being taken for the land to be sold, or at such times as are laid down by the Law of Procedures before the Civil Courts and the special laws.

### **Article 1434**

The proceedings for compulsory divesting of ownership for non-payment of a debt shall be taken in accordance with the provisions of the Law of Procedures before the Civil Courts, and special law.

### **Article 1435**

It shall be permissible for a person in possession of land pledged by way of security to intervene in the proceedings for the sale of the land by auction, and if the sale is awarded to him and he pays the price he shall be deemed to be the owner of the land under the original deed of ownership, and the land shall be freed of the right registered.

### **Article 1436**

If the sale under the auction of land pledged by way of security is awarded to a person other than the person in possession of it, he shall acquire it under the order made in the auction, and may obtain satisfaction of his right from the person in possession of it.

### **Article 1437**

- (1) There person in possession shall be liable for any damage or harm that may befall the land pledged in accordance with the rules relating to guarantees (liability) laid down in this Code.
- (2) He must render up the yield of the land as from the date he is given notice to pay the debt.

#### **Article 1438**

If the proceeds of the land sold exceed the value of the debts secured, the excess shall belong to the person in possession, and his obligee-pledgees may recover their debts there out.

#### **Article 1439**

- (1) The person in possession may have recourse by way of claim for guarantee against the previous owner up to the amount claimed by the successor against the person from whom he has obtained ownership by way of contract or gift.
- (2) The person in possession may also have recourse against the debtor for any amount paid in excess of amounts owing by him under the deed of ownership, whatever may be the cause of his having paid such excess. He shall take the place of the creditors whose rights he has discharged, and in particular he shall take their place in connection with securities provided by the debtor to the exclusion of securities provided by persons other than the debtor.

### **Part 3**

#### **Expiry of pledges by way of security**

#### **Article 1440**

- (1) A pledge by way of security shall expire upon the expiration of the debt secured in full.
- (2) If the cause of the expiration of the debt ceases to exist, the pledge shall arise again as it was before without prejudice to the rights of persons acting in good faith acquired by them during the period between the expiration and the rearing of the right.

#### **Article 1441**

- (1) A debtor may pay the debt secured by the pledge by way of security and the appurtenances thereof prior to the time for the payment of it.
- (2) If the creditor does not accept such discharge, the debtor may deposit the money with the land registry which shall, after ascertaining the value thereof, settle the amount owed by the debtor and deliver to him the deed of discharge and termination of the pledge, regard being had therein to special laws.

#### **Article 1442**

The pledge shall terminate upon the sale of the property pledged in accordance with the Law of Procedures before the Civil Courts and special laws and payment of the proceeds to the obligee-pledgees in accordance with the ranking of each of them, or the deposit.

#### **Article 1443**

A pledge by way of security shall expire upon the transfer of ownership of the property pledged to the pledgee or the transfer of the right of pledge to the pledgor, and provided that it shall rearise upon the cessation of the cause of its originally expiring, with retroactive effect.

#### **Article 1444**

A pledge by way of security shall expire if the obligee-pledgee waives the same.

#### **Article 1445**

- (1) A pledge by way of security shall expire upon the destruction of the subject matter thereof.
- (2) The provisions relating to the destruction of property pledged as laid down in this Code shall be observed.

**Article 1446**

- (1) If the limitation period for a debt guaranteed expires, it shall be permissible for the pledgee to apply for an order releasing the pledge.
- (2) If the land pledged is transferred to the person in possession, he may raise the defense that the debt secured by the pledge is time-barred if the pledgee fails without excuse to raise a claim against him under the pledge for a period of 15 years.

**Article 1447**

A pledge by way of security shall not expire upon the death of the pledgor or of the pledgee, but shall remain in effect with the heirs.

## **CHAPTER II** **Possessory pledges (mortgages)**

### **Part 1** **Definition and creation of possessory pledges**

#### **Article 1448**

A possessory pledge is a contract giving rise to a right to retain the property in the hands of the obligee or the hands of a stakeholder by way of security for a right which may be recovered there- out in whole or in part in priority over other obligees.

#### **Article 1449**

Property pledged by way of possessory pledge must be capable of delivery at the time the pledge is made, and capable of being sold by public auction.

