
CIVIL CODE OF SEYCHELLES BILL, 2018

(Bill No.13 of 2018)

OBJECTS AND REASONS

The object of this Bill is to introduce a revised Civil Code of Seychelles.

The Code has been revised to be consistent with the Constitution of Seychelles, with particular consequences for the rights of children and women. The Bill reflects judicial experience with the Civil Code 1975 and provides greater certainty in respect of property rights and, with its consistent use of terminology and structure, it provides the basic law of Seychelles in a more accessible form.

The Bill reflects a thoroughgoing revision and modernising of the Code. The key substantive provisions are as follows.

In Book I:

1. **Specific proposals related to the reintegration of marriage and matrimonial causes (without substantive change).** The Civil Code currently deals with some matters related to marriage, but over time both the basic rules relating to marriage and those relating to matrimonial relationships were dealt with primarily by separate statutes. The integrity of the Code and ease of use is achieved by reintegrating the matters of substance into the Code.
2. **A proposal that, on the termination of stable and long-term *en ménage* relationships, property will be shared between the parties.** The courts and the community struggle with the property consequences of the termination of *en ménage* relationships. On the termination of a marriage, the courts have a discretion to give property rights to the non-owning spouse. There is no such provision for the majority of stable relationships in Seychelles; the

best that the courts can do is to make cash settlements which typically reflect only the non-owning *en ménage* partner's cash contribution to the property. The non-owning *en ménage* partner, when the relationship breaks down, has no right to specific property and, in particular, to the house.

In Book II:

1. **Removal of the contradictions and ambiguities in the law on fiduciaries.** The existing law has been the source of much confusion because of the express provision for a fiduciary in the case of co-ownership. The Bill simplifies the law by requiring the appointment of a fiduciary in cases where the co-owners are in disagreement and where it is necessary to terminate co-ownership by judicial sale.
2. **Specific provision for the *droit de superficie* and encroachment.** The principles of the current case law on *droit de superficie* and encroachment are incorporated. The result is that the principles are set out clearly and the need for litigation is reduced.

In Book III:

1. **A proposal to introduce testamentary freedom in place of the fixed heirship system.** Attitudes to property have changed considerably since 1975 and there is now a strong sense of individual property rights. The Bill recognises this by extending the rights which a person has to do as they wish with their property while they are alive, to the situation on death. The concern that the grant of testamentary freedom might result in the interest of dependants not being met is addressed in the Bill by the proposal that the surviving spouse, *en ménage* partner, children, or parents, who were dependent on the deceased, have a right to maintenance from the deceased.
2. **Documentary evidence.** The threshold for the requirement of documentary evidence is raised to R50,000.

3. **Specific inclusion of the delict *troubles de voisinage*.** The principles elaborated by the courts in respect of the delict of *troubles de voisinage* have been specifically included in the Bill.

Dated this 13th day of July, 2018.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

CIVIL CODE OF SEYCHELLES BILL, 2018

(Bill No. 13 of 2018)



A BILL

OF

AN ACT to repeal and replace the Civil Code of Seychelles and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

1. (1) This Act may be cited as the Civil Code of Seychelles Act, 2018.

(2) The Act shall come into operation on such date as the Minister may, by notice published in the official *Gazette*, appoint.

Short title,
commencement
and application

(3) This Act shall bind the Republic.

2. In this Act, unless the context otherwise requires—

Interpretation

“appointed date” means the date appointed by the Minister;

“Civil Code of Seychelles” means the Code set out in the Schedule;

Commencement
of Civil Code of
Seychelles

3. Subject to the provisions of this Act, the Civil Code of Seychelles shall come into operation on the appointed date.

Existing Civil
Code of
Seychelles to
cease to have
effect.

4. The Civil Code of Seychelles as set out in Chapter 33 of the Laws of Seychelles, 2010 Edition, and all amendments thereto, shall cease to have effect on the coming into operation of this Act.

Repeal

5. The Civil Code of Seychelles Act (Cap33) is hereby repealed.

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BOOK I**PRELIMINARY AND PERSONS****PRELIMINARY**

1. This is the Civil Code of Seychelles.

2. This Act binds the Republic.

3. In this Act —

“child” includes adopted child;

“Code” means the Civil Code of Seychelles;

“person” means a natural person;

“ward” means a person who has a guardian.

4. Unless otherwise provided expressly or by necessary implication, where there is an inconsistency between a provision of the Code and a provision in any other enactment, the provision in the Code prevails.

5.(1) Legislation is the solemn and public expression of the legislative will.

(2) Legislation is promulgated and takes effect in accordance with the constitutional law of Seychelles.

6. Legislation has no retroactive effect unless that is expressly stated in the legislation or arises by necessary and distinct implication.

7.(1) A judicial decision is binding on all courts lower in the judicial hierarchy than the court which delivered the precedent decision.

(2) A court is not bound by its previous decisions but these should be considered to be highly persuasive and should be departed from only for good reason.

(3) Good reason includes the situation where —

- (a) the earlier judgment was given per incuriam;
- (b) there are two conflicting decisions of the court;
- (c) the issue is one of personal liberty or public importance and following precedent would result in considerable injustice.

8. The enjoyment of civil rights is the entitlement of everyone.

9.(1) Rules of public policy cannot be excluded by private agreement.

(2) Rules of public policy need not be expressly stated.

10.(1) “Domicil” means the country of habitual residence of a person.

(2) Habitual residence is a matter of fact determined by an assessment of all the relevant circumstances.

(3) Without limiting its meaning, “relevant circumstances” includes —

- (a) the place which is the centre of the person’s interests;
- (b) the place of usual residence of the person;
- (c) whether the purpose of residence in the country is temporary or settled;

- (d) the length of time a person has been physically present in the country;
- (e) how well the person has integrated into the particular country, taking into account factors such as whether the person has social contacts in that country, is adapted to the local culture, or speaks the local language.

(4) Every person has one habitual residence.

(5) Loss of habitual residence occurs only after a new habitual residence has been acquired.

(6) It is presumed that the habitual residence of a ward is that of the guardian.

11. Status and capacity are governed by the law of the domicil.

12. Immovable property is governed by the law of the place where it is situated (*lex situs*).

13. A contract made in a foreign country cannot create a mortgage on property situated in Seychelles, unless the mortgage complies with the law of Seychelles.

14.(1) A contract is governed by its proper law.

(2) The choice of the proper law is a matter of party autonomy.

(3) Parties can, in the exercise of their contractual freedom, select as the proper law of the contract either the law of a country or an international set of norms.

LEGAL PERSONALITY AND CAPACITY

15. Legal personality begins on the completion of birth.

16. A minor is a person under the age of 18 who is unmarried.

- 17.** An adult is a person —
- (a) aged 18 or older; or
 - (b) under the age of 18 who is married.
- 18.** An adult has full legal capacity.

19 – 143 VACANT

MARRIAGE

144.(1) A minor cannot contract marriage, but a Judge in Chambers may for serious reasons authorise a minor to contract marriage.

(2) (a) The consent of a Judge to a marriage may be given on the oral application of the minor or of a friend in the presence of the minor.

(b) The Judge may examine the minor or any person on oath concerning any facts the Judge deems relevant to the application.

(c) The consent of the Judge to the marriage shall be signified by a formal document under the signature of the Judge, a copy of which, certified by the Registrar, shall be transmitted to the Chief Officer of Civil Status.

145. There is no marriage where there is no consent.

146. No marriage can be contracted before the dissolution of an existing marriage.

147.(1) Marriage is prohibited—

- (a) In the direct line, between all ascendants and descendants and between persons related by marriage in the same line;

- (b) In the collateral line, between a brother and sister and between persons related by marriage in the same degree;
- (c) between a man and his niece or a woman and her nephew, but a Judge in Chambers may for serious reasons authorise such marriage.

(2) Notwithstanding paragraph (1), marriage may be contracted between a man and the sister of his deceased wife or between a woman and the brother of her deceased husband.

148.(1) Before the celebration of a marriage two publications of the marriage must be made in the district where the marriage is to take place, with an interval of six days between the publications.

(2) Similar publications must be made in the offices of any district in which either of the parties has resided for the fourteen days immediately preceding the date of publication.

(3) The fee for a marriage licence shall be as determined by legislation.

149.(1) (a) A Judge in Chambers may, on production of proof to the Judge's satisfaction that there is no impediment to the marriage, grant a licence authorising the celebration of a marriage at any time after one publication in the district where the intended marriage is to take place.

(b) Such publication may be made forthwith and before the expiration of the period provided in article 148.

(2) A Judge in Chambers may order that only one publication of a marriage shall be made.

(3) Where an order is made under paragraph (2) the marriage may take place after two days from such publication.

(4) The order of dispensation shall be mentioned in the margin of the act (*acte*) of marriage.

150.(1) When an application is made to a public officer for the publication of a marriage, the officer of civil status shall call for the production of the acts (*actes*) of birth of the parties, and in the case of a widower or widow for the production of the act (*acte*) of death of the deceased spouse.

(2) (a) It shall not be necessary to produce the acts mentioned in paragraph (1) where the acts have been registered in the office in which the marriage is to be celebrated.

(b) In the circumstances covered by paragraph (2)(a) the prescribed search fee shall be levied by the officer of civil status receiving the application.

(3) Where an officer is satisfied that an applicant is unable to produce any such act the applicant may replace the act with an affidavit in the prescribed form.

(4) Any such affidavit may be made before a judge, the Registrar of the court, a Magistrate or Justice of the Peace or before the officer to whom application for publication is made.

(5) Publication of a marriage shall be made by posting, in some conspicuous place in or about the office, of a prescribed notice signed by the officer.

(6) (a) The publication shall further be recorded by entering the notice in a special register, which shall not be a duplicate register.

(b) When two publications are made, no separate entry for the second publication shall be made, but the date of the second publication shall be mentioned in a footnote on the first entry.

(c) When a dispensation of one publication has been granted that fact shall be mentioned in a footnote.

151.(1) The marriage shall not take place until two days after the posting of the second notice.

(2) If the marriage does not take place within twelve months from the first publication, new publications must be made before the marriage can be celebrated.

152.(1) The husband or wife of a person who intends to contract marriage may oppose the marriage.

(2) A parent, and in default of a parent, a grandparent, of one of the parties may oppose the marriage.

(3) A guardian may oppose the marriage of the ward while the guardianship lasts.

(4) When there is no ascendant as referred to in paragraph (2), an adult brother or sister, uncle or aunt, or first cousin of one of the parties may oppose the marriage on the ground that the party is non compos mentis.

(5) An opposition made under this article will not be admitted except upon the condition that the opposing party will obtain a decree of interdiction within a period to be fixed in the judgment admitting such opposition.

(6) The court may dismiss an opposition purely and simply.

153.(1) A notice of opposition to a marriage is not valid unless it is signed by the opposing party or by an agent of the opposing party specially authorised by authentic deed to make such opposition.

(2) The notice must be served on the parties intending to marry, and on the officer before whom the marriage is to take place.

(3) The officer, on being served with such notice, shall forthwith make an entry of the opposition in the register of publications, and if the opposition is subsequently annulled or withdrawn shall make a marginal entry to that effect in the register.

(4) After service of such notice on an officer, the officer may not celebrate the marriage until either the opposition has been annulled by judgment of the Supreme Court, or the opposing party has

given notice in writing, signed or marked by such party in the officer's presence, that the opposition is withdrawn.

154.(1) Whenever an opposition has been made, any party intending to contract marriage or the Attorney-General may move the Supreme Court for a rule calling upon the opposing party to show cause why the opposition should not be quashed.

(2) Unless made by the Attorney-General, the motion shall be supported by an affidavit.

(3) The Supreme Court shall make the rule returnable and shall hear the cause within ten days and shall have power to call for such evidence, oral or written, as it thinks fit.

(4) The final order of the Supreme Court shall be transmitted by the Registrar to the Chief Officer of the Civil Status who shall cause a copy to be deposited with the officer on whom the notice of opposition has been served.

155. If an opposition is quashed the opposing party may by the same judgment be sentenced to pay damages.

156.(1) The dispensations mentioned in articles 144, 147 and 149 may be granted by the Judge in Chambers on the petition of the party requiring such dispensation and of the persons whose consent to the marriage is required by law.

(2) The Chief Officer of Civil Status shall file the order at the Civil Status Office and give to the parties such copies as may be required.

(3) The officer of civil status who makes the publication of the marriage shall mention the order in the margin of the notice.

157.(1) No marriage celebrated in Seychelles, except a marriage in articulo mortis, is valid unless it is celebrated by an officer of civil status.

(2) The marriage may be celebrated in any district in which publication has been made.

(3) The marriage shall be celebrated in the civil status office of the district, or, if the parties so request, it may be celebrated in any private house within that district.

158.(1) Where the parties request a civil status officer to celebrate a marriage in a private house within the officer's district, the officer must comply with the request if the conditions of this article are fulfilled and such fee as may be fixed by legislation is paid by the parties and the officer is supplied with a means of conveyance to and from the private house.

(2) The officer required to celebrate a marriage at a private residence shall in all cases be consulted as to the day and hour of such celebration.

(3) No civil status officer of the central office other than the Chief Officer of Civil Status shall celebrate any marriage at a private residence without the permission of the Chief Officer.

159.(1) On the day selected by the parties, after the periods prescribed for publication have expired, the officer shall —

- (a) in the office or in any private house referred to in article 158; and
- (b) in the presence of the parties and of two or more witnesses;

read aloud the names and other description of the parties as set forth in the notice of publication, and the written consent of any person whose consent is necessary.

(2) The officer shall ask the parties one after the other whether they consent to take each other as husband and wife, and after they have declared their consent so to do, the officer shall declare them duly married according to law and shall forthwith sign the act (*acte*) of marriage.

160.(1) The act (*acte*) of marriage shall be drawn up in the form required by legislation.

(2) (a) The officer shall ask the parties if any marriage settlement (*contrat demariage*) has been made between them and, if so, the name of the notary who drew up the settlement.

(b) Any statement made by the parties in relation to the marriage settlement shall be recorded in the act of marriage.

161.(1) No fee shall be charged for the publication of marriage.

(2) The parties shall be entitled to receive free of cost a copy of the publication and a copy of the act (*acte*) of marriage.

162. Whenever a person who intends to marry produces a certificate signed by any Member of the National Assembly or any judge or Magistrate or by any priest, ordained minister or nominated minister of any church statutorily incorporated in Seychelles to the effect that such person is too poor to pay the expenses of any formalities required by law before the marriage can take place, any judge, Magistrate, or civil status officer or other public officer authorised to receive fees, may exempt such person from the payment of all fees, stamp, registration and other dues chargeable on every document or proceeding, or fines or penalties connected with the fulfilment of any formalities required by law before the marriage can take place.

163.(1) Any minister of religion, public officer, commissioned officer in the military, officer in charge of a ship or plane, notary, or Island Manager may, without previous publication and without any other formality solemnise a marriage between two persons one of whom is in articulo mortis and such marriage shall, subject to this article, be valid.

(2) No marriage shall be celebrated under paragraph (1) unless—

(a) both parties are able to signify their consent and affix their signature or mark to the act (*acte*) of marriage; and

(b) in the presence of two witnesses, one of whom is a duly qualified medical practitioner, or if no

such practitioner is present, then in the presence of four witnesses.

(3) All of the parties and witnesses under paragraph (2) must sign or mark the act of marriage.

(4) An act of marriage shall be forthwith drawn up by the official referred to in paragraph (1) as nearly as possible in the form required by legislation.

(5) (a) That official must within three days from such marriage forward or deliver the act of marriage to the officer of civil status of the district, and the officer shall register the act in a special register.

(b) In the margin of such entry the officer shall note that the marriage has been solemnised in accordance with this article, one of the parties being in articulo mortis.

(6) The officer shall transmit a copy of the act to the Chief Officer of Civil Status, who shall transmit it to the Attorney-General.

164. Where a person wishes to marry outside Seychelles and under the law of the foreign country the publication of the marriage must be made in Seychelles, publication may be made in the central Civil Status office in the same manner as if the marriage was to be celebrated in Victoria and the Chief Officer of Civil Status shall deliver a certificate to the effect that publication has been made.

165 - 198 VACANT

199.(1) Proof of married status is provided by the act (*acte*) of marriage registered in the register of civil status.

(2) A birth, marriage or death may be proved by any oral or written evidence when the registers have been lost, or the leaves of the register, into which such acts are alleged to have been entered, have been partly or entirely destroyed or defaced.

(3) The same proof shall be admissible when no registers have been kept.

(4) When the act of marriage has been produced, the spouses cannot plead the invalidity of the act.

(5) Paragraph (1) does not apply if the act has been issued outside Seychelles and if the Attorney-General, *proprio motu* or at the request of a spouse, can establish that the marriage was celebrated in circumstances which indicate that recognition of the marriage would be against public policy.

200. When the proof of the celebration of a marriage is established by a judgment of a court, the entry of such judgment into the register of civil status shall bring into operation, as from the day of celebration, all the civil effects of the marriage.

201. The spouses owe to each other faithfulness, support, assistance and care.

202.(1) When there is no marriage settlement concerning the proportion in which each spouse is to contribute to the family charges, each shall contribute according to his or her means.

(2) Without prejudice to and in addition to any other enactment, any part of the salary, wages or other income of a spouse who does not fulfil the obligations under this article may on application by the other spouse be attached and ordered to be paid to the applicant spouse.

(3) An application under paragraph (2) shall be by complaint in a summary way before a Judge in Chambers.

203. The spouses jointly, by the mere fact of the marriage, undertake the obligation to maintain and bring up their children.

204. A child has no right to enforce by a legal action against either or both of his or her parents a right to be set up in marriage or business or in any other way.

205. Children shall maintain their father and mother or other ascendants who are in need.

206.(1) Sons-in-law and daughters-in-law shall maintain their father-in-law and mother-in-law who are in need.

(2) This obligation shall not be enforceable if the spouse, whose marriage created the link, is dead and any children born of the marriage are dead.

(3) The obligation is also extinguished if the marriage which created the link has ended in divorce.

207.(1) The obligations which arise from articles 203, 205 and 206 are mutual.

(2) When a claimant has seriously failed in his or her obligation towards the person from whom he or she is entitled to maintenance, the court may discharge such person from the whole or part of his or her obligation to maintain.

(3) An obligation to maintain under this article and under articles 205 and 206 shall be enforceable by an order for attachment of earnings.

208. Maintenance shall be granted only in proportion to the needs of the claimant and the means of the party under the obligation.

209.(1) When the means of a person who provides, or of a person who is in receipt of, maintenance have changed in a way in which the former can no longer supply it or the latter no longer needs the whole or part of it, the parties may apply for a discharge from or a reduction of their obligation.

(2) (a) The right to ask for a variation of maintenance is not available to a creditor.

(b) The right shall not be assigned to a third party.

(c) If a person under an obligation to provide maintenance proves inability to pay any allowance, the court, after considering all the facts of the case, may order that the debtor shall receive in his or her house, and maintain and provide for, the person to whom maintenance is due.

210. The court shall, in the same manner, decide whether the father or the mother who offers to receive, maintain and provide for in that parent's house a child to whom maintenance is due can be exempted from paying an allowance.

211 - 226 VACANT

DISSOLUTION OF MARRIAGE

227. A marriage is dissolved —

- (a) by the death of one of the spouses;
- (b) by divorce.

228. In articles 229 to 256—

“matrimonial causes” means —

- (a) proceedings by a party to a marriage for an order of divorce, nullity or separation;
- (b) proceedings for an order of presumption of death and dissolution of marriage;
- (c) proceedings in respect of any other matter under articles 229 to 256.

“relevant child” means —

- (a) a child of both parties to a marriage;
- (b) a child, not being a child in the care of the Director responsible for children affairs under the Children Act and in respect of whom a party

to the marriage is acting as a foster parent under the Children Act, who has been treated as a child of the family by the parties;

“welfare” includes access, care, custody, maintenance and education.

229.(1) Subject to paragraph (2), the court shall have jurisdiction in relation to a matrimonial cause on an application of a party to a marriage who, at the date when proceedings are commenced, is domiciled in Seychelles.

- (2) The court has jurisdiction in respect of proceedings —
- (a) under article 256 if a party to the marriage —
 - (i) is domiciled in Seychelles; or
 - (ii) is resident in Seychelles at the date the proceedings were commenced;
 - (b) for nullity, if a party to the marriage is domiciled in Seychelles; or
 - (c) in relation to a relevant child, if the child is in Seychelles at the date when the proceedings are commenced.

230.(1) A party to a marriage may petition for divorce on the ground that the marriage has irretrievably broken down because —

- (a) the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) the respondent has deserted the petitioner for a continuous period of at least two years

immediately preceding the presentation of the petition; or

- (d) the petitioner and the respondent have lived apart for a continuous period of at least one year immediately preceding the presentation of the petition and the respondent consents to the grant of the divorce.

(2) Subject to paragraph (3), a party may not petition for divorce until after one year from the date of the marriage.

(3) The court may, on an application, grant leave for a petition for divorce within one year of the date of the marriage referred to in paragraph (2) if the court is satisfied that the petitioner has suffered exceptional hardship.

231.(1) The court shall not grant a divorce unless it is satisfied that—

- (a) an attempt has been made to reconcile the petitioner and the respondent, and
- (b) after inquiring into the evidence presented by the parties to the proceedings, there is no reasonable possibility of reconciliation between the parties, and
- (c) the marriage has irretrievably broken down.

(2) The court shall, if it appears to the court at any stage of the proceedings for divorce that there is a reasonable possibility of reconciliation between the parties, adjourn the proceedings for such period as the court thinks fit to enable an attempt at reconciliation to be made.

232.(1) When granting a divorce the court shall in the first instance grant a conditional order of divorce which the court may, on application, make absolute.

(2) Where the court has granted leave under article 230(3) and it appears to the court in the course of the proceedings for divorce

that the petitioner has obtained leave by misrepresentation or concealment, the court may—

- (a) dismiss the petition; or
- (b) grant a conditional order of divorce on condition that an application to make it absolute shall not be made within such time as the court may specify in the order.

(3) An application for a conditional order of divorce to be made absolute may be made by the party who was granted the order at any time after the expiration of 6 weeks after the grant of the conditional order of divorce or after such longer or shorter period which the court has specified in the order.

(4) Where a party who was granted a conditional order of divorce fails to make an application under paragraph (3) after 3 months from the earliest date on which the party would have made such application, the party against whom the conditional order of divorce was granted may apply to the court to make the order absolute.

(5) On an application under paragraph (3) or paragraph (4), the court may, subject to paragraph (6) —

- (a) make the conditional order of divorce absolute;
- (b) rescind the conditional order of divorce;
- (c) require further inquiry to be made in the case;
- (d) take any action under paragraph (2);
- (e) otherwise deal with the case as the court thinks fit.

(6) Where there is a relevant child, the court shall not make a conditional order of divorce absolute unless the court is satisfied that arrangements to the satisfaction of the court relating to the access, custody, maintenance and education of the child have been made by

the parties and that the arrangements are in the best interests of the welfare of the child or an order under article 255 has been made relating to the child.

233. Where a conditional order of divorce has been made, but not become absolute, the court may, if the court is satisfied, on the application of a party to the proceedings or on the intervention of the Attorney-General, that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or of any other circumstances, rescind the conditional order and, if the court thinks fit, order the rehearing of the proceedings.

234.(1) For the purposes of article 230(1)(a) —

- (a) a party to a marriage may not rely on the adultery of the other party if, after the adultery became known to that party, the parties have lived together for a period of, or periods which together amount to, more than 6 months;
- (b) the court shall, in determining whether the petitioner finds it intolerable to live with the respondent, disregard the fact that the parties to the marriage have lived together for not more than 6 months after the party came to know of the adultery of the other party.

(2) For the purposes of article 230(1)(b), the court shall, in determining whether the petitioner cannot reasonably be expected to live with the respondent disregard the fact that the parties to a marriage have lived together for a period of, or periods which together amount to, not more than 6 months after the date of the occurrence of the last incident relied on by the petitioner and held by the court to support the petitioner's petition.

(3) For the purposes of article 230(1)(c) —

- (a) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary

intention if the evidence before the court is such that, had the party not been so incapable, the court would have inferred that his or her desertion continued at that time;

- (b) the court shall not take into account any period of, or periods which together amount to, not more than 6 months during which the petitioner and the respondent have resumed living together but such period or periods shall not be counted as part of the period of desertion.

(4) For the purposes of article 230(1)(d) —

- (a) the court shall not take into account any period of, or periods which together amount to, not more than 6 months during which the petitioner and the respondent have resumed living together but no such period or periods shall be counted as part of the period during which the parties have lived apart;
- (b) the petitioner and the respondent shall be treated as living apart unless they are living with each other in the same household;
- (c) the consent of the respondent shall not be valid unless given by the respondent —
 - (i) in court in the course of the proceedings for the divorce; or
 - (ii) in the prescribed form.

(5) Where a party to a marriage who has been granted a separation order under article 244 or an order under article 256(2)(a) or an order under section 4(a) of the Summary Jurisdiction (Wives and Children) Act applies for a divorce under article 230(1) on the same facts, or substantially the same facts as those on which the order was

granted under article 244 or article 256(2)(a) or section 4(a) of the Summary Jurisdiction (Wives and Children) Act —

- (a) the court may treat the order as sufficient proof of the facts on which the order was granted;
- (b) a period of desertion immediately preceding the institution of proceedings for the order shall, for the purposes of article 230(1)(c), be deemed to be a period of desertion immediately preceding the presentation of the petition for divorce if —
 - (i) the parties to the marriage have not resumed living together; and
 - (ii) the order has been continuously in force since it was granted,

but the court shall not grant a conditional order of divorce without receiving evidence from the petitioner.

235.(1) Where the court has granted a conditional order of divorce based on article 230(1)(d) and the respondent has, at any time before the order is made absolute, applied to the court, the court —

- (a) may rescind the order where the respondent alleges and the court is satisfied that the petitioner misled the respondent, whether intentionally or otherwise, about any matter which the respondent took into account in deciding to consent to the grant of the divorce; or
- (b) shall, subject to paragraph (2), not make the order absolute unless, after considering all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligation of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first, the court is satisfied that —

- (i) the petitioner should not be required to make any financial provision for the respondent; or
- (ii) the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(2) Notwithstanding paragraph (1)(b) the court may, if it thinks fit, make a conditional order of divorce absolute if—

- (a) it appears that there are circumstances that make it desirable that the order should be made absolute without delay; and
- (b) the court has obtained a satisfactory undertaking from the petitioner that the petitioner will make such financial provision for the respondent as the court may approve.

236. If in proceedings for divorce the respondent alleges and proves that the marriage has irretrievably broken down as a result of any matter specified in article 230(1) the court may give relief to the respondent as if the respondent had been the petitioner under article 230(1).

237. No appeal shall lie from an absolute order of divorce.

NULLITY OF MARRIAGE

238.(1) Subject to paragraphs (2), (3) and (4) the court may, on an application, grant an order of nullity if —

- (a) a party to the marriage had not, at the time of the marriage, obtained the consent required under this Code or any other legislation;
- (b) the parties to the marriage are within the prohibited degrees of relationship under article

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- 147 and had not at the time of the marriage obtained the required authority;
- (c) a party to the marriage was, at the time of the marriage, already married to another person and the marriage had not been dissolved;
 - (d) the parties to the marriage were not respectively male and female;
 - (e) a party to the marriage was, at the time of the marriage, a mental patient in terms of the Mental Health Act or suffering from a mental disorder or of unsound mind;
 - (f) a party to the marriage did not give a valid consent to the marriage by reason of mistake, fraud, duress, unsoundness of mind or any other legal incapacity;
 - (g) the marriage was not celebrated in accordance with this Code;
 - (h) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
 - (i) the marriage has not been consummated owing to the incapacity of a party to consummate it;
 - (j) the respondent was at the time of the marriage suffering from venereal disease in a communicable form or a carrier of the acquired immunity deficiency (AIDS) virus;
 - (k) the respondent was, at the time of the marriage, pregnant by some person other than the petitioner.
- (2) The court shall not grant an order of nullity —

- (a) in the case referred to in paragraph (1)(a), unless—
 - (i) proceedings for the order of nullity were instituted by a party to the marriage or a person whose consent to the marriage was required within 12 months of the marriage; or
 - (ii) the wife had become pregnant since the marriage;

- (b) in the case referred to in paragraph (1)(e), (j) or (k)—
 - (i) unless proceedings for the order were instituted within 12 months of the date of the marriage;
 - (ii) unless the court is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged;
 - (iii) unless the court is satisfied that the petitioner had not consented to intercourse with the respondent since the discovery by the petitioner of the alleged facts; and
 - (iv) if the respondent satisfies the court that it would be unjust to grant the order of nullity;

- (c) in the case referred to in paragraph (1)(f), (h) or (i)—
 - (i) unless proceedings for the order were instituted within 12 months of the date of the marriage;

- (ii) unless the court is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged; and
- (iii) if the respondent satisfies the court that it would be unjust to grant the order of nullity.

(3) When granting an order of nullity the court shall in the first instance grant a conditional order of nullity which, subject to this Act, the court may, on application, make absolute.

(4) Article 232(3), (4), (5) and (6) and article 233 apply to a conditional order of nullity as they apply to a conditional order of divorce.

(5) No appeal lies from an absolute order of nullity.

239. VACANT

240. If the spouses, or one of them, have died without discovering the nullity of their marriage, proceedings may be initiated at the instance of any person interested in having the marriage declared valid as well as by the Attorney-General.

241. If the officer of civil status who celebrated the marriage was dead when the fraud that led to the nullity of the marriage was discovered, the proceedings shall be conducted at the instance of any person interested or by the Attorney-General against the heirs in the presence of the interested parties.

242.(1) A marriage which has been declared null shall, nevertheless, have civil effects with regard to the spouse provided it was contracted in good faith.

(2) If one of the spouses was in good faith, the marriage shall have civil effects for the innocent spouse only.

(3) Unless there is evidence to the contrary, good faith shall be presumed in favour of the spouses.

(4) Good faith need only have existed at the time of the celebration.

243.(1) A null marriage has civil effect with regard to the children, irrespective of the good faith of either or both of the parents.

(2) A court shall have powers to make an order with regard to the custody and care of such children as in the case of a divorce.

SEPARATION

244.(1) A party to a marriage may petition the court for an order of separation on the ground that the marriage has broken down because of any of the facts specified in article 230(1)(a) to (d).