#### **Article 1450**

- (1) A pledge of fruit before ripening shall be valid, but it may only be enforced against after it has ripened. If the pledgor becomes bankrupt or dies before the fruit ripens, the pledgee shall rank with the other creditors in obtaining satisfaction of his debt out of the other assets of the pledgor.
- (2) If the fruit ripens after the distribution and is sold, and the proceeds are allocated to the pledgee, everything which he has taken in the distribution shall be returned to the other creditors if the proceeds thereof are equal to his debt. If the proceeds are less, he shall return to them the excess of what he has taken, notwithstanding that he may initially have shared with them in respect of the balance of his debt after the proceeds of the fruit pledged appropriated to him.

#### **Article 1451**

It shall be permissible to pledge perishable goods for a deferred debt, and such property shall be retained if possible, but if not it shall be sold by public auction and the proceeds shall take the place of the pledge.

#### **Article 1452**

The consideration for a possessory pledge must be an ascertained debt owed or promised, specified upon the pledge being made, or real property secured.

#### **Article 1453**

In order for a possessory pledge to be perfected, the obligee or the stakeholder must take possession of it, and the pledgor may resile from the pledge prior to delivery.

#### **Article 1454**

If the pledgor becomes subject to any restriction on making dispositions of his property before the pledgee takes possession of the property pledged, the contract of pledge shall be void.

#### **Article 1455**

The pledgor or the pledgee may agree to place the property pledged by way of possessory pledge in the hands of a stakeholder, in which event possession by the stakeholder shall stand as possession by the pledgee and the pledge shall be perfected upon possession being taken.

#### **Article 1456**

- (1) It shall not be permissible for the stakeholder to deliver the property pledged to the pledgor or the pledgee without the consent of the other so long as the debt remains in existence, and he may recover the property if he has delivered it.

- (2) If the property pledged is lost before recovery, the stakeholder shall be liable for the value thereof.

**Article 1457**

If the stakeholder dies and the pledgor and pledgee do not agree to deposit the property with another person, it shall be permissible for either of them to request the court to order that it be placed in the possession of a stakeholder selected by it.

**Article 1458**

The pledgor by way of possessory pledge in respect of a debt owed by him or by another person must be the owner of the property pledged and be competent to make dispositions over it.

**Article 1459**

The provisions relating to pledges by way of security set out in Articles 1403 and 1404 of this Code shall apply to possessory pledges.

**Article 1460**

The provisions relating to pledges by way of security set out in Article 1408 of this Code shall apply to pledges of co-owned property.

**Article 1461**

If a part of co-owned land or the like is pledged, the pledgee may take possession of the whole if the remainder is owned by the pledgor, and if it is owned by other parties, he may only take possession of the part pledged.

**Article 1462**

The provisions relating to the indivisibility of property pledged by way of security for a debt laid down in Article 1410 of this Code shall apply to possessory pledges, and the whole of such property shall remain as security for the whole or part of the debt.

**Article 1463**

A possessory pledge shall include all of the appurtenances of the property pledged which would have been included in a sale.

**Article 1464**

If the property pledged by way of possessory pledge produces a yield while in the possession of the purchaser (sic) which is distinct from it but of the same nature, such yield shall form part of the pledge, but if it is not of the same nature, it shall not form part of it unless it has been agreed in the contract of pledge that it should do so.

**Article 1465**

- (1) It shall be permissible for property pledged by way of possessory pledge to stand as security for more than one debt ranking at the same level, on condition that it is pledged under one contract.
- (2) The whole of the property shall be a pledge with each of the obligees in respect of his debt.

**Article 1466**

- (1) Property on loan may be pledged with the consent of the lending owner and upon the conditions laid down by him.
- (2) The lender may not recover the property pledged prior to the discharge of the debt.

**Part 2**  
**Effects of a possessory pledge**

**Section 1**  
**Effects of the pledge as between the contracting parties**

**(1) With regard to the pledgor**

**Article 1467**

- (1) It shall not be permissible for the pledgor to dispose of the goods pledged by way of possessory pledge, save with the consent of the pledgee.
- (2) If such disposition is by way of sale, the right of the pledgee shall transfer to the proceeds of the property pledged.

**Article 1468**

- (1) If the pledgor makes an acknowledgement in favor of a third party in respect of the goods pledged by way of possessory pledge his acknowledgement shall be of no effect as against the pledgee.
- (2) Such acknowledgement shall not affect the right of the pledgee to detain the property pledged until such time as the debt is discharged.

**Article 1469**

The pledgor shall ensure the safety of the goods pledged and he may not do anything to them which lessens their value as security or which interferes with the exercise by the pledgee of his rights.