(2) Articles 231(1)(a) and (b) and (2) and article 234 shall, subject to such modification as is necessary, apply to a petition under paragraph (1) as they apply to a petition for a divorce under article 230.

(3) An order of separation may include an order —

- (a) prohibiting any of the parties to the marriage from molesting the other party to the marriage or any relevant child or any child of a party to the marriage;
- (b) prohibiting or restricting a party to the marriage from doing any other thing.

245.(1) Where the court grants an order of separation under article 244, the petitioner may refuse to cohabit with the respondent.

(2) Where one of the parties to a marriage dies intestate and at the time —

- (a) there is in force an order of separation in their respect; and
- (b) the parties were not cohabiting with each other,

the surviving party shall not be treated as a spouse of the deceased for the purpose of succession to the estate of the deceased.

MATRIMONIAL CAUSES – FORMS OF RELIEF

246.(1) Subject to paragraph (3), a party to a marriage who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may petition the court to have it presumed that the other party is dead and to have the marriage dissolved and the court may, if it is satisfied that reasonable ground exist, grant an order of presumption of death and dissolution of marriage.

(2) In a proceeding for an order under paragraph (1), the facts that for a period of 7 years or more the other party to the marriage has been continually absent from the petitioner, and the petitioner, after making such inquiries as are necessary in the circumstances, has no reason to believe that the other party has been living within that period, shall be evidence that the other party is dead until the contrary is proved.

(3) An order granted under paragraph (1) shall, in the first instance be a conditional order which the court may on application, make absolute.

(4) Articles 232(3), 232(4), 232(6), 233, and 237 apply to an order made under this article as they apply to a conditional order of divorce or an absolute order of divorce, as the case may be.

247.(1) In a proceeding for a petition for an order of divorce, nullity or presumption of death and dissolution of marriage—

- (a) the court may, if it thinks fit, direct all necessary papers to be sent to the Attorney-General who shall argue or instruct counsel to argue before the court any question relating to the matter which the court considers it necessary or expedient to be fully argued;
- (b) any person may, at any time during the progress of the proceeding or, before the order is made absolute, give information to the Attorney-General who shall take steps as considered necessary or expedient in the circumstances.

(2) Where under paragraph (1), the Attorney-General intervenes or shows cause against the making of a conditional order of divorce, nullity or presumption of death and dissolution of marriage, the court may make such order as to the payment of costs by or to the Attorney-General or to or by any other party to the proceeding as the court thinks fit.

248.(1) Subject to article 255, the court may make such order as the court thinks fit for the welfare of a relevant child —

- (a) in any proceeding for divorce or nullity of a marriage or an order of separation, before, at the time of or after the order of divorce or nullity has been made absolute or the granting of the order of separation; or
- (b) where a proceeding for divorce or nullity of a marriage or an order of separation is dismissed after the beginning of the trial forthwith or within a reasonable period after the dismissal.

(2) The court may instead of or in addition to making an order under paragraph (1) refer a relevant child or any matter relating to the welfare of a relevant child to the Director responsible for children affairs under the Children Act for appropriate action under that Act.

(3) The court may, at any time, vary, discharge or suspend an order, or any part of an order, made under this article or, where the court has suspended an order or any part of an order, revive the order or that part of the order so suspended.

(4) The court may, in the course of any proceeding under this article request the Director responsible for children affairs under the Children Act to produce any report or provide assistance in respect of any matter which the court thinks fit and the Director shall comply with any such request.

249. On a petition for divorce or nullity of a marriage or an order of separation, the court may make such order as the court thinks reasonable in the circumstances requiring a party to the marriage —

- (a) to make to the other party or to any person, for the maintenance of the other party;
- (b) to make to any person for the benefit of a relevant child,

such periodical payment for such term, being a term not earlier than the date of the presentation of the petition, as the court thinks reasonable in the circumstances.

250.(1) Subject to article 255, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the court may, after making such inquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage—

- (a) order a party to a marriage to pay to the other party or to any person for the benefit of the other party such periodical payments for such period, not exceeding the joint lives of the parties, as may be specified in the order;
- (b) pay to the other party or to any person for the benefit of the other party such lump sum in such manner as may be specified in the order;
- (c) secure to the satisfaction of the court a payment referred to in subparagraph (a) or (b);
- (d) order a party to a marriage to pay to any person for the benefit of a relevant child such periodical payments for such period as may be specified in the order;
- (e) order a party to a marriage to pay to any person for the benefit of a relevant child such lump sum as may be specified in the order;

- (f) order a party to a marriage to secure to the satisfaction of the court a payment referred to in sub-paragraph (d) or (e).

(2) The court may defer making an order of divorce or nullity absolute or granting an order of separation until—

- (a) any document required to give effect to an order under paragraph (1) has been executed, stamped or registered as the court deems fit, and
- (b) appropriate arrangements have been or are being made under article 259 in respect of the property of the parties.

(3) An order made under article 250(1)(a) to (e) shall, if made before an order of divorce or nullity is made absolute, not have effect until the order has been made absolute.

251. VACANT

252. Proceedings for maintenance pending suit under article 249 or financial relief under article 250 may begin at any time after the presentation of the petition for an order of divorce, nullity or separation.

253.(1) Where a proceeding for a claim for financial relief is brought by one party against another party, the court may, on the application of the party —

- (a) if the court is satisfied that the other party is, with the intention of defeating the claim, about to make any disposition or to transfer out of Seychelles or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim for financial relief;
- (b) if it is satisfied that the other party has, with the intention of defeating the claim, made a

reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential direction as the court thinks fit for giving effect to the order;

- (c) if it is satisfied, in a case where an applicant has obtained an order for financial relief against the other party, that the other party has, with the intention of defeating the claim, made a reviewable disposition, make such order setting aside the disposition and give such consequential direction as the court thinks fit for giving effect to the order.

(2) An application for the purposes of paragraph (1)(b) shall be made in the proceeding for a claim for financial relief.

(3) Where an application is made under this article with respect to a disposition or transfer of or other dealing with property and the court is satisfied —

- (a) in a case falling within paragraph (1)(a) or paragraph (1)(b), that, the disposition, transfer or other dealing would have the consequence; or
- (b) in a case falling within paragraph (1)(c), that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, the disposition, transfer or other dealing shall be presumed, unless the contrary is proved, to have been made by the other party with the intention of defeating the claim.

(4) In this article —

“disposition” includes any transfer, assurance or gift of property of any description, whether made by an

instrument or otherwise but does not include any provision contained in a will or codicil;

“disposition defeating a claim for financial relief” means a disposition —

- (a) preventing financial relief from being granted,
- (b) reducing the amount of financial relief which might be granted;
- (c) frustrating or impeding the enforcement of any order for financial relief which might be or have been made;

“financial relief” means relief under articles 249, 250 or 253;

“reviewable disposition” means any disposition other than a disposition made for value to a person who at the time acted in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

254.(1) Where the court has made an order to which this article applies, the court may vary, discharge or suspend the order or suspend any provision of the order or revive any order or any provision of an order so suspended.

(2) This article applies to an order under this article or article 249 or 250.

(3) The court shall not exercise its powers under paragraph (1) in relation to an order under article 259 except on an application made in a proceeding for the dissolution of the marriage in respect of which an order of separation had been made.

(4) Without prejudice to the power of the court under article 250, where there is an agreement between the parties who are or were married relating to settlement of property of the parties, payment

of maintenance or any lump sum, the court may, on application by one of the parties, inquire into the matter and make such variation of the agreement as the court thinks fit in the circumstances.

255.(1) When making an order in respect of a relevant child the court shall have as its paramount consideration the welfare of the child.

(2) Without prejudice to paragraph (1), when considering whether any and what order should be made under the Code for the access, care, custody, maintenance, education or otherwise of a relevant child the court shall have regard —

- (a) to the extent to which a party, who is not the natural parent of the child, had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's welfare;
- (b) to the liability of any person, other than the parties to the marriage, to maintain the child.

(3) An order made by the court in respect of a child shall not apply to a child who is adult, or shall cease to apply when the child becomes an adult unless the court is satisfied that —

- (a) the child is receiving instruction at an educational establishment or undergoing training; or
- (b) the child is unable to maintain him or herself by reason of illness, infirmity or other special circumstances; and
- (c) that it is expedient that the order applies or continues to apply to the child,

in which case the order shall apply or continue to apply to the child to the extent, in the manner, and for the period specified by the court.

256.(1) Without prejudice to any other power of the court, the court may, on an application by a party to a marriage, grant such order as it thinks fit —

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- (a) for the protection of a party to the marriage or a relevant child;
 - (b) restraining a party to the marriage —
 - (i) from entering or remaining in any premises or any part of any premises, including the matrimonial home, where the other party resides or works;
 - (ii) from entering the premises of any educational or training institution at which a relevant child is attending;
 - (c) in relation to the property of a party to the marriage or the matrimonial home;
 - (d) relating to the occupancy of the matrimonial home.
- (2) In exercising its powers under paragraph (1), the court may—
- (a) make an order relieving a party to the marriage from any obligation to perform marital services or render conjugal rights;
 - (b) in the case of an order under paragraph (1)(a), (b) or (d), make an order as the court deems fit for the welfare of a relevant child in relation to access, care, custody, maintenance or education of the child;
 - (c) in the case of an order under paragraph (1)(a), (b)(i) or (d), make an order for the maintenance of the party.

257. The adultery of a party to a marriage shall not give rise to a claim for damages.

PROPERTY ORDERS

258.(1) In any question between spouses or parties to a domestic relationship (*en ménage*) as to the title to or possession of property, either party, or any public or private body in whose books any stocks, funds, or shares of either party may be standing, may apply by petition in a summary way to a Judge in Chambers.

(2) The Judge may make such order, direct or make such inquiry, and award such costs as the Judge thinks fit.

(3) Any order so made shall be subject to appeal in the same manner and on the same grounds as any civil case.

(4) Any such public or private body shall, in the matter of such application, for the purposes of costs or otherwise, be treated as a stakeholder only.

259.(1) The parties to a qualifying relationship which has subsisted for at least seven years will, where the relationship ends *inter vivos*, share equally the property which has been acquired by each during the relationship in the context of the relationship, other than property acquired by one of the parties on succession or from a third party by way of a gift *inter vivos* or by will.

(2) It is presumed for the purposes of paragraph (1) that all property held by each of the parties at the termination of the relationship was acquired during the relationship in the absence of evidence to the contrary.

(3) The court may, in exceptional circumstances where it would be repugnant to justice to apply paragraph (1), make such orders as it thinks fit for the division of the property of the parties, having regard to all the circumstances of the case and in particular each party's contribution to the relationship.

(4) A party in whose name property is held may retain title subject to paying to the other party the sum necessary to give effect to the requirements of this article.

(5) Where the qualifying relationship has subsisted for fewer than seven years, the court may, having regard to all the circumstances of the case, including each party's contribution to the relationship, the educational and professional qualifications and the financial means of the parties, make such order, as the court thinks fit, in respect of any property of either party to the relationship or in respect of any interest or right of a party in any property, for the benefit of the other party or a child of the relationship.

(6) (a) A qualifying relationship means either a marriage, or a domestic relationship (*en ménage*) between a man and a woman of full age and capacity characterised by stability and continuity.

(b) Factors which give rise to a presumption of stability and continuity include that there is a child born of the relationship or the parties have acquired property in their joint names.

(c) Where a marriage has been preceded by a domestic relationship (*en ménage*) between the parties, the calculation of time for the purposes of paragraphs (1) and (5) dates from the beginning of the *en ménage* relationship.

260 - 368 VACANT

CHILDREN

369. A child is the first degree descendant of another person and, in the case of an adopted child, of the adoptive parents.

370. (1) All children have equal status and their rights and obligations flow from their relationship with their parents.

(2) The welfare and best interests of the child is the first and paramount consideration—

(a) in the administration and application of this Code, and

- (b) in any other proceedings involving the guardianship of or the role of providing day-to-day care for, or contact with, a child.

(3) The welfare and best interests of the particular child in his or her particular circumstances must be considered.

371. A child must honour and respect its parents.

372. (1) A child is under the authority of its parents until it is an adult.

(2) A child who is a minor shall not leave the parental home without parental permission.

373. Proof of parenthood, maternal and paternal, may be established by all legal means or by possession of status (*possession d'état*).

374. Where a child is conceived during marriage or during a domestic relationship (*en ménage*), the male partner is presumed to be the father of the child.

375.(1) A person may prove all the facts tending to show that he or she is not the parent of the child.

(2) (a) The court may give a direction for the use of blood or other tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the parent of the child and for the taking, for the purpose of those tests, of blood samples from the child, the other parent and any person alleged to be the parent of the applicant.

(b) The court may at any time revoke a direction given under this paragraph.

(3) Where a court gives a direction under paragraph (2) and any person fails to take any steps required for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(4) The use of tests as provided in paragraphs (2) and (3) shall be available in all cases in which the descent of a person is in doubt.

376.(1) The descent of children shall be proved by their acts (*actes*) of birth.

(2) In the absence of an act of birth, the possession of status (*possession d'état*) of the child is sufficient.

377.(1) Possession of status (*possession d'état*) may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which the person claims to belong.

(2) The principal facts are—

- (a) That that person has always borne the name of the father whose child he or she claims to be;
- (b) That the father has been treating him or her as his child and that, in his capacity as father, he has provided for his or her education, maintenance and start in life;
- (c) That he or she has always been recognised in society as a child of that father;
- (d) That he or she has been recognised as such by the family.

378.(1) No one may claim a status contrary to that which the act of birth (*acte*) confers or to the possession of status (*possession d'état*) corresponding to that act.

(2) No one may contest the status of a person stated on the act of birth.

379.(1) In the absence of an act (*acte*) of birth and possession of status (*possession d'état*), or if the child is registered under false names

or as a child of unknown parents, proof of descent may be adduced by oral evidence.

(2) Such evidence shall not be admissible unless there is writing providing initial proof or unless the presumptions or identifications arising from later facts of a permanent character are sufficiently strong to warrant acceptance.

(3) The writing providing initial proof may consist of family documents of title, registers and family papers of the father or mother, or public documents or private documents emanating from one of the parties, or from a deceased party who if alive would have had an interest therein.

(4) Proof that the claimant is not the child of the person who claims to be his or her parent may be adduced by all means.

380.(1) There is no prescription of the right of a child to establish his or her parenthood.

(2) Proceedings to establish status may not be brought by the heirs of the child unless the child died while a minor or within five years after becoming an adult.

(3) The heirs may continue such proceedings if they were started by the child, unless the latter formally stopped them, or unless the child had failed to pursue such proceedings for three years as from the last procedural step taken.

381.(1) The right to prove parental descent is for the benefit of the child alone.

(2) An action under this article may be brought by a child's parent, even if under age, or by the child's guardian, at any time during the child's minority.

382. A person who claims maternal descent must prove the confinement of the alleged mother and the identity of the claimant with the child she delivered.

383.(1) The father and mother during marriage, or, after the dissolution of the marriage by death the surviving spouse, shall have the enjoyment of the property of their minor children.

(2) This right shall not extend to the property which the children may acquire through work or skill, or to property granted or bequeathed on the express condition that the parents will not enjoy it.

(3) The conditions of this enjoyment are—

- (a) Those that bind usufructuaries;
- (b) That the children shall be maintained and educated in accordance with their standard of life;
- (c) That arrears or interest on capital are paid;
- (d) That funeral expenses and those of the last illness are paid.

(4) A parent against whom a decree of divorce has been pronounced shall not have the enjoyment of the children's property.

384.(1) (a) The parents shall be the joint administrators of the property of their minor children with the exception of such property as may have been given or bequeathed under the express condition that it be administered by a third party.

(b) They shall be accountable both for the property and the income from property which they are not entitled to enjoy.

(c) They shall be accountable for the property only if entitled to the usufruct of it.

(2) In case of divorce or judicial separation the administration shall be entrusted to the parent who has the custody of the children, unless the court orders otherwise.

(3) After the dissolution of a marriage caused by death, the administration is with the surviving spouse.

(4) An ad hoc administrator shall be appointed by the court where there is a conflict of interests.

385.(1) While the father and mother have the personal and legal use of the property they are not bound to sell any movable furniture.

(2) (a) If they decide to keep it, they shall return it in kind.

(b) In such case, they shall cause a proper valuation of such furniture to be made at their own expense by an expert, who shall be appointed by the court and shall be sworn in by the Registrar of the court.

(3) They shall pay the estimated value of all movables which they are unable to return in kind.

386 - 390 VACANT

GUARDIANSHIP

391. A minor is under the guardianship of the parents.

392. A guardian of a minor may be appointed by a parent who is a guardian—

(a) by will;

(b) by a declaration made before a judge or before a notary.

393 - 400 VACANT

401.(1) The guardian appointed by the father or mother is not bound to accept the guardianship.

(2) If the guardian who is appointed does not wish to act, the court will appoint a guardian.

402.(1) When no guardian is appointed to a minor by the parents of the child or the survivor of them, the guardian shall be appointed by the court.

(2) The court may appoint any person or persons, having regard to the rights of paternal and maternal ascendants.

403. The Attorney-General may intervene where no one is appointed as a guardian of a minor or in any proceedings relating to the appointment of a guardian.

404. VACANT

405. No one shall be deprived without good cause of the right to be a guardian of his or her own children.

406 - 414 VACANT

415. Where a court may appoint a guardian, the court may appoint up to two co-guardians.

416. The duty of a guardian is to protect the interests of the ward.

417.(1) If a ward has property abroad, the guardian may request the court to appoint one or two co-guardians capable of dealing with such property.

(2) If a ward resident outside Seychelles has property in Seychelles, at the request of the interested parties, the court may appoint a co-guardian.

(3) A co-guardian is subject to the same rights and duties as a guardian in Seychelles and is also subject to the jurisdiction of the court.

418.(1) A guardian must act and administer the property as from the day of becoming guardian.

(2) A guardian appointed by the court takes up the obligations as from the date of appointment if present, or if not, as from the date of notification of appointment.

419.(1) Guardianship is a personal function which is not transmissible to the heirs of a guardian.

(2) Heirs shall be responsible for the day to day administration and other duties of the deceased guardian until a new guardian is appointed.

420.(1) When the interests of the guardian are in conflict with those of the ward, a sub-guardian shall be appointed by the court.

(2) (a) A sub-guardian shall act only in relation to the issue or issues in respect of which there is a conflict of interests.

(b) When the conflict is resolved, the sub-guardian shall account to the court for the sub-guardian's administration.

(c) The court, at the conclusion of the hearing, may grant a sub-guardian a complete discharge from the sub-guardian's functions.

(3) (a) A sub-guardian may also be appointed if a guardian is absent or otherwise incapacitated, and if no provision has been made for the person or property of the ward during that time.

(b) The sub-guardian is liable to the ward for any damage which may occur in consequence of the sub-guardian's neglect or failure to fulfil the subguardian's functions.

421 - 429 VACANT

430.(1) Any person who is appointed by the court as guardian may seek exemption.

(2) Such exemption may be granted by the court for good reason.

431.(1) The following persons may not ex officio be appointed guardians —

(a) judges;

- (b) the Attorney-General and other law officers of the State;
- (c) any court officers who are in a position to make decisions relating to issues before the court;
- (d) citizens who hold a public office under which they may be called upon to make decisions with regard to the guardianship;
- (e) military personnel on active service or citizens posted outside Seychelles.

(2) (a) Persons acting as guardians may apply to the court to be released from their functions if they are subsequently in a class listed in paragraph (1).

(b) Such persons shall be released subject to the conditions imposed by the court.

(c) A person so released may apply to be appointed again, after change of status.

432. VACANT

433.(1) A person aged 65 or over may refuse to act as guardian.

(2) If appointed before that age, the person may continue until he or she reaches the age of 70 or he or she may ask the court for release at the age of 65.

434.(1) A person suffering from a severe infirmity, duly established, is exempt from guardianship.

(2) If the infirmity arises subsequent to appointment, the guardian may be released.

435.(1) The following persons must not be guardians —

- (a) minors except of their own child;

- (c) interdicted persons;
- (c) all those who are, or whose parents are, engaged in litigation with the ward.

(2) A person convicted of an offence who is sentenced to a term of imprisonment exceeding five years —

- (a) shall cease to be eligible for appointment to the office of guardian, and that person shall forthwith be deprived of any guardianship held;
- (b) shall not be eligible to hold such office for a period of five years after the expiry of the sentence imposed.

(3) In other cases the court may, on the application of any interested party or the Attorney-General, order that any person sentenced to imprisonment shall be excluded from holding such office or, as the case may be, be deprived of the office as guardian.

(4) An application to deprive a person of such office shall be made within six months from the date of conviction, and an application to exclude a person from holding such office shall be made within five years from the date of expiry of the sentence.

436 - 438 VACANT

439.(1) A guardian who does not want to accept appointment shall communicate to the court the reasons for the refusal.

(2) Any person with an interest and the Attorney-General is entitled to be heard in such proceedings.

(3) If he or she has valid grounds to refuse, the court shall release the guardian as from such date as the court designates.

(4) If the court finds that there are no valid grounds, the guardian may be made to pay the costs of the proceedings.

(5) A person appointed guardian by a court must act until formally released.

440 - 443 VACANT

444.(1) The following persons are ineligible to be guardians—

- (a) Those whose misconduct is notorious;
- (b) Those whose guardianship has proved incompetent or dishonest.

(2) Any interested party or the Attorney-General may start proceedings for the removal of an incompetent or dishonest guardian.

(3) A guardian whose conduct endangers the life or health of the ward may be removed upon an application of any interested party or of the Attorney-General.

445 - 446 VACANT

447.(1) The court, in dealing with an application for the removal of a guardian, shall give an opportunity to the guardian to be heard.

(2) A person so removed may be compelled to pay the costs of the proceedings.

(3) The court, if it decides to remove a guardian, shall give its reasons.

448. In proceedings for the removal of a guardian, the court may consider at the same time the appointment of another guardian.

449. VACANT

450.(1) The guardian shall have the care of the person of the ward and shall represent the ward in all legal acts.

(2) The guardian shall administer the property with reasonable care, and shall be liable for loss which may arise from maladministration.

(3) The guardian shall neither buy the property of the ward nor take it on lease, nor shall the guardian consent to the assignment of a right belonging to the ward or bind the ward's property to the payment of any sum.

(4) Except when authorised by a Judge in Chambers, the guardian shall invest the ward's funds only in such stocks and securities as are specified for the purpose in legislation.

(5) (a) Pending investment, the guardian shall deposit into the Treasury or a bank approved by a Judge all the funds which are not required for the yearly expenses of a ward and for the administration of the ward's property, and the guardian shall owe interest on all funds not so deposited.

(b) The guardian shall not withdraw any funds deposited without the authorisation of a Judge in Chambers.

451.(1) Within ten days from taking up the function of guardian, the guardian shall apply for the removal of any seals affixed upon the property and proceed to draw up an inventory of the property of the ward, both of which shall take place in the presence of a notary.

(2) (a) If anything is due to the guardian by the ward, the guardian shall enter it in the inventory under penalty of forfeiture.

(b) The notary shall also ask the guardian whether the ward owes anything to the guardian.

(c) The declaration of the guardian shall be recorded in the report drawn up by the notary.

452.(1) (a) In the three months following the drawing up of the inventory, the guardian shall sell by public auction, after due notice and publication which must be recorded in the minutes of the sale, all the movables which cannot be used to maintain the ward as near as

possible to the standard that the ward enjoyed before the need for guardianship arose.

(b) Property which is not sold shall be specifically listed in a separate record to be signed by the guardian and a notary.

(2) (a) No guardian shall alienate any incorporeal moveable property of the ward unless previously authorised by the court.

(b) The authorisation of the court is not required if the value of such property is less than R50,000.

(c) The court may, on authorising the alienation, order any measure which it may deem useful.

453.(1) (a) The guardian shall, within three months of appointment to the guardianship, convert into nominative titles all titles to bearer belonging to the ward and the alienation of which has not been authorised by the court.

(b) The guardian shall also, within three months from the final attribution of the titles of the ward or from the guardian's coming into possession of the titles, convert into nominative titles all titles to bearer which may, in whatever manner, have accrued to the ward.

(c) The court may extend the time within which the conversion is to be effected.

(2) (a) When by their nature or on account of any agreement it is impossible to convert bearer titles into nominative titles, the guardian shall, within three months, obtain from the court authorisation to alienate the titles subject to investment of the proceeds or to keeping the proceeds.

(b) In a case mentioned in paragraphs (1) and (2), the court may order that the bearer titles be deposited in the name of the ward at the registry of the court or with some person or authorised institution specially designated by the court.

(3) The period of three months shall not interfere with the rights of third parties or with pre-existing agreements.

(4) The court shall order, at the time when the authorisation to alienate (as provided in article 450(4) and paragraphs (1) and (2) of this article) is granted, that a statement with supporting evidence must be filed with the court to the effect that the guardian has complied with the duties under the authorisation.

454. VACANT

455.(1) (a) Before a guardian other than a father or mother enters into the guardianship functions, the court shall settle, on the basis of an estimate or a rough valuation of the property involved, the yearly expenditure of the ward and the expenditure of the administration of the ward's property.

(b) This may be done by the court as part of the proceedings of nomination of a guardian.

(2) The court shall also specify whether the guardian is authorised to seek the assistance of one or more salaried administrators who shall act under the authority of the guardian.

(3) The court may order that the property be placed with a bank or other reputable financial institution for investment in bank term deposits.

(4) A guardian who fails, within a reasonable time, to invest any sum which ought to have been invested, owes interest on that sum.

456. VACANT

457.(1) Without authorisation of the court, no guardian shall—

- (a) borrow money on behalf of the ward or sell or mortgage the ward's property; or
- (b) make a compromise involving the property of the ward.

(2) All legislation applicable to judicial sales and relating to the sale of immovable property belonging to wards applies to sales under this article.

(3) (a) The sale shall take place by public auction in the presence of the guardian.

(b) The bids shall be received by the court or by a notary appointed for the purpose.

(c) The sale shall be preceded by public notices published in three consecutive weeks in the *Gazette*.

(4) (a) If it is an absolute necessity or a manifest advantage that the property be sold otherwise, the property may be sold by notarial contract, provided that such sale and its conditions have first been approved by the court.

(b) The guardian shall state his or her opinion as to the proposed sale and the judge shall, if satisfied that such sale is in the interests of the ward, authorise the sale.

(5) This article does not apply where the court orders the sale through the court of property held by a fiduciary on behalf of co-owners whose shares have been converted into money claims.

458 - 460 VACANT

461.(1) A guardian may accept a succession consisting of movable property on behalf of a ward, but only with benefit of inventory.

(2) A guardian may accept such a succession without benefit of inventory with the permission of the court.

(3) If the succession contains immovable property the distribution is regulated by articles 1025 to 1034.

462.(1) Whenever a succession of movable property which has been repudiated on behalf of the ward has not been accepted by another person, the guardian may later revive the claim of the ward.

(2) The claims may also be revived by the ward after the guardianship ends.

(3) Such succession may only be claimed in the state in which it happens to be when so reclaimed, and any sales and other transactions which have been legally effected while the inheritance was vacant, shall not be attacked.

463.(1) A guardian may freely accept a gift on behalf of the ward.

(2) It shall have the same effect as regards a ward as it has in regard to a person not under guardianship.

464.(1) A guardian requires no authorisation to bring an action in respect of the right of the ward to immovable property.

(2) A guardian may only admit claims of other parties in respect of such rights within the terms of article 457(1).

465 - 468 VACANT

469. Guardians must account for their management when the guardianship ends and do so in accordance with articles 470 to 472.

470.(1) (a) Every guardian shall file in the Registry of the court annual statements of the account of his or her management.

(b) Such statements shall be drawn up, verified by affidavit and filed free of all costs and duties.

(2) Any person may, with the permission of a Judge in Chambers, inspect the statements so filed by the guardian.

(3) The court or the Attorney-General may order a statement of account for any lesser period or for a specific transaction.

471.(1) The final account of the guardianship shall be delivered at the expense of the ward when the guardianship has ended.

(2) The guardian shall advance the costs.

(3) The guardian shall be allowed all expenses properly incurred and whose object was useful.

472.(1) An agreement between the guardian and the ward who is no longer under guardianship shall be null if it has not been preceded by a statement of accounts and the handing over of the receipts.

(2) The whole must be evidenced by a written acknowledgement from the person to whom the account has to be rendered, at least ten days before the agreement.

(3) If there is a dispute as to the account, such dispute shall be dealt with and decided in the same manner as any other civil dispute.

(4) (a) The balance due by the guardian shall bear interest without formal demand, and shall be calculated from the day of the closing of the accounts.

(b) The interest on what is due to the guardian by the ward begins to run after the closing of the accounts and from the day on which payment is demanded.

473 - 474 VACANT

475. An action by a ward against the guardian, relating to the guardianship, is prescribed five years after the end of the guardianship.

476.(1) If a guardian is unable to exercise any control over the ward, the guardian may apply to the court for an order.

(2) The court shall make such orders as it thinks fit in the circumstances, having regard to the interests of the ward, including —

(a) making an appropriate contribution to the maintenance of the ward;

(b) instructions regarding any property of the ward.

(3) The Attorney-General may intervene in any proceedings under this article.

477 – 488 VACANT

489.(1) An adult who, because of a mental or physical condition or otherwise, is unable to look after his or her own interests or properly fulfil family obligations, may be interdicted.

(2) An adult who the court is satisfied requires supervision in respect of financial matters may be made subject to a supervision order, the effect of which is that the adult cannot compromise, borrow, receive capital or give receipts for capital sums, or alienate or mortgage property, without the assistance of a person nominated by the court.

490.(1) Proceedings for interdiction or supervision shall be commenced in the court by petition.

(2) The proceedings may be entered by —

(a) any relative of the person whose interdiction or supervision is sought; or

(b) a spouse with regard to the other spouse; or

(c) the Attorney-General.

(3) The petition shall set out briefly the material facts on which the petition is based.

(4) The person whose interdiction or supervision is sought shall be made a respondent in the case, and the petition and such other process as the court may direct shall be served on the respondent.

491.(1) When the petition is not made at the instance of the Attorney-General, a copy of the petition shall be served on the Attorney-General and the matter shall be referred to the Attorney-

General in accordance with section 151 of the Seychelles Code of Civil Procedure.

- (2) The respondent may file a written answer.