**Article 1470**

The provisions relating to destruction of or damage to goods pledged arising out of the default of the pledgor or by way of unavoidable accident laid down in Article 1415 of this Code shall apply to possessory pledges.

**Article 1471**

If the goods pledged are damaged or destroyed, the possessory pledge shall attach to the property which replaces it and the pledgee may satisfy his rights there out in accordance with the provisions of Article 1416 of this Code.

**(2) With regard to the obligee/pledgee**

**Article 1472**

The pledgee must keep the goods pledged by way of possessory pledge himself or with a trustee, and he must exercise the care of a reasonable man over them. He shall be responsible for their loss or destruction, unless the same is attributable to a cause in which he had no hand.

**Article 1473**

The pledgee may not dispose of the goods pledged without the consent of the pledgor, and it shall not be permissible for him to dispose of them unless he is an agent for sale.

**Article 1474**

- (1) It shall not be permissible for the pledgee to enjoy the use of the property pledged by way of possessory pledge, whether movable or immovable property, without the consent of the pledgor.
- (2) The pledgor may permit the pledgee to have the use of the property pledged, provided that the benefit derived from it is deducted firstly from the expenses which he has incurred on behalf of the pledgor, and secondly from the principal amount of the debt.

#### **Article 1475**

It shall be permissible for a pledge to stipulate that he should have the beneficial use of the thing pledged for himself if a fixed time or purpose is laid down therefor, and the (value of the) benefit is to be deducted from the debt whether it be a debt by way of sale or loan, and if it is not deducted from the debt then (the pledgee) may not stipulate that he should have such beneficial use if the debt is by way of loan, and it shall be permissible, if the debt is by way of a deferred price on a sale, and that is stipulated in the contract of sale.

#### **Article 1476**

If the obligee misuses the property pledged, the pledgor shall have the right to require that the property pledged be placed in the possession of a stakeholder.

#### **Article 1477**

The pledgee may retain the property pledged by way of possessory pledge until such time as his debt is discharged in full together with all appurtenances or costs thereof, and thereafter he must return the property pledged to the pledgor.

#### **Article 1478**

- (1) If the property pledged is lost while in the possession of the pledgee, he shall be the guarantor of the value thereof at the time he took possession of it.
- (2) If the value of the property is equivalent to the value guaranteed by him, the debt shall lapse whether the loss occurred through the wrongful act of the pledgee or not.
- (3) If the value is greater than the debt, the debt shall lapse with regard to the pledgor, and the pledgee shall be liable for the balance if the loss was through his wrongful act or default in preserving the property.
- (4) If the value of the property is less than the debt, the debt shall be reduced pro tanto, and the obligee shall have a right of recourse for the balance of the debt as against the pledgor.

#### **Article 1479**

A pledgee by way of possessory pledge shall have the rights of a pledge by way of security pledge in executing against the property pledged and thereafter against all of the assets of the obligor in the event of failure to make full satisfaction of his debt as set out in Article 1419 of this Code.

#### **Article 1480**

The provisions of Article 1420 of this Code shall apply to a possessory pledge.

### **Section 2**

#### **Effects of a pledge in relation to parties other than the contracting parties**

#### **Article 1481**

In order for a possessory pledge to be effective as against the non-contracting parties, the property pledged must be in the possession of the pledgee-obligee or of a stakeholder to whom both parties consent.

#### **Article 1482**

The pledgee may detain the property pledged in his possession until his debt is satisfied in full together with the appurtenances and costs thereof, and if he loses possession of the property through reasons beyond his control he shall have a right to recover the same.

### **Article 1483**

The property pledged by way of possessory pledge shall stand as security for the principal amount of the debt and the necessary expenses incurred by the pledgee on behalf of the pledgor, together with the costs of the contract of pledge and the enforcement thereof.

## **Part 3**

### **Special provisions relating to certain possessory pledges**

#### **Section 1**

#### **Possessory pledges of land**

### **Article 1484**

A possessory pledge of land shall not be deemed to be effective as against the non-contracting parties unless it is registered, in addition to the (actual) possession by the obligee-pledgee of the property pledged.

### **Article 1485**

- (1) An obligee-pledgee may lend the land pledged by way of possessory pledge or may lease it to the pledgor and provided that the land pledged shall remain as security for payment of the debt, and without that affecting the effectiveness of the pledge as against the non-contracting parties.
- (2) With regard to rent paid by the pledgor, the provisions of Article 1474 of this Code shall be followed in connection with an advantage obtained out of the property pledged.

### **Article 1486**

The obligee-pledgee shall discharge the necessary costs of repairing the property pledged and maintaining the same, as well as taxes and imposts due thereon, and provided that he may deduct the same from the yield of the land pledged or from the price thereof upon sale, in accordance with the rank of his debt.

## **Section 2**

### **Pledges of moveable property**

### **Article 1487**

A pledge of moveable property by way of possessory pledge shall not be deemed to be effective as against the non-contracting parties unless an instrument is made of fixed date setting out the debt, and the property pledged, together with the fact of the transfer of possession to the pledgee.

### **Article 1488**

If the property pledged is threatened with loss, damage or detriment to its value, the pledgee shall notify the pledgor thereof, and if the pledgor does not provide another security to the pledgee, it shall be permissible for each of them to apply to the court for the sale of the property pledged, where-upon the right of the obligee shall be transferred to the proceeds.

### **Article 1489**

It shall be permissible for a pledgor to apply to the court for leave to sell the thing pledged if an opportunity arises to sell the same by way of a profitable contract, notwithstanding that that may be prior to the maturity date of the debt, and the court shall, upon granting leave, fix the conditions of sale and shall make a determination as to the depositing of the proceeds.



#### **Article 1490**

The foregoing provisions shall apply to the extent that they do not conflict with commercial laws and special laws consistent with the Islamic Sharia.

### **Section 3 Pledges of debts**

#### **Article 1491**

A person who pledges a debt owing to him must deliver the instrument proving such debt to the pledgee.

#### **Article 1492**

- (1) A pledge of a debt shall not be effective as against the debtor, unless he is notified of such pledge or he consents thereto.
- (2) It shall not be effective as against any person other than the debtor, unless the pledgee is in possession of the instrument evidencing the debt pledged.
- (3) The pledge shall rank as from the date on which notification or acceptance is proved to have taken place.

#### **Article 1493**

A pledge of instruments in favor of a named person or promissory notes shall be made in the special way laid down by law for the assignment thereof, but provided that it shall be stated that the assignment has taken place by way of pledge.

#### **Article 1494**

It shall not be permissible to pledge a debt which cannot be assigned or attached.

#### **Article 1495**

A pledgee may recover his periodical entitlements to the debt pledged and the costs connected therewith, and he must in that event deduct the same from the costs, and thereafter from the principal amount of the debt.

#### **Article 1496**

The obligee-pledgee must preserve the debt pledged, and if he is entitled to recover anything out of that debt without the intervention of the pledgor, he must recover it at the time and place specified for satisfaction, and must notify the pledgor thereof.

#### **Article 1497**

A debtor in respect of a pledged debt may rely as against the creditor-pledgee on defenses relating to the validity of the right secured by the pledge, and likewise on defenses which he may have as against his original creditor, all of the above to the same extent to which it would be permissible for the debtor, in the event of an assignment, to rely on such defenses as against the assignee.

#### **Article 1498**

- (1) A debtor under a pledged debt must pay the debt to the pledgor and the pledgee together if it falls due prior to the maturity of the debt secured by the pledge.
- (2) The pledgor and the pledgee may agree to deposit monies paid by the debtor with a stakeholder until the debt secured falls due, and the right arising out of the pledge shall be transferred to the monies deposited.

#### **Article 1499**

If the debt pledged and the debt secured by the pledge both become due for payment and the pledgee does not obtain satisfaction of his right, it shall be permissible for him to take out of the debt pledged that which is owed to him and to return the balance to the pledgor, provided that the right to which he is entitled and the debt pledged are of the same type, otherwise it shall be permissible for him to require that the debt pledged be sold or that he become the owner thereof for its value in satisfaction of his right.

#### **Article 1500**

The provisions relating to pledges of moveable property by way of possessory pledge shall apply to pledges of debts, to the extent that they do not conflict with the foregoing provisions.

### **Part 4**

#### **Termination of possessory pledges**

#### **Article 1501**

A possessory pledge shall terminate upon the termination of the debt secured in full, and shall rearise with it if the cause for the termination of the debt ceases to exist, without prejudice to rights which third parties acting in good faith may have lawfully acquired during the period between the expiry of the debt and the rearing thereof.