492. VACANT

493.(1) The court may at any stage of the proceedings before judgment —

- (a) request the petitioner's opinion on any matter;
- (b) interrogate the respondent or cause the respondent to be interrogated by a person appointed by the court;
- (c) cause the respondent in the case of a petition for interdiction to be examined by one or more medical practitioners or officers and for that purpose may issue such orders as may be necessary for the examination to take place.

(2) The court shall not be bound by any opinion expressed by the petitioner.

(3) No judgment shall be vitiated or rendered invalid on account of any error, omission or irregularity in the proceedings arising from or depending on this article unless such error, omission or irregularity has occasioned a miscarriage of justice.

(4) Proceedings for interdiction or supervision shall take place in Chambers.

494 - 496 VACANT

497.(1) At any time after a petition has been filed the court may appoint a person to act provisionally as guardian of the respondent and of the property of the respondent.

(2) The appointment of a person to act provisionally as guardian shall lapse on the appointment of a guardian under article 505.

(3) The provisional guardian shall render accounts to the guardian.

498. Sections 152 to 161 of the Seychelles Code of Civil Procedure apply to proceedings under articles 490 to 511.

499.(1) After considering any evidence adduced by the parties and such other relevant evidence which shall have been admitted by the court, the court shall give its judgment on the petition.

(2) If the court rejects a request for interdiction, the court may, if the circumstances require it, make a supervision order.

(3) In the case of an appeal from the judgment of the court, the Court of Appeal may examine the person whose interdiction or supervision is requested or have that person examined by a person appointed for the purpose.

500.(1) An order for interdiction or supervision must be served immediately on the petitioner, the person interdicted or under the supervision order as the case may be, and where the petition is granted, on the guardian.

(2) The guardian must forthwith draw up an inventory of the property of the person interdicted or under the supervision order and give notice, as the nature of the property requires, to—

- (a) the Registrar-General;
- (b) the Registrar of Companies;
- (c) the manager of any bank where property of the person interdicted or under the supervision order is held;
- (d) such other persons as is appropriate.

501.(1) An order made under art 499 has effect as from the day of judgment.

(2) Legal acts (*actes*) executed subsequently by the interdicted or supervised person shall be null by operation of law (*de plein droit*).

(3) Legal acts executed prior to the order for interdiction or supervision may be annulled if the ground for making the order of interdiction or supervision would have been obvious to a reasonable person at the time when the acts were executed.

(4) After the death of a person, the acts executed by that person shall not be challenged on the ground of insanity unless the interdiction or supervision had been ordered before death or unless the proof of insanity consists of the act which is challenged.

502 - 504 VACANT

505.(1) The court may appoint a guardian to a person who is interdicted or subject to a supervision order.

(2) Such appointment may be made in the judgment of interdiction or supervision or at any later time.

506.(1) A person who has been appointed a guardian may, with the consent of the court or on giving six months written notice to the court, resign the guardianship.

(2) The appointment of a guardian may be revoked by the court.

507. The court may appoint a temporary guardian to a person who is interdicted during the absence from Seychelles of the guardian.

508 - 509 VACANT

510.(1) The income of an interdicted person shall, in principle, be employed to improve the condition and assist the recovery of the interdicted person.

(2) According to the nature of the incapacity and the amount of the person's property, the court may decide whether the interdicted person shall be treated at home or be placed in a mental home or in a hospital.

511.(1) (a) The interdiction shall cease when the grounds which gave rise to it no longer exist.

(b) The lifting of the interdiction shall only be effective if the forms laid down for the interdiction are observed.

(2) The interdicted person shall recover his or her rights after the judgment lifting the interdiction.

512 - 515 VACANT

BOOK II**PROPERTY AND THE DIFFERENT KINDS OF OWNERSHIP****PRELIMINARY**

516.(1) Property is either immovable or movable.

(2) Property which is not immovable is movable.

517.(1) Property immovable by nature is—

(a) land and buildings;

(b) things fixed to land;

(c) growing crops and plants;

(d) fruit and flowers attached to plants growing in the land;

(e) things fixed to a building or which form part of a building.

(2) Property immovable by destination is —

(a) livestock on land by virtue of a contract for the cultivation of the land;

(b) animals and things provided by the owner of the land or building for the use or exploitation of such property;

(c) things on land or in a building necessary for the use or exploitation of that land or building or industry or manufacturing on that land.

(3) Property immovable by reason of the subject-matter to which it relates is —

- (a) usufructs of immovable property;
- (b) easements;
- (c) actions to recover immovable property.

(4) Items are fixed if they cannot be removed without breakage or deterioration or breaking or damaging the land or part of the building to which they are fixed.

518.(1) Natural produce is that which is produced naturally of the soil and includes the young of animals.

(2) Agricultural produce is the product of land obtained by cultivation.

519 - 535 VACANT

536.(1) The sale or gift of a furnished house (*maison meublée*) includes the furnishings (*meubles meublants*).

- (2) The sale or gift of a house with all that is in it —
 - (a) includes all movables;
 - (b) does not include cash, debts due, or rights for which the documents of title are in the house.

537.(1) Persons have the right to dispose of the property which belongs to them.

(2) A clause restricting the right of disposal of immovable property or of a right attached to immovable property is valid subject to two conditions —

- (a) that there is a serious reason for the imposition of such restriction; and
- (b) that it binds the transferee only during his or her lifetime.

(3) The court may delete such a restriction if satisfied that it is just to do so.

538.(1) Property which is not State or private property, and which is directly and immediately dedicated to a public service or to use by the public, is *domaine public*.

(2) *Domaine public* includes —

- (a) all roads, public highways, and streets which are maintained by a public authority;
- (b) cultural structures and national monuments which are maintained by a public authority;
- (c) national archives, libraries, and museum collections which are maintained by a public authority;
- (d) estuaries and marshes;
- (e) rivers, streams, and springs;
- (f) the land which is alternately covered and uncovered by the sea at the highest and lowest tides, sandbanks, beaches, and beaches which have been gained from the sea and left permanently high and dry;
- (g) ports, harbours, anchorages, and airports which are maintained by a public authority.

(3) Access to the *domaine public* is in the public interest.

(4) Where land that is *domaine public* is not accessible from a public road the State shall, as the case may be —

- (a) provide a sufficient right of way over State land to allow public enjoyment of the *domaine public* in accordance with the law; or

- (b) provide, as far as possible, in accordance with the law and in particular with reference to the town and country planning legislation, a sufficient right of way to allow public enjoyment.

539. Property that is in the *domaine public* is inalienable and imprescriptible.

540.(1) No property which is part of the *domaine public* shall cease to be part of the *domaine public* without express legislation to that effect.

(2) Where there is any doubt or dispute as to whether property is part of the *domaine public* or is part of the private domain (*domaine privé*) as state property or as private property, the status of the property shall be determined by the court on petition by any interested party.

541. Property which is ownerless vests in the Republic.

542. State property, the enjoyment of which is open to all persons, is governed by the law relating to the *domaine public*.

543. Property can be subject to full ownership, usufructs, easements, rights of use, rights of occupation, *droits de superficie*, or leases for a term of years.

544. Ownership is the right to enjoy and dispose of property in the most unlimited manner, provided it is not used in a manner forbidden by legislation.

545.(1) No person may be forced to part with his or her property except in the public interest and for fair compensation.

(2) The purposes of acquisition and the manner of compensation are determined by legislation.

546. Ownership gives the right to everything that the property produces and to anything that accedes to it either naturally or artificially.

547. Natural produce, earnings from land, and income from capital belong to the owner by right of accession.

548.(1) The natural produce of property belongs to the owner of the property, subject to the owner's obligation to reimburse the costs of ground preparation (*labours*), work (*travaux*) and seeds and other plant stock (*sémences*) paid by third parties.

(2) The amount of each reimbursement shall be calculated at the date of payment.

549.(1) A mere possessor of property in good faith acquires the natural produce of the property.

(2) (a) A possessor who is not in good faith is bound to restore the natural produce together with the property to its owner.

(b) Where the produce no longer exists in its natural state, its value is calculated at the date of payment.

550.(1) A person who possesses as owner by virtue of a title of ownership, the defects of which are unknown to him or her, is a possessor in good faith.

(2) The possessor ceases to be in good faith from the moment the defects of title become known to him or her.

551 VACANT

552.(1) Ownership of the soil carries with it the ownership of what is above and what is below it.

(2) The owner may, on the land, plant any plants and build any structures, subject to the exceptions in articles 637 to 710.

(3) Subject to paragraphs (4), (5) and (6), the owner may, below the land, make constructions and excavate, and take from the excavations whatever they yield.

(4) No owner may extract any minerals in, under, or on land, or in rivers or streams.

(5) No owner may search or prospect for, or acquire any rights relating to, petroleum in its natural condition *in strata* in or under any part of Seychelles.

(6) All minerals and petroleum are the property of the Republic.

553.(1) All buildings, plantations and works on land or under the ground shall be presumed to have been made by the owner at the owner's cost and to belong to the owner unless there is evidence to the contrary.

(2) This rule does not affect the rights of ownership that a third party may have acquired or may acquire by prescription, whether of a basement under a building in the ownership of another or of any other part of the building.

(3) (a) The owner of land who has erected structures or planted in the soil or put up works upon it with materials which did not belong to that owner shall pay for the value of the materials calculated at the date of payment.

(b) The owner of the land may also be ordered to pay damages.

(c) The owner of the materials has no right to remove them.

554.(1) A *droit de superficie* is a right, conferred on a person other than the owner of the land, to enjoy the surface of the land.

(2) (a) A *droit de superficie* can be created only by written agreement.

(b) The moral impossibility exception provided by article 1348(2)(e) does not apply to an agreement for a *droit de superficie*.

- (c) The written agreement must—
- (i) designate specifically the period for which the right is granted, not being a period greater than the life of the grantee, and the physical place and area where the right may be exercised;
 - (ii) state the manner in which the constructions made in the exercise of the right will be dealt with on the expiry of the term of the right; and
 - (iii) be registered.

(3) A purchaser of land that is subject to a *droit de superficie* takes the land subject to the *droit de superficie*.

(4) Where a lease is held with authority to build on the land, a *droit de superficie* is created which subsists for the period of the lease.

(5) A *droit de superficie* is a right personal to the grantee.

(6) (a) In the case of a dwelling house, where the *droit de superficie* is terminated by the death of the grantee, any spouse or domestic partner, or children of the grantee who were living with and dependent on the grantee at the time of the grantee's death, has a right to occupy the dwelling house for a period of one year following the death of the grantee.

(b) Where the owner of the land wishes to exclude those occupying under paragraph (a), the court may terminate those rights and make such order as it thinks just in the circumstances, including an order against the owner to provide for accommodation for those whose rights have been terminated.

(7) The court may, where the owner of the land wishes to terminate a *droit de superficie* —

-
- (a) order the holder of the *droit* to vacate the *droit* with or without indemnity; or
 - (b) order the holder of the *droit* to vacate the *droit* with the right to remove any construction within a reasonable time; or
 - (c) make such other order as is appropriate in the circumstances.

(8) Where the court order is that the holder will vacate the *droit* on payment of an indemnity, the indemnity will be —

- (a) a sum equal to the increase in the value of the land resulting from the construction made by the holder of the *droit de superficie*; or
- (b) a sum equal to the costs expended on any construction; or
- (c) such other sum as the court thinks fit, not being a sum greater than those assessed under subparagraph (a) or (b).

(9) The discretion under paragraphs (7) and (8) must be exercised having regard to the facts of the case and the nature of the legal relationship under which the *droit de superficie* was created.

(10) Where an indemnity is ordered under this article, the holder of the *droit de superficie* has a right of retention over the structure until the indemnity is paid.

(11) (a) Where a building the subject of a *droit de superficie* is destroyed by fire or a natural event, the grantee is entitled to rebuild that building.

(b) The object of the rebuilding is to reinstate the original kind of building and therefore it must occupy the same physical space and be of the same area.

555.(1) When plants are planted, structures erected, and works carried out by a third party with materials belonging to the third party, the owner of the land may, subject to paragraph (4), either retain their ownership or compel the third party to remove them.

(2) (a) If the owner of the land demands the removal of the structures, plants and works, such removal shall be at the expense of the third party without any right of compensation.

(b) The third party may further be ordered to pay damages.

(3) The owner who elects to keep the structures, plants and works must reimburse the third party in a sum equal to the increase in the value of the property or equal to the cost of the materials and labour estimated at the date of reimbursement after taking into account the present condition of the structures, plants and works.

(4) If plants were planted, structures erected and works carried out by a third party who has been evicted by process of law but who, because of good faith, has not been ordered by the court to return the produce, the owner of the land may not demand the removal of the plants, structures and works but must pay the third party either —

(a) the value of the material and labour; or

(b) a sum equal to the increase in the value of the land.

(5) (a) An owner who is subject to a condition subsequent (*condition résolutoire*), and who has caused plants to be planted, structures erected and works carried out, shall be presumed to have acted in good faith, unless that owner actually knew when such acts were performed that the events, the subject of the condition, had already occurred.

(b) This rule does not apply to a usufructuary or a tenant unless specific permission to plant, erect or construct had been given by the owner.

556.(1) Encroachment refers to a structure or works on land owned by one person which extends, without authority of the owner, onto or over land owned by another.

(2) Where there is an encroachment, the court may make such orders as it thinks fit to do justice in the circumstances of the case.

(3) In exercising its discretion under paragraph (2), the court will be guided by the principles set out in paragraphs (4), (5), (6) and (7).

(4) Where a person has encroached on land in good faith the encroacher may be required —

- (a) to buy the land encroached upon at current market value, or
- (b) to compensate the owner of the land encroached upon.

(5) If the encroachment is made in bad faith, the encroacher shall be required to pay damages and either —

- (a) remove the encroachment and restore the land to its former condition; or
- (b) buy the land encroached upon at current market value.

(6) Where the owner of land encroached upon had knowledge of the encroachment at the time of the encroachment, and took no action to prevent it, the encroacher shall not be required to remove the encroachment.

(7) (a) Where the encroachment is on land in the *domaine public* the interests of the public shall be protected by the State which in any action under this article shall act as owner.

(b) In the case of such an encroachment, priority should be given to the principle that the encroachment be removed and

the land restored to its former condition whether the encroachment is made in good faith or bad faith.

ACCESSION

557.(1) Deposits of earth and accretions which are gradually and imperceptibly added to land adjoining a river, stream or the sea are alluvion.

(2) Alluvion benefits the riparian and littoral owner.

(3) (a) The same shall apply in the case of earth which is left dry after running water has imperceptibly taken it from one of the banks of a river to the other or from one foreshore to another.

(b) The owner of the dry area benefits from the alluvion and the riparian owner of the opposite bank or the littoral owner of the eroded foreshore may not claim the land which was lost.

558.(1) There is no right of alluvion with regard to lakes and pools, the owner of which always retains the land covered by the water when it overflows, even if, as a result, the quantity of the water is reduced.

(2) The owner of a pool does not acquire any right of alluvion with respect of the banks of the pool where the water has caused a flood.

559.(1) If a river or a stream suddenly sweeps off a considerable and identifiable part of a riparian field and carries it towards a field further down or to an opposite bank, the owner of the part which has been carried away may reclaim the property.

(2) Claims not entered within one year will not be admitted unless the owner of the field to which the part carried away is joined has not yet taken possession of it.

560. Islands, islets and deposits of earth which are formed on the bed of rivers or streams belong to the Republic unless there is a contrary title or the title has been lost by prescription.

561. VACANT

562. If a stream or river, by forming a new branch, cuts and surrounds the field of a riparian owner as a result of which an island is formed the owner retains the ownership of the field.

563. If a river or a stream forms a new bed and abandons its old course, the riparian owners of the land in which the new bed lies may, by way of compensation, take the old bed that has been abandoned, each in proportion to the land of which the owners have been deprived.

564. Any bird, fish, animal or bee which establishes itself on land belongs to the owner of the land on which it establishes itself, unless it was lured there by fraud or moved by artificial means.

565. The right of accession, when it relates to movable property which belongs to more than one person, shall be determined in accordance with the principles of fairness and usage, as exemplified by articles 566 to 576.

566.(1) When two things which belong to different owners have been united in such a way as to form a unit, even if they are severable and one can exist without the other, the unit shall belong to the owner of the thing which forms the principal part of it on condition that each owner shall be bound to pay to the other owner the value of the other part calculated at the date of payment.

(2) The principal part is presumed to be the part with which the other has been united only for the use, adornment or completion of the former.

(3) When the thing which has been united with another is of much greater value than the principal part, and when it has been used without the knowledge of the owner, such owner may demand that the united part shall be severed and returned to such owner even if this may result in some damage to the thing to which it is joined.

(4) (a) If one of the two things that have been joined to form a single whole could not be regarded as the accessory of the

other, the part which is of greater value shall be considered to be the principal part.

(b) If their respective values are approximately equal, the part that is greater in bulk shall be the principal one.

567 - 569 VACANT

570.(1) Where a person has —

- (a) made use of any material, which did not belong to that person, in order to make a thing new in kind, and
- (b) whether the material can revert to its former form or not,

the owner shall have the right to claim the new thing on payment of the value of the work or labour as calculated at the date of payment.

(2) If the skill used was so great that it exceeds by far the value of the material used, the skill used shall be presumed to be the principal part and the craftsman shall have the right to retain the thing on condition that the owner is refunded the price of the material as calculated at the date of payment.

571. VACANT

572.(1) When a person has used material that belongs to that person and material that belongs to another in such a way as to make a thing of a new kind, the thing shall belong to both owners jointly although neither of the two materials used has completely perished, provided that they are joined in such manner that the two materials cannot be conveniently severed.

(2) The thing is owned in proportion to the value of the material belonging to each and to the value of the work put in by each.

(3) The value of the work shall be calculated on the date of the licitation as provided by article 573(4).

573.(1) When something has been made by the mixture of several materials belonging to different owners, none of which could be regarded as the principal material, and if the materials can be separated, the party who was unaware that the materials were to be mixed may demand that they be divided.

(2) If the material can no longer be conveniently separated, the owners shall acquire the ownership jointly, in proportion to the quantity, quality and value of the materials that belonged to each one of them.

(3) When the material which belonged to one of the owners was superior by far to that of the other owner with regard to quantity and price, the owner of the superior material in value may demand the thing which was the result of mixing on condition of refund of the value of the owner's material as estimated at the date of payment.

(4) When the thing remains owned in common among the owners of the materials from which it is made up, it may be disposed of by licitation for the benefit of all.

574, 575 VACANT

576.(1) (a) An owner whose material has been used without the owner's knowledge to make a thing of a different kind may demand the ownership of such thing.

(b) The owner may demand either restitution of the material in the same kind, quantity, weight, measure and quality or may demand its estimated value at the date of restitution.

(2) Any person who has used materials belonging to another and has done so without the knowledge of that other person may be required to pay damages, without prejudice to any other remedies that may be available.

577. VACANT

USUFRUCT

578. Usufruct is the right to enjoy property which belongs to another in the same manner as the owner of the property, but subject to the obligation to preserve its substance.

579. A usufruct is created by law or by the will of the parties.

580.(1) A usufruct can be created to take effect immediately or on a certain date or conditionally.

(2) A usufruct can be created on movable and immovable property.

581. VACANT

582.(1) The usufructuary has the right to all the produce of the property which is subject to the usufruct.

(2) The right applies to natural and agricultural produce which is attached to branches or growing in the ground when the usufruct begins and income which can be produced by the property which is subject to the usufruct.

(3) Similarly, when the usufruct ends, the produce belongs to the owner without any compensation to the usufructuary.

583, 584, 585 VACANT

586.(1) Income (*fruits civils*) belongs to the usufructuary for the duration of the usufruct.

(2) Income is presumed to be acquired from day to day.

(3) Income includes —

(a) rent from houses;

(b) interest on sums due;

- (c) arrears of rent;
- (d) dividends;
- (e) rent from agricultural tenancies.

587. If the usufruct includes things which cannot be used without being consumed, the usufructuary shall be entitled to use them on condition that, at the termination of the usufruct, there is a return either of things of the same quantity and quality or the value of things of the same quantity and quality estimated at the date of the return.

588. The usufruct of a life annuity entitles the usufructuary, for the duration of the usufruct, to receive any arrears without being obliged to make any restitution.

589.(1) If the usufruct includes things which, although not immediately consumed, deteriorate gradually by use, the usufructuary may use them for the purpose for which they are intended and must return them at the termination of the usufruct in whatever condition they are, provided that they have not been damaged through the fraud or negligence of the usufructuary.

(2) There is no requirement of return in respect of things that perish through normal usufructuary use.

590.(1) If the usufruct includes things regularly harvested, the harvesting by the usufructuary should be consistent with the requirements of good husbandry of the resource and the plan or practice of the owner.

(2) A usufructuary shall receive no indemnity for agricultural produce not harvested in accordance with the conditions of paragraph (1).

(3) Trees which can be removed from a nursery without causing damage to it are included in the usufruct, on condition that the usufructuary acts in accordance with local practice with regard to their replacement.

591.(1) Subject to paragraphs (2) and (3), a usufructuary shall not interfere with forest trees.

(2) A usufructuary who observes the seasons and established practice of former owners has the benefit of full-grown trees that have been felled on a controlled basis, whether at regular intervals in a particular area or whether of a fixed quantity of trees from the whole area of the usufruct.

(3) A usufructuary may, for the purpose of making repairs required by the usufruct, use trees which have been accidentally uprooted or broken, or may for the same purpose, and with the approval of the owner, cause trees to be felled.

(4) The usufructuary may, in accordance with local practice and the practice of the owners, take props from a forest for the support of vines and any regular produce hanging from the trees.

592, 593 VACANT

594.(1) Dead or dying fruit trees, including those accidentally uprooted or broken, belong to the usufructuary.

(2) Where there has been negligence on the part of the usufructuary, dead or dying fruit trees must be replaced by the usufructuary.

595.(1) The usufructuary may enjoy the usufruct personally, or grant an agricultural tenancy, or sell, or give the usufruct to another.

(2) If the usufructuary grants a tenancy the usufructuary shall be bound, insofar as its periods of renewal and duration are concerned, by the rules in paragraphs (3) and (4).

(3) Tenancies exceeding nine years shall be binding upon the owner and the owner's heirs for the time which remains to run out of the first period of nine years, if that period has not elapsed, or out of the second period, and so on, so that the tenant shall only be entitled to complete the time of a current tenancy of nine years.

(4) Tenancies of nine years or less granted more than three years before the expiry of the usufruct in the case of agricultural land, and more than two years in the case of a house, shall be void.

596.(1) The usufructuary shall benefit from any increase caused by alluvion to the size of the land subject of the usufruct.

(2) The usufructuary shall enjoy the right arising from easements, rights of way, and generally all the rights which an owner may enjoy, in the same manner as the owner.

597. VACANT

598.(1) The usufructuary shall enjoy the mines and quarries which are in operation at the beginning of the usufruct in the same manner as the owner.

(2) If the mines and quarries cannot be exploited without a permit, the usufructuary has no right to exploit them without a permit.

(3) The usufruct has no right to mines and quarries which have not yet been exploited or to treasure trove found in the course of the usufruct.

599.(1) The owner shall not interfere with the rights of the usufructuary in any way.

(2) The usufructuary may not demand, at the termination of the usufruct, any indemnity for the improvements made by the usufructuary, even though the value of the property has increased.

(3) The heirs of the usufructuary may remove furnishings (*meubles meublants*) that the usufructuary installed in the premises, provided that the premises are restored to their former condition.

600.(1) The usufructuary takes things in the condition they are but may not enjoy the usufruct until the usufructuary has drawn up an inventory of all of the property which is subject to the usufruct in the presence of the owner or after due notice has been given to the owner.

(2) The failure of the usufructuary to draw up an inventory before enjoying the usufruct does not defeat the usufruct, but the owner may demand an inventory at any time.

601.(1) A usufructuary must provide security for the exercise of reasonable care in the enjoyment of the usufruct unless the act (*acte*) that created the usufruct waives the need for the security.

(2) Parents who have the usufruct of the property of their children as of right or a seller or donor of property who has reserved the usufruct of the property is not bound to provide security to exercise reasonable care in the enjoyment of the usufruct.

602.(1) If the usufructuary cannot provide security for the exercise of reasonable care in the enjoyment of the usufruct —

- (a) The immovable property shall be held on lease or placed in receivership;
- (b) Money included in the usufruct shall be invested;
- (c) Any produce shall be sold and the proceeds shall be invested.

(2) The interest from such sums and the rent received from letting the property belong to the usufructuary.

(3) (a) In the absence of the security on the part of the usufructuary, the owner may demand that any movable property which deteriorates by use be sold and the value invested, as in the case of produce.

(b) The usufructuary enjoys the interest on the investment for the duration of the usufruct.

(c) A usufructuary may apply to the court for any part of the movable property necessary for the enjoyment of the usufruct to be made available.

(d) The court may grant the application on the sworn recognisance of the usufructuary and subject to the requirement that the property be returned on the termination of the usufruct.

603. VACANT

604.(1) The fruits of the usufruct are due to the usufructuary from the time the usufruct begins.

(2) A delay in providing security does not deprive the usufructuary of those fruits.

605.(1) The usufructuary is under no obligation other than to keep the property in good repair.

(2) Structural repairs are the obligation of the owner, unless otherwise agreed in the act (*acte*) which established the usufruct.

(3) Where structural repairs have become necessary because of the failure of the usufructuary to keep the property in good repair, the usufructuary is liable for the cost of those structural repairs.

(4) If the owner fails to carry out structural repairs which are essential to maintain the property in the condition in which it was at the beginning of the usufruct, the usufructuary may carry out the repairs and recover the cost from the owner.

(5) (a) Structural repairs are repairs to things such as walls, foundations, floors, beams, columns, roofs, dykes, groynes, weirs, levees, retaining walls or fences which are necessary to maintain the integrity of the whole structure.

(b) Repairs which are not structural repairs are maintenance repairs.

606. VACANT

607. Neither the owner nor the usufructuary is bound to rebuild what has perished by decay or what has been destroyed by inevitable accident (*cas fortuit*).

608.(1) The usufructuary is liable during the usufruct for all charges which arise from the usufructuary's use of the land and all charges which arise in relation to income from the land.

(2) (a) Other charges imposed on the property in the course of the usufruct shall be paid by the owner.

(b) If such charges are paid by the usufructuary, the usufructuary shall be reimbursed for them by the owner at the termination of the usufructuary.

609. VACANT

610. The legacy given by a testator of a life annuity or maintenance grant shall be paid by the residuary legatee of the usufructuary in its entirety, and by the legatee by universal title of the usufruct to the extent of the right of enjoyment, but neither of them shall have any right to claim a refund.

611.(1) The person entitled to a usufruct of specific property shall not be bound by the debts arising from a mortgage of the property.

(2) A usufructuary who is required to pay any such debts is entitled to recover them from the owner subject to article 1020.

612.(1) A person entitled to a usufruct either as a residuary legatee or a legatee by universal title must contribute with the owner to the discharge of the debts as follows.

(2) The value of the property, subject to the usufruct, is calculated and the proportion of each contribution is then fixed according to such value.

(3) If the usufructuary advances the sum which the property must contribute, the capital shall be refunded at the termination of the usufruct, without interest.

(4) If the usufructuary does not advance that sum, the owner may elect either to pay that sum, in which case the usufructuary

must pay the owner the interest on that sum during the continuance of the usufruct, or cause the property subject to the usufruct to be sold to the extent required for the discharge of the debt.

613. In relation to legal proceedings, the usufructuary is liable only for the cost of legal proceedings relating to the enjoyment of the usufruct and for any orders to pay arising from those proceedings.

614.(1) If during the usufruct a third party encroaches upon the property or otherwise interferes with the rights of the owner, the usufructuary must report that to the owner.

(2) If the usufructuary fails to so report, the usufructuary is liable for any loss suffered by the owner as a result, in the same way as if the usufructuary had caused the loss.

615. If the usufruct relates to an animal which dies without any fault on the part of the usufructuary, the usufructuary need not replace the animal or pay its value.

616. VACANT

617. A usufruct is terminated by —

- (a) the death of the usufructuary;
- (b) the expiration of the period of time for which it was granted;
- (c) the merger or union in the same person of the usufructuary and ownership rights;
- (d) non-use for more than twenty-five years;
- (e) the total loss of the property that is subject to the usufruct.

618.(1) The usufruct may be terminated by the abuse by the usufructuary of the right of enjoyment by —

- (a) disposing of waste on the property; or

(b) allowing the property to fall into disrepair.

(2) Creditors of the usufructuary may intervene in any legal proceedings in order to secure their rights and may offer to repair any damage and provide security for the future.

(3) The court may, according to the gravity of the circumstances, either declare the usufruct totally extinguished or order the owner to repossess the property, if the owner pays annually to the usufructuary or the usufructuary's assignees a fixed sum until such time as the usufruct would have terminated.

619. A usufruct other than to a private person must not exceed 30 years.

620. A usufruct granted until a third party reaches a certain age shall continue for that period, even if that party dies before that time.

621. The sale of property subject to a usufruct has no effect on the rights of the usufructuary who shall continue to enjoy the usufruct.

622.(1) The creditors of a usufructuary may demand the annulment of any waiver of the rights of a usufructuary if the waiver is to their detriment.

(2) It is not necessary to prove that the usufructuary acted in bad faith in making the waiver.

623. If only part of property subject to a usufruct is destroyed, the usufruct continues in respect of what remains.

624.(1) (a) If the usufruct relates only to a building and that building is destroyed by fire or other accident or collapses by decay, the usufructuary has no right to enjoy the soil or the materials.

(b) The usufructuary is liable to the owner if the fire or accident or collapse was due to the negligence of the usufructuary.

(2) If the usufruct is created on property of which a building forms part, the usufructuary has the right to enjoy the soil and the materials if the building is destroyed by fire or other accident or collapses by decay.

USE AND OCCUPATION

625. Subject to articles 628 to 632, articles 579 to 580 and 617 to 624 apply *mutatis mutandis* to rights of use and occupation.

626, 627 VACANT

628. Rights of use and occupation are governed by the instrument which creates them.

629. In the absence of provisions in the instrument creating the rights of use and occupation, articles 630 to 635 apply.

630. Rights to the produce of land are limited to what is necessary for the requirements of the rights holder and his or her family as the family exists from time to time.

631. Rights of use cannot be transferred or leased.

632.(1) A person entitled to the occupation of a house may live there with his or her family even if he or she was not married or in a domestic relationship at the time the right was granted.

(2) Rights of occupation are limited to what is necessary for the requirements of the rights holder and his or her family.

(3) For the purposes of this article “family” means those to whom alimentary obligations are owed under articles 203 to 207.

633. VACANT

634. Rights of occupation cannot be transferred or leased.

635.(1) If the person entitled to a right of use consumes all the produce of the property or occupies the whole house, that user must pay the costs of cultivation, keep the property in good repair, and pay any contributions in the same manner as a usufructuary.

(2) The person entitled to a right of use who takes only part of the produce or occupies only part of the house must contribute pro rata to the part enjoyed.

636. VACANT

EASEMENTS

637. An easement is a charge imposed on land owned by one person for the use and benefit of the owner of another piece of land.

638. An easement does not establish the superiority of one tenement over another.

639. An easement arises either from the natural position of land or from obligations imposed by law or from agreements amongst owners.

640.(1) Land on a lower level is bound to receive from land on a higher level water which flows down naturally and without human intervention.

(2) The owner of the land on the lower level must not make a dam that will prevent the flow of water.

(3) The owner of the land on the higher level must do nothing that would increase the burden of the lower level.

(4) Every owner must ensure that rainwater from roofs of buildings on the land flows on to that owner's land or onto a public road and must not allow it to flow on to a neighbour's property.

641.(1) Every owner is entitled to use and dispose of rainwater that falls on that land or water that emanates from a spring on that land.

(2) If the use to which the water is put or the direction which is given to it results in a serious increase of the burden which the natural easement of running water established by article 640 imposes, the owner of the lower land is entitled to compensation.

(3) If, as a result of tests or underground work, an owner causes water to flow from that owner's land, the owners of land on a lower level are bound to receive it but are entitled to be indemnified for any resulting damage.

(4) Paragraphs (1), (2) and (3) do not apply to any increase in the burden of the easement of running water on houses, yards, gardens, parks and enclosures adjoining residential property.

(5) (a) In adjudicating on any dispute in relation to easements, the court must take into account both the interests of agriculture and industry and the rights of ownership.

(b) If expertise is called for, the court may appoint a single expert.

642 - 645 VACANT

646.(1) An owner of land can compel the owner of adjoining land to have the boundary between their properties marked out.

(2) The marking of the boundary is a joint cost.

647. Subject to article 682, land may be enclosed by the owner.

648 - 652 VACANT

653.(1) In towns and in the country, every wall which serves two separate buildings up to the roof line reached by the lower building or between yards and gardens and even between enclosures in a field, shall be presumed to be a party-wall unless there is a document (*titre*) or other indication to the contrary.

(2) It is an indication that a wall is not a party-wall when—

(a) the top of the wall is straight and vertical on the facing of one side, but inclined on the other; or

(b) there is only on one side a coping or mouldings or stone brackets fixed when the wall was built.

(3) In the cases described in paragraph (2) the wall is presumed to belong exclusively to the owner of the side on which there are the coping or the mouldings or stone brackets.

654. VACANT

655.(1) The repairs and re-building of a party-wall shall be a charge on all those with rights in the wall in proportion to their rights.

(2) A joint owner of a party-wall may avoid contribution to the repairs and re-building by giving up his or her right to the party-wall, provided that such party-wall does not support a building which belongs to that joint owner.

656. VACANT

657.(1) An owner can insert beams or joints up to 54 millimetres into a party wall or build against a party wall.

(2) The owner's neighbour has a right to reduce the length of any inserted beam or joint to no more than the half-way point in the wall if that neighbour wants to insert beams in the same place or build a chimney against it.

658.(1) A joint owner may increase the height of a party-wall.

(2) The costs of increasing the height of the party-wall and the maintenance of the increased height is a charge to that joint owner.

(3) That joint owner is liable alone for the costs of any maintenance to the common part made necessary by the increased height of the wall and also for any expenses incurred by the adjoining owner as a result of the increased height.

659.(1) If the party-wall is not able to support an increase in the height of the wall, the person who wants to increase the height must re-build the entire wall and is responsible alone for the costs involved.

(2) If increasing the height of the wall requires additional thickness of the wall, that additional thickness must be on the builder's property.

660.(1) A neighbour who has not contributed to the increased height may acquire party-rights by paying half the cost thereof, as well as one half the value of one half of the land used for any additional thickness.

(2) The cost of the increased height shall be calculated at the date of acquisition having regard to the present condition of the superstructure.

661.(1) An owner adjoining a wall is entitled to make it a party-wall, whether the whole or a part of it, by paying the owner of the wall—

- (a) one half of its cost, or one half of the cost of that part of the wall which is to be made a party-wall; and
- (b) one half of the value of the ground on which the wall is built.

(2) The cost of the wall shall be calculated at the date of the acquisition of party-wall rights having regard to the present condition of the wall.

662.(1) A neighbour must not insert any object into a party-wall or build or rest any structure upon it without the consent of the other neighbour.

(2) If the other neighbour refuses, construction may proceed only after receiving expert advice on the means necessary to ensure that the new structure is not detrimental to the rights of the other neighbour.

663.(1) Every person may compel his or her neighbour to contribute to the construction and repair of a fence separating their houses, yards, or gardens.

(2) Unless otherwise provided by legislation, the height of the fence must be at least 1.8 metres.

664.(1) When different floors or premises of a building belong to different owners and the title deeds do not regulate the way in which repairs and re-building are to be carried out, paragraphs (2), (3), and (4) apply.

(2) The main walls and the roof must be paid for by all the owners in proportion to the floor or premises of which each is the owner.

(3) Each owner of a floor or premises shall pay for the repairs to the part of the building which belongs exclusively to that owner.

(4) Where an owner has joint control with other co-owners, or there is a building over which a person has the benefit of an easement, each joint owner and each beneficiary of an easement must pay a pro rata portion of the cost of construction or repairs of the building.

(5) Where a person pays the total cost of the construction or repairs that person may recover, from the other persons liable, the proportion of the cost for which they were responsible.

(6) Only construction and repairs appropriate to the character and position of the building are recoverable under this article.

(7) Any document, the terms of which regulate the operation and maintenance of the building at the time when a person acquires a floor or a premises, shall bind that person, subject to that person's right to apply to the court for an order amending any clause which is oppressive.

665. When a party-wall or a house is rebuilt, the easements to which it is subject shall continue with regard to the new wall, or the new house, but cannot become more onerous, provided the re-building is completed before rights over the new buildings can be acquired by prescription.

666.(1) Subject to paragraph (2), a wall or ditch which separates the land of different owners is presumed to be jointly owned unless it

encloses the land of only one of the owners or there is a governing instrument or boundary marker which establishes the contrary.

(2) Ditches with an elevation or inclination of the soil on only one side are presumed to belong to the owner of the property on that side.

667.(1) Walls and ditches referred to in article 666(1) must be maintained as a joint cost.

(2) Where a ditch habitually serves for drainage, a co-owner cannot renounce ownership.

668.(1) Any neighbour whose land borders a ditch or hedge that is not jointly owned may not compel the owner of that ditch or hedge to grant party rights in the ditch or hedge.

(2) (a) The joint owner of a party hedge may destroy it up to the extent of that joint owner's property.

(b) The joint owner who destroys a hedge under sub-paragraph (a) must build a wall up to the limit of the hedge.

(c) Sub-paragraph (b) applies equally to the joint owner of a party ditch which only serves as an enclosure.

669. The produce of the hedge shall belong to the joint owners at the rate of one half each for as long as the joint ownership lasts.

670.(1) Trees which are found in a party hedge are jointly owned on the same basis as the hedge.

(2) Trees planted on the boundary line of two pieces of land are jointly owned.

(3) Jointly owned trees that die or are cut down or uprooted for whatever reason must be shared.

(4) Expenses incurred in gathering the fruits of jointly owned trees must be borne by both parties.

(5) An owner may require the removal of jointly owned trees.

671.(1) No person shall have trees, shrubs, and bushes closer to the boundary line of neighbouring properties than two metres for plantations the height of which exceeds two metres, or half a metre for all others.

(2) Trees, shrubs and bushes planted at the limit specified in paragraph (1) must not pass beyond the crest of the wall.

672.(1) A neighbour may demand that trees, shrubs and bushes planted at a lesser distance than that in article 671 be uprooted or their height reduced unless —

- (a) there is an instrument (*titre*) to the contrary; or
- (b) the trees, shrubs or bushes were planted by a previous owner of both pieces of land; or
- (c) the right has been extinguished by prescription of twenty years.

(2) If trees, shrubs or bushes die, are cut, or are uprooted, the neighbour may replace them only in accordance with the distances required for new plantings.

673.(1) The owner whose property is invaded by branches of trees, shrubs and bushes belonging to a neighbour may compel the neighbour to cut them back.

(2) The fruit fallen naturally from the invasive branches belong to the owner of the land on which they fall.

(3) If the invasions are roots, thorns and twigs, the owner of the property affected has the right to cut them back to the boundary line.

(4) The right to cut back roots, thorns and twigs or to require branches, shrubs and bushes to be cut is not lost by prescription.

674. All relevant building and health legislation must be respected by any person who wishes, near any wall —

- (a) to make any construction or excavation for sewerage or wastewater purposes;
- (b) to build a chimney or hearth, forge, oven or furnace;
- (c) to build a stable; or
- (d) to put up against that wall a store for salt or for keeping corrosive substances.

675. A neighbour may not, without the consent of the other neighbour, cut any window or opening into a party-wall even if the open space is covered with fixed glass.

676, 677 VACANT

678.(1) No building can have a window, balcony or other similar projection giving —

- (a) a direct view over a neighbouring property which fails to comply with distances prescribed by legislation;
- (b) a side or oblique view over a neighbouring property.

(2) The distance in paragraph (1) is measured from the outside face of the wall on which the opening is made, and if there are balconies or other similar projections, from their outer line to the line separating the two properties.

(3) Paragraphs (1) and (2) are subject to any right of way that exists for the property that has the benefit of this article.

679 - 681 VACANT

682.(1) An owner whose property is enclosed on all sides, and has no access or inadequate access on to the public highway, either for the private or business use of the property, may claim from neighbours a sufficient right of way to ensure the full use of such property.

(2) The owner shall pay the neighbours adequate compensation for any damage caused by the right of way.

(3) Where an owner has been deprived of access to a public road, street or path in pursuance of an order converting a public road into private property, the person who has been granted the property must provide a right of way to the deprived owner without compensation.

(4) An action for compensation under this article may be barred by prescription but the right of way shall continue in spite of the loss of such action.

683.(1) There is generally a right of way from the side of a property that is nearest to a public road.

(2) In establishing the right of way, account must be taken of the need to reduce any damage to the neighbouring property as far as possible.

684.(1) If non-access arises from a sale or an exchange or a division of land or from any other contract, the passage may only be demanded from such land as has been the subject of such transactions.

(2) If sufficient passage cannot be provided from such land, article 682 applies.

685.(1) The position and the nature of a right of way established for land enclosed on all sides are settled by twenty years' continuous use.

(2) If at any time within that period the dominant tenement obtains access in some other way, the owner of the servient tenement

can claim the cancellation of the right of way on condition of repaying such proportion of any compensation received under article 682 as is reasonable in the circumstances.

686.(1) An owner may create easements on or in favour of property.

(2) Easements are governed by the conditions contained in the document which created them, and in the absence of such document by the rules stated in articles 688 to 710.

687. VACANT

688.(1) Easements are either continuous or discontinuous.

(2) Continuous easements are easements the use of which continues or could continue without human intervention such as water mains, drains, and the right to light.

(3) Discontinuous easements are those which need human intervention for their use such as rights of way, drawing water, and grazing.

689.(1) Easements are apparent or non-apparent.

(2) Apparent easements are visible, such as doors, windows or pipes.

(3) Non-apparent easements are not visible, such as restrictions on building on land or above a certain height.

690. Continuous and apparent easements are acquired by instrument (*titre*) or by possession for 20 years.

691. Non-apparent continuous easements and discontinuous easements, apparent or non-apparent, are created only by instrument (*titre*).

692. Proof that continuous and apparent easements were set up by the previous owner is equivalent to title (*titre*).

693. Easements set up by a previous owner are accepted only if two contiguous plots, now divided, belonged to the same owner and were created by that owner.

694. If the owner of two plots over which or in respect of which there is some visible indication of an easement disposes of one of these plots without any reference in the agreement to the easement to which it is subject, it shall continue to exist.

695. The document (*titre*) creating the easement, insofar as easements which cannot be acquired by prescription are concerned, can only be replaced by a document (*titre*) of recognition of the easement which emanates from the owner of the servient tenement.

696.(1) A person who creates an easement provides everything necessary for its use.

(2) The easement of drawing water from land of another necessarily carries with it the right of way.

697.(1) The owner of the dominant tenement may do all necessary for the use and preservation of the easement.

(2) The cost of any such work falls on the owner of the dominant tenement unless the document (*titre*) creating the easement provides otherwise.

698. VACANT

699.(1) If the owner of the servient tenement is bound by the document (*titre*) to assume the cost of the work necessary for the use and preservation of the easement, that duty may be discharged by abandoning the servient tenement to the owner of the dominant tenement.

(2) The consent of the owner of the dominant tenement is required where the court is satisfied that the owner of the servient tenement has unreasonably failed to fulfil the obligations under paragraph (1).

700.(1) If the dominant tenement is subdivided the easement subsists in respect of each portion, provided that the burden upon the servient tenement is not increased as a result.

(2) In the case of a right of way for land in co-ownership each co-owner must exercise the right of way by the same route.

701.(1) The owner of the servient tenement shall do nothing which may tend to impair the use of the easement or to render it more inconvenient.

(2) (a) The owner of the servient tenement may not change the condition of the property nor shift the easement to a place different from where it was originally located.

(b) If the original location has become more onerous to the owner of the servient tenement or if it prevents the owner of the servient tenement from carrying out improvements upon it, the owner of the servient tenement may require the owner of the dominant tenement to use a place of equal convenience for the exercise of the right.

(c) Any costs incurred by the owner of the dominant tenement under subparagraph (b) are borne by the owner of the servient tenement.

702. The person entitled to an easement must —

(a) use it only in accordance with the terms of the establishing instrument (*titre*);

(b) make no change either to the servient or to the dominant tenement which will worsen the condition of the servient tenement.

703. An easement is extinguished when the condition of things is such that the easement can no longer be enjoyed.

704. An easement revives if things revert to a condition where the easement can be used, unless sufficient time has elapsed to

raise the presumption that the easement has been extinguished as laid down in article 706.

705. All easements are extinguished when the properties become amalgamated in the same owner.

706.(1) An easement is extinguished by non-use over a period of 20 years.

(2) The period of 20 years begins to run either from the day when its enjoyment ceased in the case of discontinuous easements, or from the day when an act contrary to it was done in the case of continuous easements.

707. VACANT

708. The way in which an easement is enjoyed is subject to prescription as much as the easement itself and in the same manner.

709. If the dominant tenement has more than one owner, the enjoyment of the easement by one of them is a bar to prescription operating against all of them.

710. If there is one co-owner against whom time has not run, as, for example, a minor, the rights of the other co-owners are thereby reserved.

BOOK III**PART 1****TRANSFER OF OWNERSHIP****PRELIMINARY**

711.(1) Ownership of property may be acquired and transferred by —

- (a) succession;
- (b) gift *inter vivos*;
- (c) will;
- (d) the effect of obligations; or
- (e) otherwise by legislation.

(2) Ownership of property may be acquired by accession, incorporation, prescription, or by the creation of property.

712. VACANT

713.(1) Treasure trove belongs to the person in whose land it is found.

(2) If treasure trove is found in the land of another, one half belongs to the finder and one half to the owner of the land.

(3) Treasure trove consists of anything hidden or buried in respect of which no one can prove ownership and which is discovered by chance.

714 - 717 VACANT**SUCCESSION**

718.(1) A succession opens on death.

(2) The succession opens at the place of the deceased's last domicile.

719.(1) If persons entitled to succeed each other perish in the same event without it being possible to establish who died first, the order of death is determined by the circumstances of the case.

(2) In the absence of any evidence as to the time of death it is presumed that they all died at the same time.

720.(1) In the absence of heirs, the Curator of Vacant Estates shall be sent into possession.

(2) Where after one year from the date of the vesting order no claim has been made by an heir, the vacant estate shall be deemed to be held by the Curator on behalf of the Republic.

(3) The claims of any person against the Curator, as well as the rights of the Republic to acquire by prescription, shall be subject to the rules of prescription.

721.(1) Where a succession includes immovable property, the succession vests in an executor.

(2) Where a succession includes no immovable property, the succession vests as of right in the persons entitled under article 731, subject to the duty to discharge all debts of the succession.

(3) Where the Republic takes the succession under this article, the Republic shall be seised of the property by order of the court.

722 - 724 VACANT

725.(1) To be eligible to inherit, an heir must have legal personality at the time of the opening of the succession.

(2) A person who has been conceived and subsequently acquires legal personality is eligible to inherit.

726. The following persons are excluded from the succession as unworthy to succeed —

- (a) a person convicted of murder or attempted murder of the deceased as principal or accomplice;
- (b) a person convicted of an intentional criminal act which led to the death of the deceased, even though there was no intention to kill.

727. The heir who is excluded from the succession by reason of unworthiness must return all the property and any income from it enjoyed since the opening of the succession.

728.(1) The children of an unworthy person who come to the succession in their own right and not by way of representation are not excluded by the unworthy person.

(2) The unworthy person is not entitled to that succession or to the usufruct which the law confers upon parents with respect to the property of their children.

729, 730 VACANT

731. The succession devolves upon the descendants of the deceased, the ascendants, the collateral relatives and the surviving spouse or partner to a domestic relationship (*en ménage*) in accordance with the rules of this Code.

732. The law, in regulating the order of succession, does not consider either the nature or the origin of the property.

733.(1) Every succession accruing to ascendants or collaterals shall be divided into two equal parts: one for the relatives in the paternal line, the other for the relatives in the maternal line.

(2) Relatives of the half blood are not excluded by the relatives of the full blood except as provided in article 752.

(3) Relatives of the full blood shall take in both lines.

(4) Subject to article 753, the succession accrues from one line to the other only when there are neither ascendants nor collaterals in one of the two lines.

734. After the division made in article 733, there shall be no further division amongst the various branches, but one half of the succession accruing to each line shall belong to the heir or the heirs who are nearest to the deceased, subject to representation as stated in articles 739 to 744.

735.(1) The proximity of relationship shall be established by the number of generations.

(2) Each generation is a degree.

736.(1) A sequence of degrees forms a line.

(2) A direct line is the sequence of degrees between persons who descend one from the other.

(3) A collateral line is the sequence of degrees between persons who do not descend one from the other, but who can trace their descent to a common ancestor.

(4) The direct descending line links the ancestor with the descendants.

(5) The direct ascending line links a person with his or her ascendants.

737.(1) In the direct line, there are as many degrees as there are generations between the persons.

(2) A child is, in relation to the parent, in the first degree, the grandchild, in the second, and correspondingly the parent and the grandparent with regard to the children and grandchildren.

738.(1) In the collateral line, the degrees rank by generations from one of the parents up to, but not including, the common ancestor and from the latter to the other parent.

(2) Siblings are related in the second degree, uncle or aunt and nephew or niece are related in the third degree, first cousins in the fourth degree, and so on.

739. Representation is a legal fiction the effect of which is to put the representatives in the place, in the line and with the rights of the person represented.

740. Representation takes place without limit in the direct descending line and is admitted in all cases, whether the children of the deceased share with the descendants of a predeceased child, or whether all the children having predeceased, their descendants find themselves in relation to one another in equal or unequal degrees.

741.(1) Representation does not exist for ascendants.

(2) The nearest ascendant in each of the two lines always excludes the more remote.

742. In the collateral line, representation is admitted in favour of the children and the descendants of siblings of the deceased, whether they come to the succession concurrently with the uncles or aunts or whether, all the siblings of the deceased having died before, the succession devolves on their descendants.

743.(1) Where representation is admitted, division takes place per stirpes.

(2) If the same stock has produced several branches, the subdivision is made per stirpes within each branch and the members of the same branch share amongst themselves equally.

744.(1) Living persons cannot be represented.

(2) A person who has renounced the succession of another person may nevertheless represent that person.

745.(1) Where the deceased leaves any descendants, ascendants or collaterals within the third degree inclusive or descendants of nephews or nieces, the surviving spouse or partner to a domestic relationship (*en ménage*) takes, in accordance with this article, all the

movable property of the deceased designated in paragraph (4) and one half of the remainder of the succession.

(2) (a) Subject to sub-paragraphs (b) and (c), where, at the time of death, the deceased was both married and in a domestic relationship (*en ménage*), the surviving spouse takes all the movable property of the deceased designated in paragraph (4) and one half of the remainder of the succession.

(b) Where a marriage and a domestic relationship (*en ménage*) were concurrent and separate households were maintained, the surviving *en ménage* partner will take the movable property related to the respective household.

(c) The court may, in exceptional circumstances where it would be repugnant to justice to apply sub-paragraph (a), make such orders as it thinks fit for the division of the property of the parties, having regard to all the circumstances of the case and in particular each party's contribution to the relationship.

(3) Where the deceased is survived by concurrent domestic relationship (*en ménage*) partners, they share equally in the movable property of the deceased and in one half of the remainder of the succession.

(4) In this article movable property of the deceased means all movable property other than —

- (a) anything used by the deceased at the date of death for business purposes;
- (b) money in excess of R10,000;
- (c) securities for money.

(5) Where the deceased leaves no descendants, ascendants or collaterals within the third degree inclusive, or descendants of nephews or nieces, the succession devolves on the person or persons identified as entitled under paragraphs (2) and (3).

(6) Nothing in this article affects any law relating to gifts inter vivos or by will.

(7) For the purposes of this article, references to a domestic relationship (*en ménage*) must have the characteristics of a qualifying relationship under article 259.

746.(1) A surviving spouse or partner to a domestic relationship (*en ménage*) who has not benefited under article 745 is entitled to maintenance from the estate.

(2) Such maintenance may be claimed within one year of the date of the death or until the distribution or division of the estate of the deceased is completed, whichever is later.

747.(1) Children or their descendants succeed to their ascendants without distinction of gender or primogeniture, even if they are born of different marriages.

(2) They take in equal shares and per head if they are all of the first degree and inherit in their own right.

(3) They take per stirpes when all or some of them inherit by representation.

(4) In each order, the closest heir by degree excludes more remote heirs.

748.(1) If the deceased leaves no descendants, nor siblings, nor descendants of siblings, the succession divides into halves between the ascendants of the paternal line and the ascendants of the maternal line.

(2) The ascendant who is nearest in degree takes the half accruing to that line to the exclusion of the others.

(3) Ascendants of the same degree inherit per capita.

749.(1) When the parents of a person who died without leaving descendants survive the deceased, and if the deceased has left siblings or descendants of siblings, the succession shall be divided in two equal portions.

(2) One portion accrues to the parents who take equal shares.

(3) The other portion belongs to the siblings and their descendants as explained in articles 751 to 755.

750. Where a deceased leaves no descendants, but leaves siblings or descendants of siblings and one surviving parent, the portion that would have accrued to the deceased parent in accordance with article 749(1) is added to the half which accrued to the siblings or their representatives, as explained in articles 739 to 744.

751.(1) If the parents of a person have predeceased a person who dies without descendants, the siblings or their descendants are called to the succession to the exclusion of ascendants and other collaterals.

(2) The siblings succeed either in their own right or by representation, as provided in articles 739 to 744.

752.(1) If the parents of a deceased who leaves no descendants have survived the deceased, the siblings inherit only one half of the succession.

(2) If one parent only has survived, the siblings inherit three quarters of the succession.

753.(1) The division of the half or the three quarters which has accrued to the siblings under article 752 shall be on the basis of equal shares if they are all born of the same marriage or domestic relationship (*en ménage*).

(2) If they are born of different marriages or domestic relationships the division shall be one half between the two lines, paternal and maternal, of the deceased.

(3) Siblings of full blood share in both lines and those of half blood each in their line only.

(4) If there are siblings from one side only, they succeed to the whole to the exclusion of all relatives of the other line.

754.(1) In the absence of siblings or their descendants, and in the absence of ascendants in one of the lines, the succession devolves as a whole upon the ascendants of the other line.

(2) In the absence of ascendants in either line the succession devolves half and half upon the nearest relative of each line.

(3) Collaterals of the same degree share per capita.

755.(1) Relatives beyond the twelfth degree do not inherit.

(2) In the absence of relatives of one line capable of inheriting the relatives of the other line take the whole.

756 - 773 VACANT

774. Where a succession consists of movable property only—

- (a) it may be accepted purely and simply or subject to the benefit of inventory; or
- (b) the heirs and legatees may, by agreement, appoint an executor, in which case the distribution will proceed as if the succession included immovables as well as movables; or
- (c) the court may appoint an executor on the application of any interested party.

775.(1) No one is bound to accept a succession of movable property.

(2) A succession of movable property which devolves on wards is valid only if accepted in accordance with articles 461 to 464.

776. VACANT

777.(1) The effect of acceptance of a succession consisting of movable property dates back to the day of the opening of the succession.

(2) Acceptance is express where a person assumes the title or capacity of heir in an authentic or private document.

(3) Acceptance is implied where the heir does an act which necessarily assumes an intention to accept and the act is one that can only be done by an heir.

778. VACANT

779. Acts of pure preservation or supervision and provisional administration are not acts of acceptance of an inheritance if done by a person who has not assumed either the title or the capacity of an heir.

780.(1) Any transfer of rights of succession to movable property made by one of the co heirs, either to a stranger or to all or some of the co heirs, is acceptance of the succession on the part of that heir.

(2) The same shall be the effect of —

- (a) A renunciation, even if gratuitous, made by one of the heirs for the benefit of one or several of the co heirs;
- (b) A renunciation made for value for the benefit of all the heirs without distinction.

781.(1) When a succession of movable property devolves upon a person who dies without repudiating it, or without having expressly or impliedly accepted it, the heirs of that person may accept or repudiate it on the account of that person.

(2) If the heirs are not in agreement as to whether to accept or repudiate the succession, it shall be accepted subject to the benefit of inventory.

782. VACANT

783.(1) An adult may repudiate an acceptance of a succession, whether express or implied, only if the acceptance resulted from a fraud against that person.

(2) An adult may not disclaim an acceptance on the ground of lesion, except where the succession is taken away or reduced by more than half as a result of the discovery of a will that was unknown at the moment of the acceptance.

784.(1) Renunciation of a succession must be express.

(2) Renunciation of a succession can only be made at the Registry of the court in a special register kept for that purpose.

(3) Renunciation by an agent is valid only when the power of renunciation is expressly granted in the power of attorney.

785. An heir who renounces is deemed never to have been an heir.

786.(1) The share of the person who renounces a succession accrues to the co heirs.

(2) If there are no co-heirs the succession devolves to the next degree.

787.(1) A person shall not inherit by representation from an heir who has renounced.

(2) If the person who renounces is the only heir in that degree, or if all the co heirs also renounce, the children of those who have renounced shall succeed in their own right per capita.

788.(1) The creditors of a person who renounces to the detriment of the creditors' rights may be authorised by the court to accept the succession on behalf of the debtor and in the debtor's stead.

(2) The renunciation is annulled only in favour of the creditors and to the extent of their claims and is not for the benefit of the person who renounced.

789.(1) The right to accept or repudiate a succession is barred by the period of prescription provided in article 2262 and is subject to articles 2219 to 2280.

(2) Time runs concurrently for the heirs of all degrees.

790.(1) If the right to accept has not been lost by prescription against the heirs who renounced, those heirs can accept the succession if the succession has not been accepted already by other heirs.

(2) The operation of paragraph (1) is without prejudice to third parties who may have acquired rights over the property of the inheritance, either by prescription or through validly executed transactions made with the Curator of the Vacant Estates.

791. The right to a succession of a living person, and the rights any person may have in the succession of a living person, cannot be renounced.

792. Heirs who have taken or concealed any items of the succession may not renounce the succession but remain heirs purely and simply notwithstanding their renunciation, and may not claim any part of the items taken or concealed.

793. The declaration by an heir assuming the capacity of heir subject to the benefit of inventory, shall be made at the Registry of the court and entered in the register provided for acts of renunciation.

794. The declaration shall have effect only if preceded or followed by an accurate and precise inventory of the property belonging to the succession, in accordance with the forms prescribed and within the time limit set out in article 795.

795.(1) The heir shall draw up the inventory within three months from the date of the opening of the succession.

(2) The heir shall have forty days, to reflect on the acceptance or renunciation, from the date of the expiry of the three months allowed for the inventory, or from the date of the closing of the inventory if it were completed before the end of the three months.

796.(1) Where there is property in the succession which is liable to perish or which is expensive to preserve, the heir may, in that capacity, and without any presumption of acceptance being raised, request the court to authorise the sale of such property.

(2) Any such sale shall be made in accordance with the Immovable Property (Judicial Sales) Act.

797.(1) During the time allowed under article 795, an heir cannot be compelled to assume that capacity, nor can a judgment be obtained against the heir in that capacity.

(2) If the heir renounces, whether before or on the date of the expiry of the allowed time, the costs reasonably incurred until that time fall upon the succession.

798. Where, after the expiry of the time limits under article 795, proceedings are initiated against the heir, the court dealing with the proceedings may, on request of the heir, grant further time to the heir.

799.(1) The costs of proceedings under article 798 fall upon the succession if the heir can establish lack of knowledge of the death, or that the time limit was insufficient because of the situation of the property or by reason of the ensuing disputes.

(2) Where the heir fails to make proof under paragraph (1), the costs of the proceedings fall on the heir personally.

800. After the expiry of any time limits allowed by article 795 or article 798, the heir retains the capacity to draw up an inventory and to become heir with benefit of inventory where the heir has not otherwise acted as heir, or if there is no final judgment condemning the heir as such.

801. An heir who is guilty of concealment or who has knowingly and in bad faith omitted to include in the inventory any items of the succession, loses the benefit of inventory.

802. The effect of the benefit of inventory gives the heir the advantage —

- (a) of not becoming liable for the debts of the succession, except to the extent of the value of the property which the heir has received, and of being discharged from the payment of the debts by giving up all the property of the succession to the creditors and legatees;
- (b) of keeping the heir's movable property separate from that of the succession, and of retaining the right to claim against the succession the payment of debts owed.