#### **Article 1502**

A possessory pledge shall also terminate upon any of the following causes: -

- (a) by a waiver by the obligee-pledgee of his right to the pledge, whether expressed or implied.
- (b) if the right arising out of the pledge merges with a right of ownership in the possession of one person, but provided that it shall arise again retrospectively if the cause (of such
- e) merge ceases to exist; or
- (c) the destruction of the property, or the expiration of the right pledged.

#### **Article 1503**

A possessory pledge shall not cease upon the death of the pledgor or of the pledgee, but shall remain as a pledge with the heirs until the debt is satisfied.

**CHAPTER III**  
**Priority rights (liens)**

**Part 1**  
**General provisions**

**Article 1504**

A priority right is a specific right over property following (such property), conferring upon the obligee priority status in obtaining his right in accordance with his bargain and as acknowledged by law.

**Article 1505**

- (1) If the law does not lay down the rank of the priority right, it shall rank below the other rights referred to in this Chapter.
- (2) If rights rank equally, then they shall be satisfied in proportion to each unless the law requires otherwise.

**Article 1506**

A general priority in an obligee shall apply to all of the assets of an obligor, but a particular priority shall only take effect over specific real or moveable property.

**Article 1507**

- (1) A priority right shall not affect the rights of a person in possession of moveable property if he is acting in good faith.
- (2) A tenant of land shall be deemed to be a person in possession within the meaning of the foregoing paragraph in relation to moveable property located on the land leased, and a hotelier shall also have that status in relation to the belongings of the guests.
- (3) A person having a priority right over moveable property may, if he fears that it will be lost or disposed of, require that it be placed under protection.

**Article 1508**

- (1) The provisions relating to pledges for security shall apply to priority rights over real property, to the extent that they do not conflict with the nature thereof.
- (2) Priority rights securing rights due to the public treasury and the fees and costs of judicial sales shall not be registrable.

**Article 1509**

The provisions relating to pledges for security in connection with the destruction of or damage to property shall apply to priority rights.

**Article 1510**

Priority rights shall terminate in the same manner in which rights under pledges for security and possessory pledges may terminate, and in accordance with the provisions for termination of those kinds of right unless there is a provision to the contrary.

**Part 2**  
**Types of priority rights**

**Section 1**  
**General provisions**

**Article 1511**

The rights described in the following provisions shall be priority rights with their rank therein, and shall be satisfied as among themselves in proportion to each of them, in addition to the priority rights laid down in special provisions.

**Section 2**  
**General priority rights and particular priority rights over moveable property**

**Article 1512**

- (1) Judicial costs expended for the common benefit of creditors in preserving the property of the debtor and selling the same shall give rise to a priority right over the proceeds of such property.
- (2) Such expenses shall be recovered before any other right notwithstanding that it may be a priority right or secured by a pledge by way of security, including the rights of creditors who have expended money for their benefit, and the costs incurred in selling the property shall rank above the costs incurred in the proceedings for distribution.

**Article 1513**

- (1) Taxes, imposts and other rights of any kind whatsoever owing to the government shall constitute a priority right upon the conditions laid down in the laws made in that behalf.
- (2) Such monies owed shall be recovered from the proceeds of property encumbered by such priority, in the possession of whomsoever it may be, in preference to any other right notwithstanding that the same may be a priority right or secured by a pledge, with the exception of judicial costs.

**Article 1514**

Costs expended in preserving or repairing moveable property shall give rise to a priority right there- over and shall be recovered out of the proceeds thereof after judicial expenses and sums owed to the public treasury.

**Article 1515**

- (1) The following rights shall stand as priority rights over all of the assets of a debtor, both moveable and immovable, to the extent to which monies are due on those rights in respect of the last six months:
  - (a) expenses incurred (by others) due by a debtor to persons who have been compelled to bear such expenses;
  - (b) monies due for the supply of food, clothing and medicine to the debtor or the person supporting him.
- (2) Such sums may be recovered directly after judicial costs, monies due to the public treasury and the costs of preserving and repairing property, and as between themselves shall be recovered in proportion to each of them.

#### **Article 1516**

- (1) The cost of seeds, manure and other fertilizing materials, insecticides, and the costs of sowing and harvesting shall be a priority debt over the produce in the production of which it has been expended, and all such expenses shall rank equally and be recoverable out of the proceeds after prior rights, if any.
- (2) Likewise, the cost of agricultural machinery and repair expenses thereof shall be a priority debt over it at the same rank.