803.(1) The heir with benefit of inventory shall administer the property of the succession and shall be bound to account for the administration to the creditors and legatees.

(2) The heir's movable property may only be seized after notice has been served on the heir to present an account of the administration and where the heir has failed to do so.

(3) When the account has been audited, the heir's property may be seized only to the extent of the balance found to be due by the heir.

804. An heir is responsible for negligence in respect of the administration of a succession.

805. An heir who is a co-owner may sell movable property in the succession only as provided by article 821.

806. VACANT

807.(1) If the creditors or other interested parties demand it, the heir must provide security up to the value of the movable property included in the inventory.

(2) If the heir fails to provide security, the movable property not yet sold will be sold and the proceeds deposited, so that they may be used for the discharge of the debts of the succession.

808.(1) If there are creditors who have given notice of their claims, the heir, with benefit of inventory, shall pay only in the order and manner ordered by the court.

(2) If there are no such creditors, the heir shall pay the creditors and legatees as they come forward.

809.(1) Creditors who have not given notice of their claims who come forward after the account has been audited and after payment of the balance due shall be entitled to recover only against the legatees.

(2) The right to recover under paragraph (1) is subject to prescription of five years starting from the date when the account was audited and the balance paid.

810. The costs of any seals of the inventory and the costs of the account falls on the succession.

811. If after the expiry of the time limit for drawing up the inventory and for reflection, no one claims the succession, and if there are no known heirs, or if the known heirs have renounced their right, the succession is presumed vacant and subject to the Curatelle Act.

812 - 814 VACANT

CO-OWNERSHIP

815.(1) Co ownership arises when property is held by two or more persons jointly.

(2) In the absence of any evidence to the contrary it is presumed that co owners are entitled to equal shares.

816. In the case of a succession, where the property is vested in an executor, co-ownership arises only where there is property held in indivision after the winding up of the succession.

817. Where a co-owner's share has been transferred to a person other than a co-owner, any co-owner may, within a period of 5 years, require the transfer to him or her of that share by offering to that

other person the value of the share at the time of the re-transfer plus the costs of such transfer.

818.(1) Where property is co-owned, a fiduciary may be appointed.

(2) A fiduciary shall be appointed either by the agreement of all co-owners, or by the court on the application of any co-owner or of an interested party.

819.(1) A fiduciary who is not appointed by the court shall be appointed by a duly authenticated notarial document which shall contain the terms of his or her appointment.

(2) The co owners may appoint up to three fiduciaries.

(3) The fiduciaries shall act jointly or severally as the notarial document provides.

(4) If there is no provision to the contrary all fiduciaries shall be deemed to act jointly.

(5) In the absence of a provision in the notarial document, fiduciaries may appoint others to replace those who are no longer in a position to act.

820. VACANT

821.(1) Where the co-owners of property do not agree to stay in a state of indivision, a fiduciary shall be appointed.

(2) (a) The fiduciary shall apply to the court for an order for the property to be divided in kind among the co-owners.

(b) In the case of partition, the inequality of lots in kind may be made up by an annual payment or in cash, in order to equalize the lots.

(3) (a) Where a division in kind cannot be reasonably and practicably made, the fiduciary shall, by notice, inquire of the co-owners whether any of them wishes to purchase the property.

(b) The fiduciary shall include in the notice the report of a valuer as to the current value of the property.

(4) Any co-owner who wishes to purchase the property shall, within 12 months from the date of the fiduciary's inquiry, make a written offer to the fiduciary for the purchase of the property.

(5) Where offers to purchase are received by the fiduciary within the 12 month period, the fiduciary shall sell the property to the co-owner who made the highest offer.

(6) The fiduciary may not sell the property to a co-owner at less than the current market value as established by a valuer.

(7) In the event of no offer being accepted under these provisions, the fiduciary shall proceed to the sale by licitation of the property.

(8) At the point of sale, the right of each co-owner in the property is converted into a like share in the proceeds of the sale of the property, and any other right as a co-owner ceases.

822 - 824 VACANT

825.(1) The function of a fiduciary is to hold, manage and administer the property diligently and in a business-like manner as agent of the co-owners.

(2) The fiduciary must follow all instructions, directions, and guidelines given in the document of appointment.

826. VACANT

827.(1) A fiduciary is under a duty to render full and regular account of the management of the property during the term of office of the fiduciary.

(2) A fiduciary is liable for any damage or loss sustained by the property but may exclude such liability by —

- (a) showing that the property was managed with reasonable care; or
- (b) showing that the management of the property has been delegated to a competent business firm, bank or other reputable financial institution; or
- (c) insurance cover up to the full extent of the assets in the succession.

(3) Any agreement or stipulation limiting or excluding the duties or liabilities referred to in this article is null.

(4) A fiduciary shall be entitled to reasonable expenses and any fees which may have been agreed upon or allowed by the court.

828.(1) Co-owners may agree to appoint another fiduciary if —

- (a) the fiduciary dies; or
- (b) is imprisoned for a crime; or
- (c) becomes insolvent;
- (d) or is subject to an incapacity; or
- (e) resigns.

(2) Failing such agreement the court, at the request of an interested party, may make such appointment as it considers fit and proper.

829. VACANT

830. Where a fiduciary has given a discharge in respect of any asset, debt or obligation, or sold or otherwise disposed of property or any interest therein or part thereof or done any other act in relation

to the property which is held as fiduciary, in accordance with the terms of the instrument of appointment or with any order of the court or with the provisions of the law, such discharge, sale, disposal or act shall have the same effect, in all respects, as if it had been given, made or done by all the co owners whatever their status or capacity.

831.(1) A fiduciary is not personally liable in respect of any act done or obligation incurred in the proper exercise of the office of fiduciary.

(2) A fiduciary shall be entitled to full indemnity from the co owners for acts properly done.

(3) Such co owners shall be jointly and severally liable to the fiduciary for any loss incurred in the proper discharge of the office of fiduciary.

(4) An heir or legatee shall not be liable to indemnify the fiduciary in respect of any such loss to a greater extent than the value of any benefit the heir or legatee may have received under the succession.

832.(1) A fiduciary is not liable for any duty in regard to property held in that capacity.

(2) No such property may be seized by any creditor of the fiduciary in satisfaction of any claim that the creditor may have against the fiduciary.

(3) The tax or succession duty exemption provided by this article is available only to a fiduciary who has deposited with the revenue authorities a written declaration under oath listing the persons beneficially entitled to any property that the fiduciary holds and the proportion of each person's interest.

833.(1) (a) The court may, on the application of a co-owner or of an interested party, order the postponement of the sale of co-owned property for a fixed period.

(b) An order under sub-paragraph (a) may be renewed.

(2) In exercising its discretion under paragraph (1) the court must consider whether greater hardship would be caused by staying the proceedings in licitation or by refusing to stay the proceedings in licitation.

834. VACANT

835. The court may, on application by an interested party or the Attorney General, make such orders relating to the appointment or dismissal of a fiduciary or executor or to the management of a fiduciary or executor as it thinks fit, notwithstanding any term to the contrary in the instrument of appointment of the fiduciary or executor.

836.(1) The owner or owners of movable property may transfer the property to one, two or three fiduciaries to hold it for a particular purpose.

(2) Property held by a fiduciary under paragraph (1) is called a fiduciary fund.

(3) A fiduciary fund shall be established by an authenticated notarial document which sets out precisely the terms on which the fiduciary holds the property.

(4) The fiduciaries shall be designated by name or by office.

(5) The fiduciary holding a fiduciary fund shall to the extent possible be governed by the rules relating to fiduciaries set out in articles 818 to 835 and otherwise as necessary by articles 2003 to 2010.

(6) The transfer of property to a fiduciary fund does not affect the possession of the property.

837 - 869 VACANT

PAYMENT OF DEBTS

870.(1) Co heirs shall contribute to the payment of debts of and charges to the succession, each in proportion to his or her share.

(2) If an executor is in charge of the succession the executor shall pay all the debts of the succession and distribute to each person his or her portion minus the share of the deductions made.

871.(1) A legatee under universal title shall also contribute in proportion to the legacy.

(2) A particular legatee is not liable for debts and charges except for money secured by mortgage on the property which is the subject of the legacy.

872.(1) When immovable property belonging to a succession is subject to annuities secured by a mortgage, the executor shall ensure the payment of such annuities as part of the administration of the estate.

(2) If the sale of the property is postponed, and the parties do not agree as to how the annuities are to be secured, the court shall be requested to give instructions.

873. If the succession consists of movables and no executor is appointed, the heirs shall be personally bound by the debts and charges of the succession, subject to their right to recover the appropriate share from either the co heirs or the residuary legatees or legatees by universal title.

874.(1) Execution against the deceased shall be levied against the executor, or if there is no executor, against the heirs personally.

(2) Execution shall not be levied against the executor or the heirs until the executor or heirs as the case may be have been given at least eight days' notice.

(3) Where an executor does not act, the creditors may in all cases demand against any other creditor the separation of the movable property of the deceased from that of the heir.

(4) (a) This right shall not be exercised if there is novation of the claim against the deceased through the acceptance of the heir as debtor.

(b) The right is subject to prescription, in relation to movable property, after five years.

875. The creditors of the heirs may not demand the separation of the movable property against the creditors of the succession.

876.(1) The creditors of a co partitioner of movable property may, for the purposes of preventing any fraud in the partition to the detriment of their rights, object to the partition being made in their absence.

(2) They may intervene at their expense, but they may not re open a partition of movables which has been completed unless it took place in their absence and in spite of any objection they may have lodged.

877 - 886 VACANT

PARTITION OF MOVABLES

887.(1) A partition of movables may be rescinded for duress or fraud or lesion.

(2) The simple omission of an item of the succession may give rise to an action for rescission but not an action for a supplement.

888.(1) The action for rescission shall be admitted against any transaction the object of which is to partition movable property amongst the co heirs, even if it took the form of sale, exchange, compromise, or some other form.

(2) After the partition, or after the arrangement in lieu of partition has been carried out, the action for rescission shall no longer be admissible against a compromise concluded in respect of the substantial difficulties settled by that compromise, even if these difficulties had not been the subject of legal proceedings.

(3) The action shall not lie against a sale of rights of succession made without fraud to one of the co heirs at the co-heir's risk and peril by the other co heirs or by one of them.

889. VACANT

890. In order to ascertain whether there is lesion of more than one half, the value of the property shall be calculated according to its condition at the time of the sale, as set out in article 1675.

891. The defendant in an action for rescission of a partition of movable property may request the court to stay the proceedings, and thus prevent a new partition by offering and supplying to the plaintiff a supplement from the share in the succession of the defendant, either in money or in kind.

892. A co heir who has alienated the whole or part of the share of movable property allocated to that co-heir shall not bring an action for rescission for fraud or duress if this alienation is subsequent to the discovery of the fraud or the discontinuance of the duress.

GIFTS INTER VIVOS AND WILLS

893. A person may not make a disposition of property gratuitously otherwise than by a gift inter vivos or by will, and in accordance with this Code.

894. A gift inter vivos is an act by which the donor irrevocably divests ownership of the thing in favour of a donee who accepts it.

895.(1) A will is an act by which a person makes a disposition of property to take effect upon the maker's death.

(2) A will may be revoked.

896.(1) Substitutions are prohibited.

(2) Any disposition of property whereby the donee, the appointed heir or the legatee are bound to preserve the property and pass it on to a third party is null, even in respect of the grant to the donee, the appointed heir or the legatee.

(3) Any provision by which a third party is entitled to receive the gift, inheritance or legacy, if the donee, the appointed heir

or the legatee do not receive it, shall not be regarded as a substitution and shall be valid.

(4) A disposition inter vivos or by will by which the usufruct is given to one person and the bare ownership to another is also valid.

897 - 899 VACANT

900.(1) In a gift inter vivos or by will, impossible conditions or conditions which are against the law or public policy shall be deemed unwritten.

(2) (a) The terms which tend to make property given by gift or will inalienable are null unless they can be justified by a serious and legitimate interest.

(b) A donee or legatee may be judicially authorised to dispose of the property if that interest no longer exists, or if another, more important, interest makes disposal imperative.

(3) Any term by which the grantor deprives the grantee of the gift or legacy if the latter requests the court to cancel the term is null.

(4) The provisions of paragraphs (2) and (3) are without prejudice to any gifts or legacies granted to legal persons or to physical persons under a duty to set up a legal person.

901. Only a person of sound mind may make a gift inter vivos or by will.

902. Everyone may receive a gift inter vivos or by will.

903. A minor may not dispose of property.

904 - 905 VACANT

906.(1) To be capable of receiving a gift inter vivos it is sufficient to have been conceived at the time when the gift was made.

(2) To be capable of receiving a gift by will it is sufficient to have been conceived at the death of the testator.

(3) The gift or will shall have no effect if the child was not born viable.

(4) If a gift inter vivos or by will is made in the form of a grant of property to a legal person, and if a condition subsequent (condition résolutoire) is attached to the gift to the effect that, if a certain event occurs, the property shall pass to a third party who was not in existence when the gift was made, the condition subsequent shall cease to have effect after ninety nine years.

(5) If the condition is realised, the third party shall be deemed to derive title not from the original grantor but from the legal person.

907.(1) A ward may not dispose of property, even by will, in favour of the guardian.

(2) An adult shall not dispose of property either by gift inter vivos or by will, in favour of a person who has been that person's guardian, if the final account of the guardianship has not been rendered and audited.

(3) Paragraphs (1) and (2) do not apply to ascendants.

908. VACANT

909.(1) Doctors, surgeons, health officers or pharmacists who may have treated a person during the illness of which person died, and ministers of religion and law practitioners who have dealt with a person during their last illness, shall not benefit from any dispositions inter vivos which were made in their favour during the course of that illness.

(2) Dispositions by way of remuneration, having regards to the means of the grantor and the services rendered, are not covered by paragraph (1).

910. VACANT

911.(1) A disposition in favour of a person who is prohibited by legislation from receiving the disposition is null, whether disguised in the form of an onerous contract or effected through an intermediary.

(2) For the purposes of paragraph (1), the parents, descendants, and spouse or domestic partner (en ménage) of the person subject to the prohibition are intermediaries.

912. VACANT

913.(1) Where a person dies testate and the will of that person does not make adequate provision for the maintenance of a person referred to in paragraph (2), the court may, on application made by any such person, or by a third party on behalf of any such person make such provision out of the succession of the deceased for the maintenance of any or all of those persons as it thinks fit.

(2) (a) The survivor of a qualifying relationship and children and parents of the deceased who were at the time of the death of the deceased wholly or partly dependent on the deceased for maintenance may make application under this article.

(b) In this article, qualifying relationship has the same meaning as in article 259(6).

(3) An application by one of the persons entitled to apply may be treated by the court as an application on behalf of all the persons who might apply.

(4) Provision under this article may be made by way of lump sum or by a periodical or other payment.

(5) The incidence of any payment ordered under this article falls rateably on the whole succession.

914 - 930 VACANT

931.(1) A document which creates a gift inter vivos shall be drawn up by a notary.

(2) The notary shall keep the original under pain of nullity.

(3) This rule may not be excluded by the agreement of the parties.

(4) A gift may also be made by delivery, in which case no document need be drawn up.

(5) Proof of the intention to make a gift which has already been delivered shall be subject to the general law of evidence.

(6) A gift of immovable property is subject to the legislation relating to the registration of land.

932.(1) A gift inter vivos binds the donor only after it has been accepted in express terms.

(2) The acceptance may be made in the lifetime of the donor by a subsequent authentic document, an original copy of which shall be kept by the notary.

(3) The gift will have effect with regard to the donor only from the day that the donor receives notice of the document of acceptance.

933.(1) If the donee is an adult, the acceptance shall be made by the donee or in the name of the donee by a person with a power of attorney which confers power to accept gifts made or which may be made.

(2) The power of attorney shall be effected by notarial deed in accordance with legislation and a certified copy shall be annexed to the original of the gift or to the original of the acceptance if made by a separate document.

934. VACANT

935. A gift made to a ward shall be accepted by the guardian in accordance with article 463.

936. Acceptance of a gift by a person who does not know how to write may be made by a guardian appointed for that purpose.

937. VACANT

938.(1) A gift is perfect when duly accepted.

(2) Ownership of the property is transferred to the donee without delivery being required.

939.(1) When the gift is of property capable of being mortgaged, the documents containing the gift and the acceptance, as well as the notification of the acceptance if made by a separate document, must be registered and transcribed at the Office of the Registrar General.

(2) When such property is subject to registration under the Land Registration Act the gift has no effect until registered.

940.(1) When a gift is made to a ward or a public body, the transcription shall be made at the instance of the guardian of the ward or the administrator of the public body.

(2) Failure to effect the transcription may be relied on by all persons having a lawful interest, except those responsible for causing the transcription to be done or their assigns, and the donor.

941. VACANT

942.(1) Wards have no claim for restitution in the absence of acceptance or transcription of the gift.

(2) In such a case they shall have a remedy against their guardians, without however being able to obtain restitution, even if the guardians are insolvent.

943.(1) A gift inter vivos includes only the present property of the donor.

(2) A gift which includes future property is null to that extent.

944.(1) A gift inter vivos made subject to a condition, the fulfilment of which depends entirely upon the will of the donor, is null.

(2) A gift inter vivos made subject to a condition that the donee should discharge debts or liabilities other than those existing at the time of the gift or inserted either in the document of the gift or in the estimate annexed to it is null.

945. VACANT

946. When the donor reserves the liberty to dispose of an item included in the gift, or of a fixed sum out of the property given, and the donor dies without having made such a disposition, the said item or the said sum belongs to the heirs of the donor, notwithstanding any provisions and stipulations to the contrary.

947. Articles 943 to 946 do not apply to gifts the subject of an agreement made under article 1400 or an agreement made during the subsistence of a marriage or a domestic relationship (*en ménage*) in favour of the spouses of the partners and their children.

948. VACANT

949. The donor is at liberty to reserve for the donor's benefit, or to dispose of for the benefit of another, the enjoyment or the usufruct of the movable or immovable property given.

950.(1) When a gift of movable property is made with a reservation of a usufruct, the donee must at the expiry of the usufruct take the items given which are found in kind in such condition as they happen to be.

(2) The donee shall have a right of action against the donor or the donor's heirs for any missing items up to the limit of their value as stated in the estimate.

951.(1) The donor may stipulate for the right to the return of the items given on the ground of the earlier death of the donee or the donee's descendants.

(2) That right shall be stipulated for the benefit of the donor alone.

952. The effect of the right of return shall be to cancel all transfers of the property given and to cause that property to revert to the donor free from all liabilities and mortgages.

953.(1) A gift inter vivos may only be revoked by reason of the failure to fulfil the conditions subject to which it was made or by reason of ingratitude.

(2) In the case of a revocation by reason of the failure to fulfil the conditions, the property shall revert to the donor free from all encumbrances and mortgages created by the donee, and the donor shall have, against third party holders of immovable property given, all the rights which the donor would have had against the donee.

954. VACANT

955. A gift inter vivos shall not be revoked by reason of ingratitude unless —

- (a) the donee has made an attempt on the life of the donor;
- (b) the donee has been guilty of cruelty towards the donor or of criminal acts or serious wrongs;
- (c) the donee has refused to maintain the donor.

956. A gift is not revoked by reason of failure to fulfil the conditions or by reason of ingratitude without court order.

957.(1) (a) The demand to revoke by reason of ingratitude is subject to the general rule of prescription.

(b) Such prescription shall run as from the day of the wrong of which the donor accuses the donee or as from the day on which the wrong comes to the donor's notice.

(2) The revocation shall not be demanded by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless, in the latter case, the action had been brought by the donor or the donor died in the course of the five years since the wrong.

958.(1) The revocation by reason of ingratitude shall be without prejudice either to the transfers made by the donee or the mortgages and other real charges which the latter may have created upon the object of the gifts provided that these rights were granted or created prior to the inscription, in the margin of the transcription prescribed in article 939, of the demand of revocation at the Office of the Registrar General.

(2) In case of revocation the donee must restore the value of the objects alienated, having regard to the time of the demand and the income therefrom as from the day of such demand.

959 - 966 VACANT

WILLS

967. Every person may dispose of property by will, either by appointing an heir, or by granting legacies, or in any other appropriate form of declaration of intention.

968. Two or more persons shall not make a will by the same document, either for the benefit of a third party or by way of reciprocal and mutual dispositions.

969. A will may be a holograph or authentic or secret will.

970.(1) A holograph will is valid only if it is wholly written, dated and signed by the hand of the testator.

(2) It is subject to no other form.

971.(1) An authentic will must be made before a notary.

(2) If the testator is illiterate or physically unable to sign his or her name, the presence of a second notary or of two witnesses able to sign their names shall be necessary both for the reading and for the signing of the will.

(3) The testator must make his or her mark on the will and the notary and witnesses or the two notaries, as the case may be, must vouch that the mark is that of the testator affixed in their presence.

(4) If the testator is unable to make a mark the notary and witnesses or the two notaries must vouch for that physical incapacity.

972.(1) If a will is made accordance with article 971 the testator shall dictate it.

(2) The notary, or one of the notaries if two are present, must write it or have it rendered in written form.

(3) The will must then be read back to the testator.

(4) Express mention must be made in the will that the above formal requirements have been complied with.

973.(1) The will must be signed by the testator in the presence of the notaries or of the witnesses and the notary.

(2) If the testator declares that he or she cannot or does not know how to sign, the declaration must be expressly mentioned in the will as well as the cause which prevented the testator from signing.

974.(1) The will shall be signed by the notaries or by the witnesses and by the notary, as the case may be.

(2) Witnesses to a will must be —

(a) adult;

(b) capable of signing; and

(c) not subject to any legislative incapacity.

(3) Spouses may not be witnesses to the same will.

975. Neither the legatees, under whatever title they may take, nor their relatives by blood or marriage up to the fourth degree inclusive, nor the clerks of notaries who draw up the will may act as witnesses of an authentic will.

976.(1) If the testator wants to make a secret will, the paper on which the dispositions are written must be folded and sealed in such a way as to maintain the secrecy of the dispositions until the seal is broken, or if the paper on which the dispositions are written is placed in an envelope or similar cover, that envelope or cover must be so closed and sealed as to guarantee the secrecy of the dispositions.

(2) The testator shall deliver the secret will in the form described in paragraph (1) to the notary and two witnesses, or shall cause it to be folded or closed and sealed as in paragraph (1) in the presence of the notary and two witnesses, and declare that the contents of the paper are his or her will, signed by him or her, and written by him or her or by another.

(3) If the contents of the paper have been written by another, the testator must affirm that the testator has personally verified the text and whether the will was written by hand or in some other way.

(4) The affirmation required of the testator shall be in writing.

(5) The notary shall draw up a memorandum of confirmation and write or cause to be written on that paper, or on the envelope or other cover of the will, the date and the place where the will was drawn up, as well as fulfilment of the formal requirements set out in paragraphs (2) and (3).

(6) The notary's memorandum must be signed by the testator, the notary, and the witnesses.

(7) All the above shall be done consecutively and without attending to other business.

(8) If the testator, through an impediment subsequent to the signing of the will, cannot sign the memorandum of confirmation, the

testator shall make a statement to that effect and stating the nature of the impediment.

977.(1) If the testator does not know how to sign or was unable to do so when the dispositions were written, the procedure shall be as in article 976.

(2) Mention shall be made in the memorandum of confirmation that the testator has declared that he or she cannot write or was unable to do so when the dispositions were written.

978. Persons who do not know how to read or are unable to read may not make a secret will or a holograph will.

979. If the testator is unable to speak but can write, the testator may make a secret will if —

- (a) the testator signs the will and it is written by the testator or another;
- (b) the will is delivered to the notary and to the witnesses and the testator has written in their presence that the paper is the will of the testator and that he or she will sign it.

980.(1) A secret will in respect of which the lawful procedures have not been complied with, and which is null as a result, is valid as a holograph will if the conditions required for its validity as a holograph will are fulfilled, even if called a secret will.

(2) Mention must be made in the memorandum of confirmation that the testator has written and signed these words in the presence of the notary and the witnesses, and everything laid down in article 976 shall be further complied with insofar as it is not inconsistent with this article.

981.(1) Wills of military personnel and of persons employed by the military may be made before —

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- (a) a superior officer or a military doctor of a corresponding rank in the presence of two witnesses; or
 - (b) two administrative clerks or officers, or
 - (c) one administrative clerk or officer in the presence of two witnesses, or
 - (d) in the case of an isolated unit, by the officer commanding that unit assisted by two witnesses, if there is no superior officer or military doctor in that unit.

(2) The will of the officer commanding an isolated unit may be made before the second in command in accordance with service regulations.

(3) The ability to make a will extends to those who are prisoners of war.

982. The wills referred to in article 981 may, further, if the testator is ill or wounded, be made in hospitals or first aid units as defined by the regulations of the armed forces, by the doctor in charge assisted by an administrative officer or in the presence of two witnesses.

983.(1) The wills referred to in articles 981 and 982 shall be drawn up in duplicate original copies.

(2) If paragraph (1) cannot be complied with by reason of the physical condition of the testator, a certified copy of the will shall be drawn up, which will replace the second original copy.

(3) The certified copy shall be signed by the witnesses and by the participating officers.

(4) Mention shall be made on the certified copy of the reasons which prevented the drawing up of the second original copy.

(5) As soon as communications are re established, and within the shortest possible time, the two original copies, or the original and the certified copy of the will, shall be dispatched, separately and by different messengers, in a closed and sealed cover, to the headquarters for the purpose of being deposited with the notary indicated by the testator or, absent such an indication, with the court.

984. A will made under articles 981 to 983 is null six months after the testator comes to a place where ordinary forms of testation are available to the testator, unless the testator is once again placed, before the expiry of that period, in the same circumstances which permitted the testator to make the aforementioned will.

985. Wills made in a place with which all communications have been interrupted on account of contagious disease may be made before a judicial or government officer in the presence of two witnesses.

986.(1) Wills made on an island on which there are no notaries may be made before a judicial or government officer or by the manager or assistant manager of that island, if it is impossible or dangerous to communicate with a larger centre of population where notaries are available.

(2) The impossibility or danger of communication shall be certified on the will by the person before whom it is made.

987. The wills mentioned in articles 985 and 986 are null six months after the re establishment of the communications with the place where the testator is, or six months after the testator moves to a place with which there is no interruption of communications.

988.(1) If a ship is abroad and whether in port or not, a will may be made by the captain or any other officer.

(2) In a voyage by air, a will may be made before the captain or any other officer.

(3) The will must be made in the presence of two witnesses.

(4) The will must indicate the circumstances in which it has been made.

989. A will shall be made on a naval vessel in accordance with article 988.

990.(1) The wills mentioned in articles 985 to 989 shall be drawn up in duplicate original copies unless this is impossible in the circumstances.

(2) Mention of the reason why a single document only was drawn up shall be made in the will.

991.(1) At the first port of call of a ship or aircraft where a Seychelles Consular Authority exists, one of the two originals of the will, if this requirement has been complied with, shall be delivered in a sealed cover to an officer in charge who shall transmit it through the proper channels to the Registrar of the court.

(2) Upon arrival of the ship or aircraft at its home port, the other original, if two were drawn up, shall be sent by registered post, sealed, to the Registrar of the court.

992, 993 VACANT

994.(1) Wills made on board a ship or an aircraft shall only be valid if the testator dies in the course of the journey or within six months after the end of such journey.

(2) If the testator disembarks in a place where there are no means of making a will, the will shall remain valid until six months after the testator returns to a place where it is possible to make an ordinary will.

995.(1) Dispositions inserted in a will, made in the course of a voyage by sea or air, for the benefit of officers or employees serving on the vessel or aircraft, shall be null except where such persons are related to the testator.

(2) This rule applies also if the testator has made a holograph will.

996. VACANT

997.(1) Wills made in accordance with articles 981 to 989 shall be read back to the testator and shall be signed by those before whom they are made and by the witnesses.

(2) A note that this has been done shall be recorded on the will.

998.(1) If the testator is physically unable to sign or does not know how to do so, that fact shall be noted on the will as well as the reasons that prevented the testator from signing.

(2) Where two witnesses must be present, the will must be signed by at least one of them, and a note made on the will of the reason why the other did not sign.

999. A person who is domiciled in Seychelles but present in a foreign country may make a will by a document under private signature, or as provided by article 970, or in accordance with the law of that foreign country.

1000. Wills made abroad shall be executed in respect of property situated in Seychelles only if declared and registered at the Office of the Registrar General and following the appointment of an executor by court.

1001. A will which does not comply with the forms set out in this Code is null.

1002.(1) Dispositions by will are universal, or by universal title, or by particular title.

(2) Each of these dispositions, whether made under the designation of the appointment of heirs or under the designation of legacies, has effect in accordance with the rules established for universal legacies, for legacies by universal title, and for particular legacies.

1003. A universal legacy is a disposition by will by which the testator gives to one or several persons in the capacity of residuary

legatees the whole of the property which the testator will leave at death.

1004 - 1006 VACANT

1007.(1) A holograph will, before being executed, must be presented to a judge of the court.

(2) The will must be opened if sealed.

(3) The judge must draw up a report of the presentation, opening and condition of the will and must order that it be deposited with a notary designated in the order.

(4) If the will is a secret one, the presentation, opening, description and deposit must be made in the same manner.

(5) If any of those who signed the memorandum of confirmation is available and may conveniently attend, the opening of a secret will may only take place in the presence of that person.

1008. VACANT

1009. Where the succession consists entirely of movable property, the residuary legatee who takes along with an heir is liable for all the debts and other charges of the succession of the testator in a personal capacity to the extent of the share of the residuary legatee.

1010.(1) Legacies by universal title are those by which a testator gives a specified share, or all of —

(a) the testator's immovable property;

(b) the testator's movable property; or

(c) the testator's movable and immovable property.

(2) All other legacies are particular legacies.

1011.(1) When the succession consists of movable property only, legatees by universal title take the property as of right in the condition

in which it is, together with all its necessary accessories, and with the right to obtain payment and to prosecute all claims resulting from the legacy without being obliged to obtain legal delivery.

(2) If the succession consists of movable and immovable property or of immovables only, the legatees do not take any property as of right, but their rights shall be exercised against the executor.

1012.(1) A legatee by universal title, as the residuary legatee, is bound by the debts and other charges of the succession only if the succession consists of movable property only.

(2) In that case, legatees by universal title shall be personally liable only to the extent of their share in the succession.

(3) If the succession consists of immovables only or of both movable and immovable property, the legatee by universal title is not liable for the debts and other charges, but the rights of the universal legatee are enforceable against the executor.

1013. VACANT

1014.(1) A pure and simple legacy gives the legatee a right to the property of the legacy.

(2) The legatee takes the property as of right if the succession consists of movables only.

(3) If the property includes immovables, the legatee's claim is for money to be exercised against the executor with a view to the distribution to those entitled under the will and by law.

(4) The right or claim of the legatee is transmissible to the legatee's heirs and assigns.

1015. The interest or income of the property of the legacy runs for the benefit of the legatee as from the day of death, even if the legatee has not yet lodged a claim in court, where —

- (a) the testator has expressly requested that in the will; or

- (b) a life annuity or other periodic payment has been given by way of maintenance.

1016. The costs incurred by a legatee which are incidental to obtaining the property to which the legatee is entitled under the will, including registration dues, if any, fall upon the legatee unless the will provides otherwise.

1017.(1) If the succession consists of movable property only, the heirs of the testator and those liable to pay a legacy shall be personally bound to pay it, each in proportion to their share of the succession.

(2) If the succession includes immovables, the liability shall fall upon the executor.

1018. If the property given is to be delivered in kind, it shall be delivered with its accessories and in the condition in which it is found at the death of the donor.

1019.(1) When immovable property subject to a legacy has been subsequently enlarged by further acquisitions, these shall not be deemed to become part of the legacy without a new disposition of the testator, even if the properties are adjacent.

(2) It shall be otherwise if improvements or new structures have been made upon the property subject to the legacy, or if a fence has been used to enlarge the property.

1020. If prior to the will or thereafter the property given had been mortgaged to secure a debt of the succession, or even of a third party, or if it is subject to a usufruct, the person who is bound to pay the legacy shall not be compelled to do so free from these encumbrances, unless this has been expressly stated by the testator in a special disposition.

1021. If the testator gives property which belongs to another the gift is null.

1022. If the legacy relates to indeterminate goods the person bound to deliver them need not deliver goods of the best quality but should not deliver the worst.

1023. A legacy granted in favour of a creditor shall not be deemed to discharge the debts, nor shall a legacy to an employee be deemed to discharge wages due.

1024. VACANT

1025.(1) A testator may appoint not more than three testamentary executors.

(2) An executor must act as a fiduciary with regard to the rights of the persons entitled under the will, as provided by this Code, and also with regard to the distribution of the inheritance.

(3) The powers and duties of the executor are not transmissible.

1026. VACANT

1027.(1) An executor must make an inventory of the succession, pay the debts of the succession, and distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be.

(2) The executor is bound by any debts of the succession only to the extent of its assets as shown in the inventory.

(3) The manner of payment of debts and other rights and duties of the executor, insofar as they are not regulated by this Code, whether directly or by analogy to the rights and duties of successors to movable property, shall be settled by the court.

1028.(1) The executor must —

- (a) hold, manage and administer the property diligently and in a business-like manner;
- (b) follow all instructions, directions, and guidelines given in the document of appointment;

- (c) render full and regular account of the management of the property during the term of office;
- (d) represent the estate in all legal proceedings, and act in any legal action the purpose of which is to declare the will null.

(2) Any agreement or stipulation limiting or excluding the duties or liabilities referred to in this article shall be null.

1029. Where an executor has given a discharge in respect of any asset, debt or obligation, or sold or otherwise disposed of property or any interest therein or part thereof or done any other act in relation to the property which is held as fiduciary, in accordance with the terms of the instrument of appointment or with any order of the court or with legislation, such discharge, sale, disposal or act shall have the same effect, in all respects, as if it had been given, made or done by all the persons beneficially entitled in the succession, whatever their status or capacity.

1030.(1) An executor is not personally liable in respect of any act done or obligation incurred in the proper exercise of the office of executor.

(2) An executor is not personally liable to tax duties in regard to property held in that capacity.

(3) The tax or succession duty exemption under paragraph (2) is available only to an executor who has deposited with the revenue authorities a written declaration under oath listing the persons beneficially entitled to any property that the executor holds and the proportion of each person's interest.

(4) An executor is liable for any damage or loss sustained by the property but may exclude such liability by —

- (a) showing that the property was managed with reasonable care; or
- (b) insurance cover up to the full extent of the assets in the succession.

(5) An executor is entitled to reasonable expenses and any fees which may have been agreed upon or allowed by the court.

1031. No property of the succession may be seized by any creditor of the executor in satisfaction of any claim that the creditor may have against the executor.

1032. VACANT

1033.(1) If two or more executors have been appointed, one may act in the absence or on the failure to act of the other.

(2) The executors are jointly and severally liable for the execution of the will unless there is agreement to the contrary.

1034. The costs incurred by the executor in the administration of the succession, and any other necessary expenses incurred, such as the affixing of seals, the drawing up of the inventory and other costs relating to the executor's functions, are debts of the succession.

1035. A will is only revoked, wholly or in part, by a subsequent will or by a notarial document containing a declaration of a change of intention.

1036. A subsequent will which does not expressly revoke an earlier will shall only annul the latter insofar as dispositions are incompatible with or contrary to the dispositions of the most recent will.

1037. A revocation made in a subsequent will shall have full effect although that will is inoperative owing to the incapacity of the appointed heir or legatee or owing to their refusal to accept the succession.

1038. Every transfer, even a sale subject to an option to repurchase or an exchange, which the testator may make of the whole or of part of the property bequeathed carries with it the revocation of the legacy to the extent of the transfer, even if the subsequent transfer is null and the property has reverted to the testator.

1039. A testamentary disposition is null if the person in whose favour it was made does not survive the testator.

1040. Every testamentary disposition made subject to a condition depending upon an uncertain event and which, according to the intention of the testator, must only be executed if the event occurs or does not occur, is null if the appointed heir or legatee dies before the condition is satisfied.

1041. The condition which, according to the intention of the testator, only postpones the execution of the disposition does not prevent the appointed heir or the legatee from acquiring a right which is transmissible to the heirs of the appointed heir or legatee.

1042.(1) The legacy is null if the property given has totally perished in the lifetime of the testator.

(2) The same will apply if the property has perished since the death of the testator without any act or fault of the executor, even if the latter has been late in effecting delivery, provided that the property would have equally perished in the hands of the legatee.

1043. A testamentary disposition is null if the appointed heir or the legatee repudiates it, or if the appointed heir or legatee is subject to some incapacity with regard to receiving it.

1044.(1) If a legacy is given to several persons in common, the share of the legatee who repudiates it shall be used to increase the share of the others.

(2) A legacy shall be deemed to have been given in common where —

- (a) it arises from one and the same disposition and the testator does not allocate a part of the property bequeathed to each of the co legatees;
- (b) a thing which cannot be divided without suffering some detriment is given by the same will to several persons, even by separate dispositions.

1045. VACANT

1046.(1) The same grounds which, following article 953 and article 955(a) and (b), authorise the demand for revocation of a gift inter vivos shall be admitted in respect of the demand for revocation of testamentary dispositions.

(2) The demand for revocation shall be subject to the general rules of prescription.

1047 - 1051 VACANT

1052. If the child or siblings to whom property was given by an act inter vivos without the property being subject to a gift over accepts another gift made by an act inter vivos or by will subject to a condition that the property previously donated should be subject to such gift over, the child or siblings shall not be permitted to divide the two dispositions and waive the second in order to keep the first, even if that child or sibling is willing to return the property included in the second disposition.

1053.(1) The rights of the remaindermen will be available when the enjoyment of the child or sibling subject to the gift over, for whatever reason, ceases.

(2) The anticipatory waiver of the enjoyment in favour of the remaindermen does not prejudice the creditors who acquired their rights towards the person subject to the gift over prior to the waiver.

1054. VACANT

1055.(1) A person who makes the dispositions permitted by articles 1052 and 1053 may, in the same document or by a subsequent document in authentic form, appoint a guardian charged with the execution of these dispositions.

(2) The guardian may be exempted only on the grounds set out in articles 430 to 444.

1056.(1) If there is no guardian appointed under article 1055, one shall be appointed on an application of the person subject to the gift over, or of the guardian in the case of a minor, within a period of three months.

(2) The period in paragraph (1) runs from the day on which the document containing the disposition becomes known.

(3) The guardian shall be selected by the court.

1057.(1) A person subject to a gift over who has not complied with article 1056 shall forfeit the benefit of the disposition.

(2) In that case the right shall be declared capable of vesting in the remaindermen either at the instance of the remaindermen themselves if adult, or of their guardian or curator if they are minors or of full age but incapacitated, or ex officio by the Attorney General.

1058.(1) After the death of the person who made a disposition subject to a gift over, the procedure to be followed shall be in the ordinary form with an inventory of all the property and effects of which the succession consists, with the exception, however, of the case of a specific legacy.

(2) The inventory shall contain an accurate valuation of the movable property and effects.

(3) The inventory must be made at the instance of the person subject to the gift over and within a time limit fixed in articles 795 to 798 in the presence of the guardian appointed for the execution.

(4) The costs shall burden the property which is subject to the disposition.

1059. VACANT

1060. If article 1058(3) has not been complied with, the inventory must be made within a month at the instance of the guardian appointed for the execution in the presence of the person subject to the gift over or of that person's guardian.

1061. If articles 1058 and 1060 have not been complied with, the inventory must be made within a month at the instance of persons designated in article 1057 by summoning the person subject to the gift over or that person's guardian and the guardian appointed for the execution.

1062. The person subject to the gift over shall be bound to proceed to the sale by auction, after giving public notice, of all the movable property included in the disposition, with the exception of items mentioned in articles 1063 and 1064.

1063. All movable property included in the disposition, subject to an express condition to preserve it in kind, shall be delivered in the condition it is in at the time of the delivery.

1064.(1) Animals and agricultural implements serving to put the land to good use shall be deemed to be included in gifts inter vivos or by will of land.

(2) The person subject to the gift over is bound only to obtain a valuation and an estimate for the purpose of delivering equal value when the gift over takes effect.

1065.(1) The person subject to the gift over shall invest, within six months starting from the day of the closing of the inventory, the cash proceeds from the sale of such movable property and effects and the sums received from any assets.

(2) This time limit may be extended by the court if necessary.

1066.(1) The person subject to the gift over shall also be bound to invest funds coming from assets which are recovered and from the receipt of annuities, within three months after such funds are received.

(2) (a) This investment shall be made in accordance with the instructions of the person who made the disposition if the nature of the property in which the investment is to be made has been specified.

(b) If paragraph (a) does not apply, the investment must be made in immovable property or by way of mortgages or privileges on immovable property or in an investment fund managed by a bank or other reputable institution.

(c) Where the investment is made in an investment fund, the prior authorisation of a judge is required.

(3) The investment must be made in the presence of and at the instance of the guardian appointed for the execution.

1067, 1068 VACANT

1069.(1) The execution of dispositions by an act inter vivos or by will subject to a gift over shall be made at the instance of the persons subject to such gift over or of the guardian appointed for its execution.

(2) They shall be given public effect, in respect of immovable property, by the transcription of the documents in the Office of the Registrar General and, in respect of sums secured by a charge upon immovable property, by an inscription on the property subject to it.

1070.(1) The failure to effect a transcription of the document containing the disposition may be pleaded by the creditor against third party purchasers and against wards, subject to the right of such persons to sue the person subject to the gift over and the guardian for the execution.

(2) A ward is not entitled to restitution of that which that person is deprived by reason of the failure to effect the transcription, even if the person subject to the gift over, or the guardian, is insolvent.

1071. The failure to effect a transcription shall not be remedied or presumed as inoperative by knowledge that the creditor, or any third party purchaser, may have had of the disposition through channels other than the transcription.

1072. The donees, the legatees and the heirs of the person who made the disposition, and similarly their donees, legatees or heirs, may not in any circumstances plead the failure of the transcription or inscription against the remaindermen.

1073. The guardian appointed for the execution shall be personally liable for any failure to comply with articles 1058 to 1069 and any failure to take all necessary steps to properly and faithfully discharge the duty to pass the gift over.

1074. VACANT

1075.(1) All persons may distribute or partition their property among their heirs and legatees.

(2) These partitions may be made by an act inter vivos or by will, subject to the same forms, conditions and rules as for gifts inter vivos or by will.

(3) A partition made by an act inter vivos shall only apply to present property.

(4) If all the property of a deceased has not been included in the partition, that part which was not included shall be divided in accordance with the law.

1076, 1077 VACANT

1078.(1) If the partition is not made amongst all the children living at the time of the death and the descendants of those children who have pre deceased, it is null only if that partition cannot be amended or supplemented.

(2) The amendment, if feasible, or otherwise a new partition, shall be made at the instance of the children or the descendants, whether they have received anything or not.

1079 - 1100 VACANT

BOOK III**PART 2****CONTRACTS AND AGREEMENTS IN GENERAL**

1101. A contract is an agreement whereby one or several persons bind themselves towards one or several others to give, do, or refrain from doing something.

1102. A contract is bilateral when the contracting parties mutually bind themselves towards each other.

1103. A contract is unilateral when one or several persons bind themselves towards one or several persons without any obligation arising on the part of the latter.

1104.(1) A contract is commutative when each of the parties undertakes to give or do something that is considered the equivalent of what is given to or done for him or her.

(2) A commutative contract is contingent when the equivalence consists of a chance of a profit or loss for each of the parties resulting from an uncertain event.

1105. A contract is gratuitous when one of the parties procures to the other an advantage entirely free of charge.

1106. A contract is onerous when each of the parties is bound to give or do something.

1107.(1) Contracts, whether they have a particular denomination or not, are subject to the general principles laid down in articles 1101 to 1369.

(2) Special rules applicable to specific contracts are laid down in the articles relating to each of them.

(3) Special rules applicable to commercial contracts are laid down in laws relating to commerce.

(4) Standard type contracts are contracts which are identical in form and which are intended to apply to a large number of similar relationships.

1108. Four conditions are required for a contract to be valid—

- (a) The consent of the party who binds him or herself;
- (b) His or her capacity to enter into a contract;
- (c) A definite object (*objet certain*) which forms part of the contract; and
- (d) That the contract is not against the law or public policy.

1109. There is no valid consent if it is given by mistake, extracted by duress, or induced by fraud.

1110.(1) An offer or an acceptance only has effect if the parties intend to create legal relations.

(2) An offer may be made to the public at large.

(3) An invitation to treat is not converted into a contract by acceptance.

(4) The display of goods with a price attached amounts only to an invitation to treat.

(5) A contract is concluded as soon as the acceptance comes to the notice of the offeror.

(6) It is not necessary to show that the acceptance comes to the notice of the offeror if, in the ordinary course of events, the offeree can reasonably assume that the offeror received it.

(7) A time limit for the acceptance of the offer is binding upon the offeror.

(8) Silence does not imply acceptance unless this is a necessary implication arising from the previous business relations of the parties or from the practice of a particular trade.

(9) In an auction sale an offer is accepted when the auctioneer signifies acceptance by the fall of a hammer or in any other accepted manner.

(10) In a self-service shop an offer is accepted when the cashier accepts the money tendered.

1111.(1) A contract can be nullified on the grounds of mistake only if the mistake relates to the essence (*substance même*) of the thing that is the object of the contract.

(2) A contract cannot be nullified on the grounds of mistake if the mistake relates to the person with whom it was intended to contract, unless the personal qualities of that person are a principal consideration in the agreement.

(3) There is a mistake as to essence (*substance même*) if the parties would not have concluded the contract had they known the true circumstances.

(4) A court, in deciding whether a party made a mistake relating to the essence (*substance même*) of the thing, which is the object of the contract, must consider whether the mistake was excusable in the circumstances.

1112.(1) Exercising duress against a contracting party is a ground of nullity.

(2) If the duress was exercised by a person other than the person for whose benefit the contract is concluded, the duress must be the main reason why the victim of the duress entered into the contract.

1113.(1) Duress in article 1112 must be of a kind that would affect a reasonable person and put that person in fear of substantial harm to his or her person or property or to those near and dear.

(2) When determining whether there has been duress, the age and state of health of the person affected must be taken into account.

1114. Duress consisting of a threat to do what a person is lawfully entitled to do is not a ground of nullity, unless —

- (a) the promise obtained by the threat has no relationship to the action threatened; or
- (b) the promise obtained is excessive having regard to the nature of the offer.

1115. A contract cannot be challenged on the ground of duress if it has been approved after the duress has come to end, whether expressly or tacitly, or if the victim allows the time fixed by law for its rescission to lapse.

1116.(1) Fraud is a ground of nullity of a contract when the contrivances practised by one of the parties are such that it is evident that, without the contrivances, the other party would not have entered into the contract.

(2) Fraud must be intentional but need not emanate from the contracting party.

(3) Fraud is not presumed and must be proved.

1117.(1) A contract entered into by mistake, duress, or fraud is not null as of right (*de plein droit*).

(2) A contract entered into by mistake, duress, or fraud give rise to an action for nullity or rescission only as provided in articles 1304 to 1314.

1118.(1) A contract may be rescinded on the grounds of lesion if—

- (a) the promise of one party is less than one half of the value of the promise of the other party, and

- (b) unfair advantage has been taken of the party seeking rescission.

(2) No claim for rescission on the grounds of lesion may be made when the lesion arises as the result of *cas fortuit*.

(3) The loss to the party entitled to bring the action for lesion can only be taken into account if it continues when the action is brought.

(4) The defendant to an action for lesion is entitled to refuse rescission if willing to make an adequate contribution to the other party in such manner as to restore a more equitable balance between the contracting parties.

(5) The provisions of this article cannot be excluded by agreement of the parties.

(6) This article is to be read in conjunction with articles 1674 to 1683.

1119. Subject to articles 1120 to 1122, a person may only bind him or herself or stipulate in his or her own name for his or her own account.

1120.(1) A person can undertake that a third party will perform an obligation but is liable for damages if the third party refuses to do so.

(2) If the third party ratifies the contract it becomes retroactively effective from the date of the original undertaking.

1121.(1) A person can stipulate for the benefit of a third party.

(2) A stipulation cannot be revoked if the third party has a lawful interest and declares that he or she wants to take advantage of it.

(3) A claim by a third party to take advantage of a stipulation is enforceable, even without a declaration, if the event that gave rise to the claim occurred before the stipulation was revoked.

(4) Paragraph (3) applies whether or not the third party was aware of the existence of the benefit conferred by the stipulation.

1122. A person is deemed to stipulate for him or herself and his or her heirs and assigns, unless the contrary has been agreed on or results from the nature of the contract.

1123. Every person may enter into a contract unless subject to some legal incapacity.

1124. Wards and those under a supervision order are subject to a legal incapacity to enter into a contract.

1125.(1) Wards and those under a supervision order may plead their incapacity only in the cases provided by law.

(2) Persons capable of entering into a contract may not plead the incapacity of those with whom they have contracted.

1126. Every contract must have as its object something which one party binds him or herself to give or to do or to not do.

1127.(1) Possession or use of a thing, as well as the thing itself, can constitute the object of a contract.

(2) (a) Where a contract has a thing as its object, the thing must be specified in kind.

(b) The quantity of the thing may be uncertain provided it can be specified.

1128. Only things of commercial value may be the object of a contract.

1129. VACANT

1130.(1) Future things may be the object of a contract.

(2) A person cannot renounce a succession that has not opened nor make any stipulation in respect of it, even with the consent of the person whose succession may be affected.

1131.(1) A contract that is unlawful has no legal effect.

(2) A contract is unlawful if its performance is prohibited by legislation or is against public policy.

1132. VACANT

1133. VACANT

EFFECT OF OBLIGATIONS

1134.(1) Contracts lawfully concluded have the force of law for those who have entered into them.

(2) Contracts cannot be revoked except by mutual consent or for reasons authorised by legislation.

(3) Contracts must be performed in good faith.

1135. A contract binds the parties not only in respect of what is expressed in the contract, but also to all the consequences of the contract which are implied by equity (*équité*), practice, or legislation.

1136. The obligation to give implies a duty on a person in charge of a thing to deliver it and to preserve it until delivery, under penalty of damages payable to the creditor.

1137.(1) There is an obligation on the person in charge of the thing to take care of it and to preserve it, whether or not the contract is for the advantage of one party or all parties.

(2) (a) The obligation requires the exercise of reasonable care.

(b) The extent of the obligation depends on the nature of the contract.

1138.(1) The obligation to deliver the thing arises by the mere consent of the contracting parties.

(2) The obligation to deliver confers ownership on the creditor and carries with it the risk as from the moment when delivery was due, even if the delivery has not yet been effected.

(3) Notwithstanding (2), if the debtor has been served with notice to deliver, the thing remains at the risk of the debtor.

1139. A debtor is in default when —

- (a) required to deliver by a formal summons to that effect, or by a similar legal instrument, or
- (b) the contract expressly provides that a formal summons is not required and that the passing of time for delivery suffices.

1140. The effects of the obligation to give or to deliver immovable property are regulated under articles 1582 to 1701 and the articles 2092 to 2202.

1141. If a person has contracted to give the same movable property to two different persons, the one who has actual possession in good faith is preferred and remains owner though that person's title (*titre*) may be later in date.

1142. Every obligation to do or to refrain from doing something gives rise to damages if the debtor fails to perform.

1143.(1) Where the debtor is in breach of the obligation under article 1142 by acting in violation of the obligation, the creditor may demand that what was done in breach of the obligation be destroyed.

(2) If the debtor fails to destroy what has been done on the demand of the creditor, the creditor may seek a court order to destroy it at the expense of the debtor without prejudice to any claim for damages.

(3) Where the debtor is in breach of the obligation under article 1142 through a failure to fulfil the obligation, the creditor may obtain a court order to perform the obligation at the expense of the debtor.

1144. A creditor who has authority to act under article 1143 may also obtain a court order against the debtor for payment in advance of the amount necessary for the destruction or performance, as the case may be.

1145. If the obligation consists of refraining from doing something, the person who violates it is liable for damages by the mere fact of the violation.

1146.(1) Damages are due only when the debtor is under notice to fulfil the obligation, provided that the thing which the debtor had undertaken to give or to do could only be given or done within a period of time which the debtor has let pass.

(2) The operation of a penalty clause in a contract is dealt with in article 1230.

1147.(1) A debtor is liable to pay damages for a breach to which article 1142 relates, or for a delay in performing the obligation.

(2) The debtor will not be liable under paragraph (1) where the debtor has acted in good faith and it is proved by the debtor that the cause of the breach cannot be imputed to the debtor.

1148.(1) Damages are not due when, as a result of an inevitable accident (*cas fortuit*), the debtor was prevented from giving or doing what was undertaken, or did what the debtor had undertaken not to do.

(2) If performance of the contract has only partly become impossible by an inevitable accident, and if the debtor is also at fault, the debtor's liability is reduced in proportion to the debtor's share of the responsibility.

(3) If the literal performance of a contract is possible but, owing to a complete change of circumstances that could not have been anticipated when the agreement was concluded and which is outside

the control of the parties, it no longer fulfils the common design of the parties, the contract shall be rescinded.

(4) Where the court declares that a contract has been rescinded under paragraph (3), it may on the application of a party to the rescinded contract make such orders as it thinks fit to provide an equitable adjustment to the rights of the parties as a result of the rescission.

(5) (a) Parties to a contract that has been rescinded under this article may appoint an arbitrator to adjust the situation between them as a result of the rescission.

(b) Where the parties are unable to agree on an arbitrator, they may apply to the court to appoint an arbitrator for the purpose.

1149.(1) Subject to this article, damages due to a creditor cover in general the loss the creditor has sustained and the profit of which the creditor has been deprived.

(2) Damages are also recoverable for any injury to or loss of rights of personality, including pain, suffering, aesthetic loss, and the loss of any of the amenities of life, which cannot be quantified in financial terms.

(3) Damages payable under paragraphs (1) and (2) and under articles 1150 to 1154 apply as appropriate to the breach of a contract and to the commission of a delict.

(4) (a) In the case of delicts, the award of damages may take the form of a lump sum or a periodic payment.

(b) The court may order that the rate of periodic payments should be pegged to a recognized index, such as the cost of living index or other index appropriate to the activities of the creditor.

1150.(1) The debtor is only liable for damage which could have been reasonably foreseen or which was in contemplation of the parties

when the contract was made, provided that the damage was not due to any fraud of the debtor.

(2) A stipulation that tends to exonerate the debtor in advance for liability for fraud or negligence is null.

(3) Paragraph (2) does not apply to insurance contracts, but the parties may agree to shift the burden of proving any fraud or negligence from one party to the other.

1151. If the debtor's failure to perform the contract is the result of the debtor's fraud, damages for loss sustained by the creditor and for loss of any profits can be sought only for the immediate and direct consequences of the debtor's failure to perform.

1152.(1) When the agreement provides that failure to perform the contract makes the debtor liable to a certain sum by way of damages, no larger or lesser sum may be awarded to the other party.

(2) Paragraph (1) does not apply if the failure to perform is due to fraud or gross negligence.

(3) In any case, the court may reduce the sum agreed on if it is manifestly excessive in the particular circumstances of the contract.

1153.(1) Damages that arise from delayed performance of an obligation to pay a certain sum amount only to the payment of interest fixed by legislation or commercial practice.

(2) If the parties have agreed on their own rate of interest, that rate shall apply.

(3) Damages under paragraph (1) are recoverable without any proof of loss by the creditor and are due from the day of the demand, except where they become due by operation of the law.

(4) A creditor who sustains special damage caused by a debtor acting in bad faith, and not merely by reason of delay, may obtain damages in addition to those for delayed performance.

1154.(1) Interest on interest is payable either by starting proceedings or by special agreement between the parties.

(2) The interest on which interest is claimed must have been due for at least a year.

(3) Unpaid farm rents, perpetual annuities, or life annuities produce interest from the day of demand or the day of agreement.

(4) Paragraph (3) applies to produce ordered to be returned and to interest which a third party has paid to a creditor in discharge of the debtor.

1155. VACANT

1156.(1) Contracts should be interpreted by reference to the common intention of the parties, not simply by reference to the literal sense of the words used.

(2) In the absence of clear evidence, the court is entitled to assume that the parties have used words in the sense in which they are reasonably understood.

1157. When a term can bear two meanings, the meaning that renders it effective must be preferred.

1158. Words capable of two meanings must be taken in the sense that is more appropriate to the subject matter of the contract.

1159. Ambiguous words must be interpreted by reference to the practice of the place where the contract is made.

1160. Usual clauses are implied in a contract even if they are not expressly stated.

1161. All clauses in a contract must be used to interpret the others, by giving to each the meaning that is consistent with the document as a whole.

1162. In the case of doubt, a contract is construed against the person who has required something to be done and in favour of the person who has given the undertaking.

1163. However general the terms of a contract, they apply only to the matters upon which it appears that the parties intended to contract.

1164. When in a contract an example has been used to explain an obligation, it shall not be assumed that the parties thereby intended to limit the ordinary legal construction of the contract.

1165.(1) Contracts have effect only between the contracting parties.

(2) Contracts do not bind third parties and do not benefit third parties except as provided by article 1121.

(3) (a) Notwithstanding paragraph (2), the assignment of a debt has the effect of permitting the creditor to recover the debt either from the debtor or from the debtor's assignee.

(b) If the creditor grants a release to the debtor, the debt shall be enforceable only against the assignee.

(4) If a party consents in advance that the other may assign the claim or debt to a third party, the assignment has effect from the moment of notification and acceptance of such assignment.

(5) If the contract results from a document which bears the formula "to the order" or equivalent, endorsement of the document places the person who receives it in the position of the person who made the endorsement.

1166. Creditors may exercise all the rights and actions of their debtor, with the exception of those that are exclusively attached to the person.

1167.(1) A creditor may, in his or her own name, take up proceedings relating to any transactions concluded by his or her debtor which constitute a fraud on his or her rights.

(2) The parties must, however, comply with articles 718 to 892.

DIFFERENT KINDS OF OBLIGATIONS

1168. An obligation is conditional when it is made to depend on a future and uncertain event, either by suspending its effect until the event occurs or by cancelling it when the event does or does not occur.

1169. A condition is contingent when it depends upon a chance that is beyond the control either of the creditor or the debtor.

1170. A condition at will is a condition that causes the performance of a contract to depend on an event that is in the power of one or other of the contracting parties to fulfil or to prevent.

1171. A compound condition is a condition that depends for its fulfillment on both the will of one of the contracting parties and the will of a third party.

1172. A condition prescribing an impossibility or something that is against public policy or prohibited by legislation is null and renders null the contract that depends upon it.

1173. A condition to refrain from doing something impossible does not render null the contract subject to that condition.

1174. A contract is null if it is agreed upon subject to a condition at will on the part of the person who binds him or herself.

1175. A condition must be fulfilled in the manner in which the parties appear to have wanted and agreed that it should.

1176.(1) When a contract is subject to a condition that an event will occur within a fixed period, the condition is deemed to be unsatisfied if the time has expired without the event having occurred.

(2) If no fixed period has been agreed upon, the condition can be satisfied at any time and is deemed to be unsatisfied only when it is certain that the event will not occur.

1177.(1) When a contract is made subject to a condition that an event will not occur within a fixed period, that condition is satisfied when—

- (a) the period has expired without the event occurring, or
- (b) before the period has expired, it is certain that the event will not occur.

(2) If the contract contains no fixed period, the condition is fulfilled only when it is certain that the event will not occur.

(3) The condition is deemed to have been fulfilled if the debtor bound by the condition has prevented its being fulfilled.

(4) The condition, once fulfilled, has a retroactive effect to the day the contract was made.

(5) If the creditor is dead before the condition is fulfilled, the rights pass to the creditors' heirs.

(6) A creditor may, before the condition is fulfilled, take any legal steps to preserve the creditor's rights.

1178 - 1180 VACANT

1181.(1) An obligation which is subject to a condition precedent (*condition suspensive*) depends on —

- (a) a future and uncertain event; or
- (b) an event which has in fact occurred but which is still unknown to the parties.

(2) In the case of paragraph (1)(a), the obligation may not be performed until after the event.

(3) In the case of paragraph (1)(b), the obligation has effect from the day it was contracted.

1182.(1) When an obligation is undertaken subject to a condition precedent (*condition suspensive*), the subject matter of the agreement remains at the risk of the debtor, who is not bound to deliver until the condition is fulfilled.

(2) If the thing has entirely perished without any fault on the part of the debtor, the obligation is extinguished.