#### **Article 1517**

The rent for agricultural property and land for two years or for the period of the tenancy if less, and every other right vested in the landlord under the contract of tenancy shall constitute a priority right over moveable property on the property leased and owned by the tenant, and which may be attached, as well as the agricultural produce.

#### **Article 1518**

The priority right for the rent referred to in the foregoing Article shall attach notwithstanding that the moveable property may be owned by the wife of the tenant or a third party of whose right the landlord is unaware, without prejudice to the special provisions relating to stolen or lost chattels.

#### **Article 1519**

- (1) A priority right in respect of a tenancy debt shall attach to chattels and produce which are on the property leased notwithstanding that they may be owned by a sub-tenant, if the landlord has not permitted the first tenant to moneys due to the first tenant by the subtenant.
- (2) If the lessor has permitted the first tenant to sublet the property leased to another person, the priority right shall only apply to lease the property to another person.

#### **Article 1520**

The landlord shall have the right to follow property encumbered by a priority right if it is removed from the land leased without his knowledge or consent, and sufficient assets do not remain upon the land to secure the priority rights, the above being without prejudice to the rights of third parties acting in good faith over such assets, and the priority right shall remain in existence over property which has been carried away, notwithstanding that (the exercise of such right) may prejudice the rights of third parties, for a period of three years from the day on which they were carried away, if the landlord imposes an attachment over such property within thirty days from the date of its transportation. Nevertheless, if such property is sold to a purchaser acting in good faith in the public market or at a public auction or from a person dealing in such property, the landlord must return the proceeds to the purchaser.

#### **Article 1521**

A debt arising out of a tenancy of agricultural land and property shall be recovered out of the proceeds of the property encumbered by the priority right after the rights set out in the foregoing Articles, save in respect of those rights which are ineffective as against the right of the landlord in his capacity as a person in possession in good faith.

#### **Article 1522**

- (1) Monies due to a hotelier by a guest for his board and accommodation, and monies expended on his account shall constitute a priority right over the belongings which the guest has brought to the hotel.
- (2) The priority right shall attach to the belongings notwithstanding that they are not owned by the guest, unless it is proved that the hotelier knew at the time they were brought into the hotel were subject to third party rights, but on condition that such property is not stolen or lost. The hotelier may object to the removal of the belongings from the hotel so long as

he has not been paid in full, and if the property is removed despite his objection or without his knowledge, the priority right shall remain in existence over such property without prejudice to rights over that property acquired by third parties acting in good faith.

#### **Article 1523**

The priority right of a hotelier shall rank equally with the priority right of a landlord, and if both rights exist simultaneously, the earlier of them in date shall be preferred unless the right is invalid as against the other.

#### **Article 1524**

- (1) The seller of moveable property shall have a priority right there over for the price and appurtenances, and such priority right shall remain in existence so long as the chattels retain their identity, but without prejudice to rights acquired by persons acting in good faith, and subject to the special provisions in the commercial laws.
- (2) Such priority right shall rank after the other priority rights referred to over moveable property. It shall apply as against a landlord or a hotelier if it is established that they were aware of the priority right of the seller at the time the chattels were brought on to the property leased or into the hotel.

#### **Article 1525**

- (1) Co-owners of chattels shall, upon their dividing the same, have a priority right there over by way of security for the rights of each of them in having recourse against the others by reason of the division and the recovery by them of their share.
- (2) The priority right of a sharing party shall have the same rank as that of the priority right of a seller, and the earlier in time shall prevail if there are competing ranks.

### **Section 3**

#### **Priority rights over real property**

#### **Article 1526**

- (1) The price and appurtenances of real property owing to a seller thereof shall have the status of a priority right over the property sold.
- (2) The priority right must be registered notwithstanding that the sale is registered, and it shall rank as from the date of its registration.

#### **Article 1527**

- (1) Amounts due to contractors and building engineers who have undertaken to construct buildings or other installations, or to reconstruct, repair or maintain the same, shall have the status of priority right over such structures, but to the extent to which it exceeds the value of the land at the time of sale, by reason of such works.
- (2) Such priority right must be registered and it shall rank as from the time of registration.

#### **Article 1528**

- (1) Co-owners of land shall, upon their dividing the same, have a priority right there over by way of security for the right of recourse that any of them has as against the others to recover his share to which he is entitled under the division.
- (2) A priority right arising out the division must be registered, and it shall rank as from the

date of registration.