(3) If the thing has deteriorated without any fault on the part of the debtor, the creditor can elect either to cancel the contract or to demand the return of the thing in such condition as it may be, without any reduction of the price.

(4) If the thing has deteriorated through the fault of the debtor, the creditor is entitled either to cancel the contract, or to demand delivery of the thing in such condition as it may be, plus damages.

1183.(1) A condition subsequent (*condition résolutoire*) is a condition which, when fulfilled, rescinds the obligation and restores things to the state they would have been in had the obligation not existed.

(2) A condition subsequent does not suspend the performance of the obligation, but binds the creditor to restore what has been received, if the event envisaged by the condition occurs.

1184.(1) A condition subsequent (*condition résolutoire*) is always implied in bilateral contracts where one of the parties does not perform his or her undertaking.

(2) A condition subsequent may be implied in a unilateral contract, such as a loan or a pledge, where a party does not perform his or her undertaking.

(3) (a) The party towards whom the undertaking is not fulfilled can elect either to demand execution of the contract, if that is possible, or to apply for rescission and damages.

(b) Rescission must be obtained by court order but the defendant may be granted time according to the circumstances.

(4) The court may, in relation to an action for rescission, make such orders as it thinks fit, both in relation to the rights and duties of the contracting parties and in relation to the rights of their heirs.

(5) (a) If a contract is only partially performed, the court may decide whether the contract must be rescinded or whether it may be confirmed, subject to the payment of damages to the extent of the partial failure of performance.

(b) The court is entitled to take into account any fraud or negligence of a contracting party.

(6) If, before the performance of a contract is due, a party to a contract by an act or omission absolutely refuses to perform the contract or renders its fulfilment impossible, the other party shall be entitled to treat the contract as discharged.

1185. A time or forward obligation differs from a conditional one in that it does not suspend a contract, but merely delays its performance.

1186.(1) What is only due in the future cannot be demanded before the expiry of the time.

(2) What has been paid in advance cannot be recovered.

1187. A time agreed upon is always presumed in favour of the debtor unless the stipulation or the circumstances imply that it has also been agreed in favour of the creditor.

1188. A debtor cannot claim the benefit of time if the debtor becomes insolvent or bankrupt, or if through his or her actions, the

debtor reduces the security that has been given by the contract to the creditor.

1189.(1) The debtor of an alternative obligation is released by the delivery of one of the two things included in the obligation.

(2) The choice is that of the debtor unless it has been expressly granted to the creditor.

(3) A debtor cannot compel a creditor to receive part of one thing and part of the other.

1190 – 1191 VACANT

1192. An obligation is pure and simple, even if contracted in an alternative manner, if one of the two things promised could not be the subject matter of the obligation.

1193.(1) (a) An alternative obligation becomes pure and simple if one of the things promised perishes and can no longer be delivered, whether or not through the fault of the debtor.

(b) The price of the thing that perished cannot be offered in its stead.

(2) If both things perish and the debtor is at fault in respect of one of them, the debtor must pay the price of the thing that perished last.

1194. Where in the cases provided for in article 1193, the choice is the creditor's by contract —

(a) if one of the two things perish, and that is not due to the fault of the debtor, the creditor must take the other thing;

(b) if one of the two things perish, and that is due to the fault of the debtor, the creditor may demand either the other thing or the price of the thing that perished;

- (c) if both of the things perish, and the fact that either one or both perished is due to the fault of the debtor, the creditor may demand the price of the thing at his or her choice;
- (d) if both of the things perish without any fault on the part of the debtor, and before the debtor has been served with a notice to deliver, the obligation is extinguished in accordance with article 1302.

1195. VACANT

1196. The principles in articles 1189 to 1194 apply where the alternative obligation relates to more than two things.

1197.(1) An obligation is joint and several (*solidaire*) amongst several creditors when the contract expressly grants to each one of them the right to demand payment of the amount of the entire claim, and the payment made to one of them releases the debtor, even if the benefit of the obligation is amenable to sharing and to a division amongst the various creditors.

(2) The rules relating to joint and several liability (*solidarité*) also apply to the liability of joint tortfeasors insofar as they are applicable.

1198.(1) The debtor has the option to pay one or another of the joint creditors where not prevented from doing so by proceedings initiated by one of them.

(2) A release granted by one of the joint creditors discharges the debtor only to the extent of that creditor's share.

1199. An act that interrupts prescription in respect of one of the joint creditors also has effect in respect of the other creditors.

1200. Debtors are jointly and severally liable when they are bound by the same obligation in such a manner as to make each one of them liable for the whole, and when payment by one releases the others.

1201.(1) An obligation may be joint and several although the conditions by which one of the debtors is bound to pay the same sum differ from those by which another debtor is bound.

(2) For instance, an obligation may be joint and several although the obligation of one debtor is subject to a condition and the obligation of another is pure and simple, or if the obligation of one debtor is subject to a time limit to which the other is not subject.

1202.(1) Joint and several liability shall not be presumed and must be expressly stated.

(2) The only exception to paragraph (1) is where joint and several liability arises by virtue of legislation (*de plein droit*).

1203. The creditor of an obligation that has been contracted jointly and severally may demand performance from any of the debtors and that debtor cannot demand the benefit of division.

1204. Bringing proceedings against one of the debtors is not a bar to the creditor from bringing proceedings against the others.

1205.(1) If the thing due perishes through the fault of one or more of the joint debtors or while one or more of them are under notice to perform, the other debtors are not discharged from the obligation to pay the price of the thing but are not liable for damages.

(2) A creditor may obtain damages against the debtors through whose fault the thing perishes and against those who were under notice to perform.

1206. Bringing proceedings against one of the joint debtors prevents prescription running as to all of them.

1207. A demand for interest against one of the joint debtors causes interest to run against all of them.

1208.(1) Where a co-debtor subject to joint and several liability is sued by a creditor, that debtor may plead all the defences which arise

from the nature of the contract and all those which are available to him or her personally and those which are common to all the co-debtors.

(2) A co-debtor may not plead any defences available to him or her personally against one or more of the other co-debtors.

1209. When one of the debtors becomes the sole heir of the creditor, or when the creditor becomes the sole heir of one of the debtors, the joint liability is not merged, except so far as the share of the debtor or the creditor is concerned.

1210. The creditor who consents to the division of the debt in respect of one of the creditors retains his or her right of action against the others jointly, subject to a deduction of the share of the debtor who has been released from joint liability.

1211.(1) The creditor who receives separately the share of one of the debtors without reserving in the receipt the joint and several liability or the rights in general, is deemed to have waived the joint and several liability only with regard to that debtor.

(2) The creditor is not deemed to release the debtor from that debtor's joint and several liability when the creditor receives from that debtor a sum equal to the share for which that debtor is liable unless the receipt specifies that the release relates to the debtor's share.

(3) The same applies to the simple claim made against one co-debtor for that co-debtor's share of the debt if the latter has not admitted the claim or if judgment has not been given against that co-debtor.

1212.(1) A creditor who receives, separately and without reservation, the share of one of the co-debtors in the arrears or interest of the debt shall only lose the joint and several right for the arrears or interest accrued.

(2) He or she shall only lose his or her joint and several right for arrears or interest not yet accrued, or for capital, if the separate payment has continued for ten consecutive years.

1213. An obligation contracted jointly and severally towards a creditor shall be divided by operation of law (*de plein droit*) amongst the debtors, who are only liable towards one another each for his or her share.

1214.(1) The co-debtor of a joint and several debt who has paid in full shall recover against the others only the share of each.

(2) If one of them is insolvent the loss that his or her insolvency has caused shall be shared proportionately amongst all the other solvent co-debtors and the debtor who has paid in full.

1215. If a creditor waives his or her right to make a particular debtor liable for the whole debt when one or more of the other co-debtors becomes insolvent, the share of those who are insolvent shall be proportionately allocated amongst all the debtors, even those previously released by the creditor from the joint and several liability.

1216. If the thing in respect of which the debtors contracted was for the benefit of only one of those who bound themselves jointly and severally, that one is liable for the whole debt and his or her co-debtors shall be deemed only to be his or her guarantors.

1217. An obligation is divisible or indivisible according to whether its object, be it something that can be delivered or an act which may be performed, is or is not amenable to division, whether physical or notional.

1218. An obligation is indivisible, although the thing or the act that is its object is divisible by nature, if the context of the obligation is such that it may not be partially performed.

1219. Joint and several liability does not render an obligation indivisible.

1220.(1) An obligation that is divisible must be performed between one creditor and one debtor as if it were indivisible.

(2) The possibility of divisibility arises only in relation to the heirs of the creditor and debtor.

(3) The heir of a creditor may not claim payment of the whole debt but only the share of it to which that heir is entitled as representative of the creditor.

(4) Subject to article 1221, the heir of a debtor may not be required to pay the whole debt, but only the share of it for which that heir is liable as representative of the debtor.

1221.(1) An heir who possesses the thing due or the property mortgaged for the debt may be sued for the whole of the debt when –

- (a) the debt is secured by a mortgage, or
- (b) it consists of a specific thing, or
- (c) it relates to an alternative debt of things at the option of the creditor, of which one is indivisible.

(2) An heir may be sued for the whole of the debt when, according to the will, that heir is alone responsible for the obligation.

(3) An heir may be sued for the whole debt when the nature of the undertaking or the thing which constitutes the object or the purpose of the contract are such that it is clear that the intention of the contracting parties was that the debt should not be partially discharged.

(4) An heir who has paid the whole debt under this article has a right to claim against co-heirs.

1222.(1) Each of those who have contracted an indivisible debt together is liable for the whole, even if the obligation had not been contracted jointly and severally.

(2) The heirs of those who have contracted an indivisible debt together are also liable for the whole.

1223. VACANT

1224.(1) Each heir of the creditor may demand the full performance of an indivisible obligation.

(2) Such an heir cannot grant a release of the whole of the debt.

(3) Such an heir may not alone receive the price in lieu of the thing.

(4) If one of the heirs of the creditor has alone released the debt or received the price of the thing, a co-heir may only sue for the indivisible thing if he or she takes into account the share for which his or her co-heir has given a release or for which his or her co-heir has received the price.

1225.(1) The heir of a debtor who is sued for the whole of the obligation may request time to enable the co-heirs to be joined as co-defendants.

(2) Paragraph (1) does not apply if the debt is of a kind that only the heir sued may discharge, in which case judgment may be obtained against that heir alone.

(3) An heir against whom judgment has been obtained under this article has a right to claim against the co-heirs.

1226. A penalty clause is a clause whereby a person, to ensure the performance of a contract, agrees to a penalty in the event of failure to perform.

1227.(1) The nullity of the principal obligation nullifies the penalty clause.

(2) The nullity of the penalty clause does not nullify the principal obligation.

1228. A creditor, instead of requiring the penalty stipulated, may sue for the execution of the principal obligation.

1229.(1) A penalty clause acts as compensation for the loss which the creditor sustains as a result of the failure to perform the principal obligation.

(2) The creditor can claim compensation for the principal obligation and the penalty if the penalty was agreed on only for delayed performance.

1230. Whether or not the original obligation contains a time limit within which it must be executed, the penalty is incurred only when the person bound to deliver or to take or to do something had been given notice to perform.

1231.(1) The court may reduce a penalty when the principal obligation has been partly performed.

(2) The court may reduce a penalty that is manifestly excessive.

1232.(1) When the original obligation contracted with a penalty clause relates to an indivisible thing, the penalty shall be incurred by the violation by any one of the heirs of the debtor.

(2) The penalty may be demanded either in full against the person in violation or against each of the co-heirs for his or her share.

(3) (a) If the penalty is secured by a mortgage, the penalty may be demanded in full against each of the co-heirs.

(b) A co-heir who has paid a penalty in full has a right to claim against co-heirs.

1233.(1) When the original obligation contracted with a penalty is divisible, the penalty shall be incurred only by that heir of the debtor who violates the obligation and only for that share for which that co-heir was liable.

(2) No action shall be brought against those who performed their part of the obligation.

(3) Paragraph (1) does not apply where the penalty clause was inserted with the intention that payment in part should not be made and a co-heir has prevented the performance of the obligation as a whole.

(4) (a) The co-heir in paragraph (1) is liable for the full penalty and other co-heirs are liable only to the extent of their shares.

(b) The co-heir who has paid a penalty in full has a right to claim against co-heirs.

DISCHARGE OF OBLIGATIONS

1234. Obligations are discharged by —

- (a) payment;
- (b) novation;
- (c) voluntary release;
- (d) set-off;
- (e) merger;
- (f) the loss of the thing;
- (g) nullity or rescission;
- (h) the effect of a condition subsequent (*condition résolutoire*);
- (i) prescription.

1235.(1) Every payment presupposes a debt.

(2) The payment of a sum that is not due may be recovered.

(3) There can be no recovery in respect of natural obligations that were voluntarily discharged.

1236.(1) An obligation may be discharged by any interested party such as a co-debtor or a guarantor.

(2) An obligation may be discharged by a third party where the third party acts in the name of and for the discharge of the debtor, or where the third party acts in his or her own name and is not subrogated to the rights of the creditor.

1237. An obligation to do something cannot be discharged by a third party against the will of the creditor when the creditor has an interest in its being discharged by the debtor.

1238.(1) A payment shall only be valid if the person who pays is the owner of the thing given in payment and is capable of alienating it.

(2) Notwithstanding paragraph (1), the payment of an amount in money or other thing that is consumed by use shall not be recovered against a creditor who has consumed it in good faith, although the payment has been made by a person who was not the owner or who was not capable of alienating it.

1239.(1) Payment shall be made to the creditor, or to someone authorised to receive payment on his or her behalf, or to someone who is authorised by legislation or by court order to receive it.

(2) Payment made to a person who has no authority to receive it on behalf of the creditor shall be valid if the creditor ratifies it or benefits from it.

1240. Payment made in good faith to a person who had the right to receive it is valid, even if the possessor of the right is subsequently deprived of that right.

1241. Payment made to a creditor is not valid if the latter was incapable of receiving it, unless the debtor proves that the payment has been for the benefit of the creditor.

1242.(1) Payment made by a debtor to a creditor to the detriment of a seizure or attachment is not valid in respect of creditors for whose benefit that seizure or attachment exists.

(2) (a) Those creditors may, according to their rights, compel the debtor to make another payment.

(b) A debtor who has made such a payment is entitled to claim against the creditor.

1243.(1) A creditor may not be compelled to receive a thing different from what is due, even if the thing tendered is of equal or greater value.

(2) A debtor shall not compel a creditor to receive part payment of a debt, even if the debt is divisible.

1244. A court may, taking into account all of the circumstances of the case, grant a debtor a reasonable extension of the time for payment of the debt and a stay of legal proceedings against the debtor for that period.

1245. A person who owes a thing which is certain and specific is discharged by the delivery of the thing in the condition in which it is when delivery is made, provided that any deterioration sustained is not due to the act or fault of the debtor nor of any person for whom the debtor is responsible, unless the debtor had been given notice to deliver before the deterioration occurred.

1246. If the debt relates to goods that are all specified only by reference to kind, the debtor is bound only to deliver goods of reasonable quality relative to the context of the contract.

1247.(1) Payment shall be made at the place fixed by the agreement.

(2) If the place is not fixed, subject to article 1650, payment shall be made at the creditor's usual place of residence or business at the time of payment.

(3) If the creditor requires, payment shall be made at a place in Seychelles other than the creditor's usual place of residence.

(4) (a) Where the creditor requires payment to be made at a place in Seychelles other than the creditor's usual place of residence or business at the time when the liability arose and the

discharge of the liability would be rendered substantially more onerous as a consequence, the debtor may refuse to pay at such place.

(b) In the event of such refusal, the place of payment shall be the place of the creditor's usual place of residence or business at the time when the liability arose.

(c) The debtor may defer payment at that place until the creditor has arranged for the payment to be received there by him or her or on his or her behalf.

1248. The costs of payment under article 1247 fall on the debtor.

1249. The subrogation to the rights of the creditor for the benefit of a third party who pays a debt is either by contract or by operation of law.

1250.(1) Subrogation is contractual when—

- (a) the creditor, by receiving payment from a third party, subrogates the third party in respect of rights, actions, privileges and mortgages against the debtor;
- (b) the debtor borrows a sum intending to pay the debt and subrogate the lender to the rights of the creditor.

(2) A subrogation under paragraph (1)(a) must be express and made at the time of the payment.

(3) (a) A subrogation under paragraph (1)(b) requires that the document of the loan and the receipt be drawn up by a notary.

(b) The document must declare the amount borrowed for the purpose of the payment and the receipt must declare that the payment was made from the funds supplied by the new creditor for the purpose.

(4) A subrogation under paragraph (1)(b) is effective irrespective of the will of the creditor.

1251. Subrogation takes effect by operation of law (*de plein droit*) for the benefit of—

- (a) a creditor who pays another creditor who has prior rank by reason of privileges or mortgages;
- (b) a buyer of immovable property who uses the purchase price to acquire from mortgagees their rights of mortgage over the property;
- (c) a person who, being bound with or on behalf of others to pay the debt, has an interest in discharging it;
- (d) an heir who is subject to the benefit of inventory who has paid the debts of the succession out of his or her own funds.

1252.(1) Subrogation under articles 1249 to 1251 is as effective against the guarantors as against the debtors.

(2) (a) The subrogation shall not be to the detriment of a creditor who has been paid in part only.

(b) In this case, the creditor may claim the amount of the debt still owed in priority to the person who paid part of the debt.

1253. A person who owes several debts may declare, when a payment is made, which debt the payment is to discharge.

1254.(1) A person who owes a debt that bears interest or produces income may not, without the consent of the creditor, direct payments to discharge the capital rather than the income or interest.

(2) A payment made in discharge of capital and interest that does not fully discharge the amount due shall first be payment of interest.

1255.(1) When a person who owes several debts accepts a receipt showing that the creditor has applied a payment in discharge of one of these debts, the debtor may not require that sum to be applied in payment of a different debt unless there is fraud on the part of the creditor or the debtor has been given insufficient notice.

(2) (a) When the receipt bears no indication and there are several debts due, payment must be applied to the debt on which the accumulated interest is highest among the debts due.

(b) If there is only one debt due, payment must be applied to that debt.

(c) If the debts are of the same nature, payment is applied to the oldest of them.

(d) If the debts are of the same age, payment is shared among them proportionately.

1256. VACANT

1257.(1) When a creditor refuses to accept payment, the debtor may tender the amount and, if the creditor does not accept it, may place the sum in escrow.

(2) A valid tender followed by payment into escrow shall release the debtor and has the equivalent effect of payment to the creditor.

1258. A valid tender must—

(a) be made to a creditor who has the capacity to accept it, or to a person who has the authority to accept it for the creditor;

(b) be made by a person who has capacity to pay;

- (c) cover the full amount due, arrears or interest due, and costs incurred, and include an offer to pay any further sum due in respect of the unascertained costs;
- (d) be made after the time for payment has passed, where the time was set for the creditor's benefit;
- (e) where the debt was contracted subject to a condition, be after that condition is fulfilled;
- (f) be made at the place agreed for payment and, where there is no agreement as to the place of payment, be made in accordance with article 1247.

1259. Notice of a payment into escrow under article 1257 must be given to the creditor in writing and the amount must be paid out to the creditor on request by the creditor.

1260. The cost of a valid tender and of any payment into escrow must be met by the creditor.

1261.(1) Money paid into escrow may be withdrawn by the debtor at any time before acceptance by the creditor.

(2) If the debtor withdraws the money, co-debtors and guarantors are not released.

1262. When the debtor has obtained a judgment that declares the tender and payment into escrow to be valid, the debtor may not, even with the consent of the creditor, withdraw the amount in escrow to the detriment of co-debtors or guarantors.

1263. VACANT

1264.(1) If what is due is a specific thing which is delivered at the place where it is, the debtor shall serve the creditor with notice to remove it by a summons served on the creditor in person or at his or

her residence or at the place agreed on for the performance of the contract.

(2) If after this notice the creditor does not remove the thing, and if the debtor requires the use of the place upon which the thing is found, the latter may obtain from the court authority to put it in deposit somewhere else.

1265. An assignment of assets is the surrender by a debtor of all the debtor's assets to the creditors when the debtor is unable to pay his or her debts.

1266. VACANT

1267. A voluntary assignment of assets is an assignment where the creditors voluntarily accept and there is no effect other than what results from the contract itself as between the creditors and the debtor.

1268 - 1270 VACANT

1271. Novation is effected —

- (a) When the debtor contracts with the creditor a new debt which is substituted for the earlier debt which is thereby extinguished;
- (b) When a new debtor is substituted for the old, who is released by the creditor;
- (c) When as a result of a new agreement, a new creditor is substituted for the old, in respect of whom the debtor is released.

1272. Novation has effect only between persons who have capacity to enter into a contract.

1273.(1) Novation is not presumed.

(2) The intention to effect novation must clearly result from the act (*acte*).

1274. Novation through the substitution of a debtor may be effected without the consent of the first debtor.

1275. Assignment by which a debtor assigns a debt to another who becomes bound towards the creditor does not effect a novation if the creditor does not expressly declare that he or she intends to discharge the debtor who made the assignment.

1276. The creditor who releases the debtor who made the assignment has no right of action against that debtor, if the assignee becomes insolvent, unless the assignment contains an express reservation, or unless the assignee had already become bankrupt or insolvent when the assignment was made.

1277.(1) A simple indication given by the debtor that another will pay the debt does not effect a novation.

(2) A simple indication given by a creditor that another will receive the payment for the creditor does not effect a novation.

1278. The privileges and mortgages which secured a claim subject to novation does not secure the claim which replaces it, unless the creditor has made an express reservation in respect of those privileges and mortgages.

1279. When the novation is effected by the substitution of a new debtor, the original privileges and mortgages securing the claim shall not be reserved as surety for the new debt, except with the permission of the owners of the property subject to the privileges and mortgages.

1280. When the novation is effected between a creditor and one of joint and several debtors, the privileges and mortgages securing the earlier claim may only be reserved in respect of the property of the person who contracts the new debt.

1281.(1) Co-debtors shall be released by a novation made between the creditor and one of joint and several debtors.

(2) The novation effected in respect of the principal debtor releases the guarantors.

(3) Nevertheless, if the creditor demands in the case of paragraph (1) that the co-debtors join in, or in the case of paragraph (2) that the guarantors do so, the prior debt subsists if the co-debtors or the earlier guarantors refuse to accept the new arrangement.

1282.(1) A release may be tacit and is not subject to any requirement of form.

(2) The voluntary surrender of the original of the document under private signature by the creditor or debtor is deemed to be proof of release.

1283. The voluntary surrender of the authentic and immediately enforceable document is presumed to constitute a release from the debt or payment.

1284. The surrender of the original of a document under private signature or of an authentic and executory document to one of the co-debtors has the same effect in favour of all the co-debtors.

1285.(1) A contractual surrender or discharge in favour of one of the co-debtors releases all others, unless the creditor expressly reserves his or her rights against those others.

(2) A creditor who reserves a right under paragraph (1) can only recover the debt subject to a deduction of the share of the debtor who was released.

1286. The fact that a person has handed back the pledge is not sufficient to raise a presumption that the debt has been released.

1287.(1) A contractual surrender or discharge granted to the principal debtor releases the guarantor.

(2) A contractual surrender or discharge granted to the guarantor does not release the principal debtor.

(3) A contractual surrender or discharge granted to one of the guarantors does not release the other guarantors.

1288. What a creditor receives from a guarantor for the discharge of the guarantor's obligation shall be appropriated to the debt and applied to the discharge of the principal debtor and the other guarantors.

1289. When two persons are debtors of each other, a setoff extinguishes the two debts as provided in articles 1290 to 1299.

1290.(1) A setoff is by operation of law through the mere effect of the law (*de plein droit*), even without the knowledge of the debtors.

(2) The two debts are mutually extinguished at the moment when they both exist simultaneously, to the extent that the respective sums correspond.

1291. The setoff is effected only in respect of debts both of which are expressed in money or in a certain quantity of consumer goods of the same kind, and both of which are due immediately.

1292. A period of grace does not prevent a setoff.

1293. A setoff has effect, whatever the origin of the debts, except in the case of—

- (a) a claim for restitution of a thing of which the owner has been unlawfully deprived;
- (b) a claim for restitution of a deposit or loan for use;
- (c) a debt incurred for the payment of maintenance (aliments) declared immune from attachment.

1294.(1) A guarantor may plead the setoff arising from the debt that the creditor owes to the principal debtor.

(2) The principal debtor shall not plead the setoff arising from the debt that the creditor owes to the guarantor.

(3) A joint and several debtor shall not plead the setoff arising from the debt that the creditor owes to a co-debtor.

1295.(1) A debtor who accepts purely and simply the assignment that a creditor has made to a third party shall not subsequently plead the setoff against the assignee that could have been pleaded against the assignor prior to the acceptance.

(2) An assignment that is not accepted by the debtor, of which the debtor was notified, only prevents the setoff of rights subsequent to such notice.

1296. When two debts are not payable at the same place, a setoff may be claimed only if accompanied by a payment of the costs of the remittance.

1297. When there are several debts owed by the same person that may be the subject of a setoff, article 1255 applies.

1298.(1) A setoff shall not occur to the detriment of the rights acquired by a third party.

(2) A debtor who becomes a creditor following the attachment of the credit balance by a third party shall not plead a setoff to the detriment of that third party.

1299. A person who pays a debt which was, in law, extinguished by a setoff cannot then, by exercising the rights which were not raised in opposition to the set-off, take advantage to the detriment of third parties of the privileges and mortgages which were attached to the debt, unless the creditor had good reason for not knowing of the credit which provided the set-off for the debt.

1300. When the rights of the creditor and the liabilities of the debtor are united in the same person, there is merger by operation of law that extinguishes both claims.

1301.(1) The merger in the person of the principal debtor releases the guarantors of the principal debtor.

(2) The merger in the person of the surety does not extinguish the principal obligation.

(3) The merger in the person of the creditor does not release the joint and several co-debtors except to the extent of the share in respect of which the creditor was the debtor.

1302.(1) When a certain and specific thing which was the object of the contract perishes or no longer has any commercial value, or is lost and it is not known whether it exists or not, the obligation is extinguished if the thing perishes or becomes lost through no fault of the debtor and before the debtor is served with notice to deliver.

(2) Even if the debtor has been given notice to deliver, and the debtor has not contracted to accept liability for inevitable accident, the obligation is extinguished when the thing would equally have perished had it been delivered to the creditor.

(3) The burden of proving the inevitable accident is on the debtor.

(4) Stolen property that perishes or is lost does not discharge the person who stole it from the obligation to pay its value.

1303. When the thing that perishes has no commercial value or is lost without any fault of the debtor, the debtor must, if entitled to any rights or claims for indemnity in respect of the thing, assign those to the creditor.

1304.(1) Unless provided otherwise by legislation, the period of prescription for an action for nullity or rescission of a contract is five years.

(2) In the case of duress, the prescription period runs from the day the duress ended, and in the case of mistake or fraud, from the day the mistake or fraud was discovered.

(3) (a) In respect of transactions of a minor, the prescription period runs from the date of that person's majority.

(b) In respect of the transaction of an adult under guardianship, the prescription period runs from the day the person acquires knowledge of the transactions and is in a position to conclude them again validly.

(c) In respect of the heirs of a person subject to an incapacity, the prescription period runs from the date of the death, unless it has already started running for some other reason.

1305, 1306 VACANT

1307. A minor who represents that he or she is adult is not barred from a claim for rescission.

1308, 1309 VACANT

1310.(1) A minor is liable for his or her delicts and quasi-delicts.

(2) If the minor committed a delict or a quasi-delict as a result of a contract that may be rescinded because of incapacity, the other contracting party cannot enforce the contract by bringing an action in delict or quasi-delict.

1311. A minor cannot rescind a contract concluded during minority if the minor has ratified that contract on becoming adult, whether the contract was null in form or subject only to rescission.

1312. When wards are permitted by reason of incapacity to rescind their contracts, the refund of what has been paid to them as a result of these contracts during the guardianship may not be claimed unless it is proved that what was paid was to their advantage.

1313. VACANT

1314. When the forms required in respect of wards, whether for the transfer of immovable property or for the partition of a succession, have been complied with, these persons are deemed, in

respect of these transactions, to have entered into them as adults or as persons for whom the need for interdiction has not arisen.

PROOF OF OBLIGATIONS

1315.(1) A person who demands the performance of an obligation must prove it.

(2) Conversely, a person who claims to have been released from an obligation must prove the payment or the performance that has extinguished the obligation.

1316. The rules that regulate written evidence, oral evidence, presumptions, admissions by a party and oaths are set down in articles 1317 to 1369.

1317. An authentic document is a document received by a public official entitled to draw up the same where the document is drafted and in accordance with the prescribed forms.

1318. A document that is not authentic owing to the lack of powers or capacity of the official or owing to a defect of form has the effect of a private document if signed by the parties.

1319. An authentic document shall be accepted as proof of the agreement that it contains between the contracting parties and their heirs or assigns.

1320.(1) A document, whether authentic or under private signature, shall be accepted as proof between the parties even if expressed in terms of statements, provided that the statement is directly related to the transaction.

(2) Statements foreign to the transaction shall only be accepted as writing providing initial proof (*commencement de preuve*).

1321.(1) (a) A counter-letter (*contre-lettre*) has effect only as between the contracting parties.

(b) A counter-letter must be in writing and is valid only for a period not exceeding five years from the date of the ostensible transaction.

(c) A counter-letter cannot be used against third parties.

(2) A third party who has an interest in declaring null a contract affected by a counter-letter may apply to the court to set aside the ostensible transaction.

(3) The moral impossibility exception provided by art 1348(2)(e) does not apply to a counter-letter.

1322. A document under private signature which is acknowledged by a person against whom it is pleaded or which is legally presumed as acknowledged shall have the same effect as an authentic document in respect of the parties who have signed it, their heirs and assigns.

1323.(1) A person against whom a document under private signature is pleaded must formally acknowledge or repudiate the handwriting or signature.

(2) The heirs or assigns may restrict themselves to declaring that they do not recognise either the handwriting or the signature of the principal.

1324. When a party repudiates handwriting or a signature, or when a person's heirs or assigns declare that they do not recognise either of them, the court shall decide the issue after hearing evidence.

1325.(1) Documents under private signature that contain bilateral contracts are valid only if they were drawn up in as many originals as there are parties having a separate interest.

(2) One original is sufficient for all the persons who have the same interest.

(3) (a) Each original shall mention the number of originals in which it was drawn up.

(b) Failure to mention that there are two or more originals shall not be pleaded by a person who has performed the agreement contained in the document.

1326.(1) A note or promise under private signature whereby only one party undertakes an obligation towards another to pay that other a sum of money or something of value must be written in full, in the hand of a person who signs it, or in addition to the signature the party must add in his or her own hand the words "valid for" or "approved for" followed by the amount in letters or the quantity of the thing.

(2) Paragraph (1) does not apply to tradespeople and employees acting within the scope of their trade or employment.

(3) The formula in paragraph (1) does not apply to promissory notes.

1327. When there is a discrepancy shown between the amount in the main document and the sum in the formula, the obligation is presumed valid only for the lesser of the two sums, even if both the document and the formula are written entirely by the hand of the person who undertakes the obligation, unless it can be proved which of the two sums is mistaken.

1328. The date of a document under private signature shall have effect on third parties only from when it is registered, or from the death of the person who signed it, or from the date on which the contents were confirmed in documents drawn up by public officials, such as minutes under seal or inventories.

1329 - 1330 VACANT

1331.(1) Diaries and domestic papers are not evidence in favour of the persons who have written them.

(2) They shall be evidence against them—

(a) in all cases in which they formally state the receipt of a payment;

- (b) when they contain an express reference that the entry was made to account for a defect in the title of the person in whose favour an obligation is declared to exist.

1332.(1) Writing added by the creditor at the end, in the margin, or on the back of a document which has always remained in the creditor's possession is proof, even if unsigned or undated, when it tends to establish the discharge of the debtor.

(2) Paragraph (1) applies to writing added to a duplicate or receipt provided the duplicate is in the hands of the debtor.

1333. Tallies that correspond are evidence as between people who are accustomed to use them in keeping an account of the goods, which they deliver or receive in retail.

1334. Copies of a document, when the original exists, are not evidence of the contents of the original, the production of which may, in all cases, be demanded.

1335.(1) When the original document no longer exists or cannot be found or practicably produced, copies shall be accepted as proof, subject to the following paragraphs.

(2) (a) Authentic and immediately enforceable or first authentic documents shall be accepted as proof as much as the originals.

(b) The same shall apply to copies made by judicial authority in the presence of the parties and by their mutual consent.

(3) (a) A copy which, without judicial authority or without the consent of the parties, and since the delivery of authentic and immediately enforceable or first authentic documents, were made from the original document by a notary who issued it or by one of his or her successors or by public officials who in their capacity act as depositories of such original documents, may, in the case of loss of the original, be accepted as proof if they are old.

(b) They shall be deemed to be old if they were made at least thirty years previously.

(c) If they are less than thirty years old they shall serve only as writing providing initial proof.

(4) Copies of an original document which are not made by the notary who issued it or by one of his or her successors or by public officials who, in that capacity, are depositories of originals, shall only serve, whatever their age, as writing providing initial proof (*commencement de preuve*).

(5) The copies of copies may, according to the circumstances, be considered of purely informational value.

1336.(1) The transcription of a document on a public register serves only as writing providing initial proof (*commencement de preuve*).

(2) For this purpose it shall be necessary—

(a) that it be certain that all the originals filed with the notary for the year in which the document appears to have been drawn up, are lost, or that it be proved that the loss of the original of that document was caused by a specific accident;

(b) that an entry book of the notary that is in proper order exists and that it confirms that the document had been issued on the same date.

(3) When the two circumstances in paragraph (2)(b) correspond, evidence by witnesses is admissible and it is necessary that those who witnessed the document, if they are still alive, be heard.

1337.(1) Documents of acknowledgement do not obviate the need to produce the original document unless the contents of the original document are expressly recited in the document of acknowledgement.

(2) What is contained in excess of the original document, or what happens to be different, has no effect.

(3) If there were several identical acknowledgements, supported by possession, of which one dates back at least thirty years, the creditor may be permitted to dispense with the production of the original document.

1338.(1) A document of confirmation or ratification of an obligation which is, by law, subject to an action for nullity or rescission is valid only if that document contains the substance of that obligation, a reference to the cause of the action for rescission and the intention to rectify the defect upon which that action is founded.

(2) In the absence of a document of confirmation or ratification, it is sufficient if the obligation is performed voluntarily after the period during which the obligation was capable of being validly confirmed or ratified.

(3) The confirmation, ratification, or voluntary performance in the form of, and during the period determined by, the law carries with it the waiver of the defences and denials that could be pleaded against that document, without prejudice to the rights of third parties.

(4) The respective rights of the parties under this article shall not be affected by the fact that a bill of exchange is drawn or endorsed by a minor or a corporation.

1339. A donor shall not rectify, by any document of confirmation, the defects of a gift *inter vivos* that is null in form.

1340. The confirmation, ratification or voluntary delivery of a gift by the heirs or assigns of the donor after the donor's death carries with it the waiver of pleas, whether based upon a defect of form or on any other ground.

1341.(1) Any matter (*toutes choses*) the value of which exceeds R50,000 shall be evidenced by a document drawn up by a notary or under private signature, even for a voluntary deposit.

(2) No oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of R50,000 or less.

(3) This article also applies where the action contains, apart from a claim for the capital, a claim for interest which, added to the capital, exceeds the sum of R50,000.

1342. VACANT

1343. A person who makes a claim that exceeds R50,000 shall not adduce oral evidence, even if the original claim is reduced.

1344. Oral evidence is not admissible, even on a claim for R50,000 or less, if that sum is declared to be the balance of, or to form part of, a more substantial claim that is not evidenced in writing.

1345. If, in the same proceedings, a party has made several claims for which that party has no written document and these claims joined together exceed the sum of R50,000, oral evidence is not admissible, even if the party alleges that the claims arise from different transactions and at different times unless such rights are derived by succession, gift or otherwise, from different persons.

1346. All claims, whatever their cause, which are fully supported by writing shall be joined in the same plaint or summons, but subsequent claims which are not supported by written proof shall not be admitted.

1347.(1) Articles 1341 to 1346 do not apply if there is writing providing initial proof (*commencement de preuve*).

(2) Initial proof means every writing that emanates from a person against whom the claim is made, or from a person whom that person represents, and which renders the facts alleged likely.

1348.(1) Articles 1341 to 1346 are also inapplicable whenever it is not possible for the creditor to obtain written proof of an obligation undertaken towards him or her.

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- (2) This exception applies —
- (a) to the obligations that arise from quasi-contracts, delicts or quasi-delicts;
 - (b) to necessary deposits made in case of fire, ruin, riot, or wreck and to those made by travellers staying at an hotel or guest house, in accordance with the circumstances;
 - (c) to the obligation undertaken during unforeseen accidents when the persons were unable to enter into written transactions;
 - (d) where a creditor has lost the document, which served as written proof, as a result of *cas fortuit*;
 - (e) to instances of moral impossibility which arise from a special relationship between the parties such as family ties, parentage, ties of affection, or ties based on trust.

1349. Presumptions are the inferences that the law or the court draws from a known fact in respect of an unknown fact.

1350. A presumption of law is the presumption which a particular law applies to certain transactions or to a certain fact such as—

- (a) transactions which by their very nature the law declares null and which are presumed to have been made in violation of its provisions;
- (b) the case in which the law declares that ownership or release results from certain specific circumstances;
- (c) the authority which the law attributes to a final judgment;
- (d) the weight that the law attaches to an admission of the party or to the party's oath.

1351.(1) A final judgment has the effect of *res judicata* only in respect of the subject matter of the judgment.

(2) It is necessary that the demand relate to the same subject matter, that it relate to the same cause of action, that it be between the same parties and that it be brought by them or against them in the same capacities.

1352.(1) A presumption of law exempts a person, in whose favour it operates, from the necessity of producing evidence.

(2) No evidence shall be admitted against the presumption of law when the substance of such presumption operates to annul certain transactions (*actes*) or to prevent the exercise of a legal action, unless it is subject to proof of the contrary and oath or admission under articles 1356 to 1369.

1353. Presumptions that do not apply by operation of law are left to the knowledge and wisdom of the court, which shall only admit presumptions that are serious, precise and consistent and do so only in cases in which the law admits oral evidence.

1354. An admission that is pleaded against a party is extra-judicial or judicial.

1355. The allegation of an extra-judicial and purely oral admission has no effect if it relates to a claim in respect of which oral evidence is not admissible.

1356.(1) A judicial admission is the declaration that a party or a party's specially authorised proxy makes in the course of court proceedings.

(2) (a) A judicial admission shall be accepted against the persons who make it.

(b) It may not be admitted only in part to the detriment of the person making it.

(3) (a) It may not be revoked unless it be proved that it resulted from a mistake of fact.

(b) It shall not be revoked on the ground of a mistake of law.

1357. Judicial oaths are of two kinds—

(a) an oath that a party tenders to the other, with a view to making the judgment depend on it, is a decisive oath;

(b) an oath that is tendered ex officio by the judge to one or the other of the parties is an oath ex officio.

1358.(1) A decisive oath may be tendered in respect of any kind of litigation.

(2) It shall be tendered only in respect of an act personal to the party to whom it is tendered.

(3) It may be tendered at any stage of the proceedings, even if there is no initial proof of the claim or of the defence in support of which it is demanded.

1359, 1360 VACANT

1361.(1) The person to whom the oath is tendered and who refuses to take it, or who does not consent to passing it on to the opponent, or the opponent to whom it is passed and who refuses to take it, shall fail in the claim or in the defence as the case may be.

(2) The oath shall not be passed on when the act envisaged is not that of the two parties but an act purely personal to the party to whom the oath was tendered.

(3) When the oath tendered or passed on has been taken, the other party shall not be allowed to prove its falsity.

(4) The party who has tendered or passed on the oath cannot withdraw it if the other party has declared willingness to take it.

1362 - 1364 VACANT

1365.(1) An oath is evidence only in favour of the person who tendered it or against that person, and in favour of that person's heirs and assigns or against them.

(2) An oath tendered by one of joint and several creditors to the debtor shall release the debtor only in respect of that creditor.

(3) An oath tendered to the principal debtor shall also release the guarantors.

(4) An oath tendered to one of joint and several debtors benefits the co-debtors.

(5) An oath tendered to a guarantor shall benefit the principal debtor.

(6) In paragraphs (4) and (5), the oath of a joint and several co-debtor or of the guarantor benefits only the other co-debtor or the principal debtor, if it is tendered on the debt and not on the fact of the joint and several liability or of the suretyship.

1366. A judge may tender the ex officio oath to one of the parties either in order to decide the case upon it or only in order to fix the amount of the liability.

1367.(1) A judge may tender the oath ex officio either upon the claim of a party or in defence of a party sued only where-

(a) the claim or the defence is not fully established,
or

(b) the claim is not entirely devoid of evidence.

(2) In cases other than those specified in paragraph (1) the judge must either admit or reject the claim purely and simply.

1368. An oath tendered ex officio by the judge to one of the parties shall not be passed on to the other party.

1369.(1) An oath as to the value of a thing claimed shall be tendered by the judge to the plaintiff only when it is impossible to assess that value by any other means.

(2) Under this article the judge shall decide the value to the extent that the judge places faith in the oath of the plaintiff.

OBLIGATIONS THAT ARISE WITHOUT AGREEMENT

1370.(1) (a) Certain rights or duties arise without the intervention of an agreement, either on the part of the person who is bound by a duty or on the part of the person who is entitled to the performance of that duty.

(b) They arise from legal acts or personal situations of fact that the law regulates.

(c) Such are the rights and duties which arise from legal acts, independent of the will of the persons bound or entitled, as for instance, the rights and duties between neighbouring owners or those of guardians and other administrators who may not refuse the duties imposed upon them.

(2) Rights and duties that arise from personal situations of fact are those that result from quasi-contracts, unjust enrichment, and delicts or quasi-delicts; they are the subject of articles 1371 to 1390.

(3) (a) A person who has a cause of action founded either in contract or in delict may elect which cause of action to pursue.

(b) If legislation limits the liability in either of the two causes of action, the plaintiff must pursue the cause of action to which that legislation relates.

(c) A plaintiff shall not be allowed to pursue both causes of action consecutively.

1371.(1) Quasi-contracts result from purely voluntary acts of a person.

(2) They give rise to duties towards a third party and sometimes to mutual obligations between two parties.

1372.(1) (a) When a person (*gérant*) voluntarily manages the business (*l'affaire*) of another (*maître*), whether or not the maître is aware of it, the *gérant* has the duty to manage *l'affaire* until the maître is in a position to manage *l'affaire*.

(b) The *gérant* must manage everything connected with *l'affaire*.

(2) (a) A *gérant* must exercise reasonable care in the management of *l'affaire*.

(b) Nevertheless, the circumstances that have led to the assumption of the control of *l'affaire* may permit the court to reduce the damages that may have arisen from the fault or the negligence of the *gérant*.

(3) The *gérant* is subject to all the obligations which would have arisen from an express power of attorney, had such a power been granted by the maître.

(4) A *gérant* may claim under this article only if the actions taken were reasonable in the circumstances.

(5) The actions of the *gérant* need not be entirely for the benefit of the maître.

(6) If a maître dies, the *gérant* must continue the management of *l'affaire* until the heir of the maître is able to assume control.

1373. VACANT

1374. A maître whose affaire has been properly managed must fulfil the obligations that the *gérant* has contracted in the name of the

maître, indemnify the gérant for all the personal obligations contracted, and reimburse the gérant for all the necessary and reasonable expenses incurred.

1375. A person who voluntarily assumed a risk to save life or property may, if the person acted reasonably in the circumstances, make a claim under article 1374.

1376. A person who, in error or knowingly, receives what is not due to him or her, is bound to make restitution to the person from whom it has been improperly received.

1377. A person who receives a payment in bad faith is bound to make restitution of the capital and interest or of the income that has accrued from the day of the payment.

1378.(1) Where a person who mistakenly believes that he or she is a debtor makes a payment, that person is entitled to recover the payment from the payee.

(2) The right ceases if the payee has, in consequence of the payment, destroyed the document (*titre*) evidencing the debt.

(3) The person who made the payment is entitled to recover from the real debtor.

1379.(1) If property unduly received is immovable or a tangible movable, the person who receives it is bound to make restitution in kind, if it is still in existence, or make restitution of its value if it has perished or deteriorated because of that person's fault.

(2) That person is liable also for its incidental loss if the property is received in bad faith.

(3) If a person who has received something in good faith has sold it, that person must restore only the proceeds of the sale.

(4) A person whose property has been restored must refund, even to a possessor in bad faith, all the necessary and reasonable expenses incurred for the preservation of the property.

1380. VACANT

1381.(1) If a person suffers a detriment without there being a reason in law for that detriment, and another is correspondingly enriched, the former may recover from the latter the extent of the enrichment of the latter.

(2) An action under this article is a subsidiary action and available only if the person who suffers the detriment has no other remedy available.

(3) An action is not available where the person who has suffered the detriment caused the loss by his or her fault or negligence.

DELICTS AND QUASI-DELICTS

1382.(1) Every human act that causes harm to another requires the person by whose fault the harm occurred to repair it.

(2) (a) Fault is an error of conduct that would not have been committed by a prudent person in the circumstances.

(b) Fault may be the result of an act or an omission.

(c) Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

(3) (a) A person is responsible for fault, original or contributory, only to the extent of that person's capacity of discernment.

(b) This paragraph does not apply to a person who knowingly deprives him or herself of the power of discernment.

(4) (a) An agreement to exclude liability for intentional or negligent harm is null.

(b) Voluntary assumption of risk is implied from participation in a lawful game.

1383. A person is liable for harm caused not only by his or her actions but also by his or her negligence or imprudence.

1384.(1) A person is liable for harm caused not only by his or her own act but also for the harm caused by the act of persons for whom he or she is responsible or by things in his or her care.

(2) Parents of a child, in so far as they have custody, are jointly and severally liable for the harm caused by their children residing with them, to the extent that is deemed reasonable having regard to the age and maturity of the child, the nature of the act or omission by which the harm was caused, and other relevant circumstances.

(3) (a) Employers are liable for harm caused by their employees acting within the scope of their employment.

(b) A deliberate act of an employee contrary to the express instructions of the employer and which is not incidental to the service or employment of the employee does not render the employer liable.

(4) Teachers and craftspeople are liable for the damage caused by their pupils and apprentices while under their supervision, only to the extent applicable to parents under paragraph (2).

(5) The liability in the above cases shall exist unless the father and mother and the teachers and craftsmen prove that they were unable to prevent the act that has given rise to the liability.

1385. The owner of an animal, or the person who uses it while that person has the use of it, is liable for the harm that the animal has caused, whether the animal was under that person's care or was lost or had escaped.

1386. The owner of a building is liable for harm caused by its ruinous state when it occurs as a result of neglect or by a fault of construction.

1387.(1) Every person has a right to respect for his or her private life and for confidential information relating to him or her.

(2) The court can, without prejudice to any award of damages that may be made, order all necessary measures such as sequestration or seizure of property, to prevent or stop an invasion of or an attack on a person's private life or publication of confidential information.

(3) Necessary measures can, in the case of urgency, be taken *ex parte*.

1388.(1) The driver of a motor vehicle that, by reason of its operation, causes harm to persons or property is liable for that harm.

(2) It is a defence to a claim under paragraph (1) to prove—

- (a) absence of fault or negligence on the part of the defendant;
- (b) that the harm was solely or partly due to the fault or act of the injured party or of a third party; or
- (c) that the harm was due to an act external to the operation or functioning of the vehicle (*cas fortuit*).

(3) Vehicle defects or the breaking or failure of its parts are not *cas fortuits*.

1389.(1) A person is liable for harm caused to or loss suffered by a neighbour without fault or negligence being proved where that person's legal enjoyment of their property exceeds the measure of the ordinary obligations of the neighbourhood.

(2) The liability arises even where all possible precautions have been taken and the loss or damage is the inevitable consequence of the exercise of the particular activity.

(3) It is a defence to a claim under this article to prove that the loss or damage was solely due to—

-
- (a) the fault or negligence of the injured party;
 - (b) the act of a third party;
 - (c) a *cas fortuit*;
 - (d) an activity permitted by specific legislation and where the permission was for a specific purpose and a limited time and the permit holder has acted reasonably in accordance with the permit.

1390. The civil law on defamation is governed by specific legislation.

1391 - 1399 VACANT

DOMESTIC PROPERTY CONTRACTS

1400.(1) Unless otherwise agreed in a pre-marital or pre-relationship contract, the property regime of a married couple or of those living en ménage is one of separation of property during the subsistence of the relationship and governed by article 259 on termination.

- (2) The contract in paragraph (1) must be notarised.

1401 - 1581 VACANT

SALE

1582.(1) Sale is an agreement by which one party undertakes to deliver something and the other to pay for it.

- (2) The contract may be made by an authentic document or by a document under private signature.

1583.(1) A sale is complete between the parties and ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid.

(2) Paragraph (1) does not apply to land subject to the Land Registration Act.

1584.(1) A sale may be concluded either purely and simply or subject to a condition precedent (*condition suspensive*) or condition subsequent (*condition résolutoire*).

(2) It may also envisage two or more alternative things.

(3) In all these cases, the effect shall be governed by the general principles of contract.

1585.(1) (a) If goods are not sold in bulk but by weight, number or measure, the sale shall not be complete in the sense that the risk of the goods sold falls upon the seller, until they are weighed, counted or measured.

(b) The buyer shall be entitled to demand delivery or damages, if any, in the case of failure to perform the contract.

(2) Conversely, if the goods are sold in bulk, the contract shall be completed, even if the goods are not yet weighed, counted or measured.

1586. VACANT

1587. With regard to wine, oil, and other things that are normally tasted before buying, there shall be no sale until the buyer has tasted and approved them.

1588.(1) A sale made subject to a trial is deemed to have been made under a condition subsequent (*condition résolutoire*).

(2) (a) The dispatch of unsolicited goods shall not constitute a sale until the goods are accepted.

(b) A person who receives such goods may give notice to the seller inviting the seller to collect the goods at his or her expense within four weeks.

(c) If the seller fails to do so, the goods shall be deemed to be a gift.

1589.(1) A promise to sell is equivalent to a sale if the two parties have mutually agreed upon the thing and the price.

(2) However, the acceptance of a promise to sell or the exercise of an option to purchase property subject to registration has effect only between the parties, and in respect of third parties, as from the date of registration.

1590.(1) If the promise to sell is accompanied by a deposit, each of the contracting parties is free to withdraw.

(2) (a) If the purchaser withdraws, the purchaser loses the deposit.

(b) If the seller withdraws, the seller must pay the purchaser twice the amount of the deposit.

1591.(1) The price of the sale shall be certain and fixed by the parties.

(2) The price may be left to determination by a third party.

(3) If the third party refuses to act, there is no sale.

1592. VACANT

1593. The costs of any documents of title (*titre*) or other charges incidental to the sale fall on the buyer.

1594. Persons who are not forbidden by law to buy or sell can do so.

1595. VACANT

1596. The following persons shall not buy either by themselves or through intermediaries under pain of nullity—

- (a) guardians, in relation to property which they hold under guardianship;
- (b) agents, in relation to property which they are under a duty to sell;
- (c) executors, fiduciaries, and those who have administrative responsibility in respect of the property;
- (d) civil servants, with regard to State property the sale of which is conducted through government departments.

1597. The following persons may not acquire legal rights and actions in respect of the subject matter or any of the grounds of litigation before the court in which they perform their duties, under penalty of nullity and of the payment of costs and damages —

- (a) judges or their deputies;
- (b) officers of the Attorney-General's department;
- (c) clerks or ushers of the court;
- (d) practising lawyers;
- (e) notaries.

1598. Everything that may be the subject of commerce may be sold.

1599.(1) The sale of the property of another is null.

(2) Notwithstanding any provision to the contrary in this Code, a person who, having bought goods obtains possession with the consent of the seller, may transfer title to a third party who receives the same in good faith and without notice of any right of a previous seller in respect of the goods, provided that the seller originally obtained the goods with the consent of the owner.

1600. The rights of succession of a living person shall not be sold even with consent.

1601.(1) If at the moment of the sale the thing sold has totally perished the sale is null.

(2) If only part of the thing has perished, the buyer may elect either to abandon the sale or to demand the delivery of the part that was preserved, subject to an adjustment of the price through a separate valuation of that part.

1602.(1) The sale of a future building is a contract whereby the seller undertakes to build a building within a period determined by the contract.

(2) It may be a building sale forward or a sale of the future completion of a building.

1603.(1) A building sale forward is a contract where the seller undertakes to deliver a building when it is completed and the buyer undertakes to take delivery and pay the price at the time of delivery.

(2) Ownership passes as of right when an authentic document establishes the completion of the building.

1604.(1) The sale of the future completion of a building is a contract by which the seller transfers immediately to the buyer the rights to the soil as well as the ownership of any existing structures on it.

(2) (a) The future structures belong to the buyer stage by stage as they are built.

(b) The buyer must pay the price in proportion to the progress of the work.

(3) The seller retains the right to be in charge of the works until they have been accepted.

(4) The assignment by the buyer of the rights acquired from the sale of a future building has the effect of replacing as of right the

buyer by the assignee with regard to the obligations of the buyer towards the seller.

(5) If the sale was subject to a contract of agency, the latter continues as between the seller and the assignee.

(6) These provisions apply to all transfers *inter vivos*, voluntary or judicial or *mortis causa*.

1605.(1) The seller must explain clearly the obligations the seller undertakes.

(2) An obscure or ambiguous term shall be interpreted against the seller.

(3) There are two principal obligations —

(a) the obligation to deliver, and

(b) the obligation of warranty of the thing sold.

1606. Delivery is the transfer of the thing sold to the control and possession of the buyer.

1607.(1) The obligation on the seller to deliver immovable property is performed when —

(a) the keys to the property are handed to the buyer, if it is a building; or

(b) the documents of title (*titre*) are delivered to the buyer; or

(c) in the case of registered land, when the land is registered in the name of the buyer.

(2) The delivery of movable property is effected by —

(a) actual delivery;

- (b) the handing over of the keys of the building in which it is located;
- (c) the mere consent of the parties if the transfer cannot be made at the moment of the sale or if the buyer was already in control in another capacity.

(3) The delivery of incorporeal property is effected either by the handing over of any document of title (*titre*) or by the use that the buyer makes of the property with the consent of the seller.

1608. Costs of delivery fall on the seller and those of the removal on the buyer, unless there is agreement to the contrary.

1609. Delivery must be made at the place where the thing sold was at the time of the contract, unless there is agreement to the contrary.

1610. If the seller fails to deliver within the mutually agreed time, the buyer may demand either the cancellation of the contract or to be put in possession, provided the seller was responsible for the delay.

1611. In all cases, the seller shall be ordered to pay damages if the buyer suffers any detriment as a result of the failure to deliver at the time agreed upon.

1612. The seller is not bound to deliver the thing if the buyer has not paid the price, unless the seller has granted the buyer time for payment.

1613. The seller is not bound to deliver, even where time was granted for payment, if, since the sale, the buyer has become bankrupt or insolvent in a manner that the seller is in imminent danger of losing the price, unless the buyer has provided security for the payment when it becomes due.

1614.(1) The thing must be delivered in the state in which it was at the time of the sale.

(2) From the day of sale all the profits of the thing belong to the buyer.

1615. The obligation to deliver the thing includes its accessories and everything that is necessary for its permanent use.

1616. The seller must deliver the thing that is the subject matter (*contenance*) of the contract, subject to articles 1617 to 1624.

1617.(1) If the sale of an immovable was made by reference to its area at the rate of so much per standard of measurement, the seller must deliver that amount to the buyer, if the buyer demands it.

(2) If it has become impossible to deliver that specified amount, or if the buyer does not demand it, the seller must accept a proportionate reduction in price.

(3) If the amount delivered is greater than that specified in the contract by more than one-twentieth, the buyer can either provide a supplement to the price or withdraw from the contract.

1618. VACANT

1619.(1) In every situation not covered by article 1617, the area stated in the contract does not give rise to any supplement of the price in favour of the seller for the excess, nor any reduction of price in favour of the buyer for the smaller area, except to the extent that the difference between what is delivered and that specified is more than one twentieth of the value of the whole property sold, unless there is express provision in the contract providing for allowance to be made.

(2) Paragraph (1) applies whether the contract refers first to the measurements, or first by designating the property sold followed by its measurements.

1620. Where under article 1619 there was a supplement in the price for an excess in area, the buyer can either withdraw from the contract or, if the buyer keeps the property, pay the supplement along with interest.

1621. When the buyer has a right to withdraw the seller must give to the buyer any price paid and the costs of the contract.

1622. Proceedings for a supplement in the price on the part of the seller, and for a reduction in the price or for rescission of the contract on the part of the buyer, must be commenced within a year of the date the contract was concluded.

1623.(1) If two properties are sold by the same contract and for a single price but with measurements of the area of each, and it is found that one has a lesser and the other has a greater area than that specified, there is a set-off to the extent of the total measurements of both properties.

(2) Any action under this article must comply with articles 1617 to 1622.

1624. The question of whether the seller or the buyer bears the cost of loss or deterioration of the thing sold before delivery is decided in accordance with articles 1101 to 1369.

1625.(1) The warranty by which the seller is bound to the buyer has two objects —

- (a) to ensure peaceful possession of the thing sold, and
- (b) to protect the buyer against any hidden or latent defects of the thing sold.

(2) The court may order that any damage suffered as a result of a breach of warranty may be recovered by the buyer.

(3) The exclusion of any express or implied warranty imposed by law protects the seller only if the defect or the encumbrance on the property was of a nature that the seller did not know of it and could not reasonably have known of it in the circumstances.

(4) (a) If the seller is a trader who is habitually selling the kind of goods sold, the seller cannot avoid liability on the grounds that he or she did not know and could not have known of the defect.

(b) In that case the seller's liability is discharged if the seller refunds the price or replaces the goods.

1626. Even if, at the time of sale, no provision is made with regard to warranties, the seller warrants peaceful possession for the buyer in relation to the whole or part of the property sold, and against any alleged encumbrances on the property which were not disclosed when the sale was concluded.

1627. The parties may, by special agreement, add to the obligation under article 1626 and may exclude liability for any obvious defects that the buyer should have noticed.

1628.(1) The seller is bound by the consequences of the seller's personal acts.

(2) Any agreement to the contrary is null.

1629. In the case of an exclusion of warranty, the seller is bound to restore the price if the buyer has been put out of possession, unless the buyer bought the property agreeing to accept the risks.

1630. When the warranties apply or when nothing has been agreed on in respect of this matter, the buyer who was put out of possession may demand from the seller—

- (a) the return of the price;
- (b) the return of the value of any produce which the seller was obliged to restore to the owner of the property;
- (c) the costs incurred by the buyer in enforcing the warranties and the costs of the action brought by the real owner;

- (d) damages and the costs and legal expenses connected with the purchase.

1631.(1) The seller must repay the full purchase price, even if at the time of being put out of possession the thing sold has diminished in value or has considerably deteriorated either through the negligence of the buyer or by *cas fortuit*.

(2) Where the buyer has derived profit from deterioration caused by the buyer, the seller may withhold from the repayment of the purchase price a sum equal to that profit.

(3) If the thing sold has increased in value at the time when the buyer is put out of possession, the seller must pay the buyer the excess over and above the purchase price, even if the increase was independent of any act of the buyer.

1632, 1633 VACANT

1634. The seller must reimburse the buyer, or cause the person who has put the buyer out of possession to do so, for all the useful repairs and improvements that the buyer carried out on the property.

1635. If a person sells the property of another in bad faith, the seller must reimburse the buyer for all expenses incurred on the property, even if excessive.

1636.(1) If a buyer is put out of possession of only part of the property sold and that part is of such importance in relation to the whole that the buyer would not have bought the whole without the part taken out of possession, the buyer may rescind the contract.

(2) If the buyer is put out of possession of part of the property and the sale is not rescinded, the value of that part from which the buyer has been excluded shall be reimbursed in accordance with its value at the time of the loss of possession.

1637. VACANT

1638. If the property sold is burdened with non-apparent easements which had not been disclosed, and which are of such

importance that it is reasonable to presume that the buyer would not have bought the property had the buyer known of them, the buyer may either rescind the contract or be indemnified.

1639. VACANT

1640. No action on a warranty of peaceful possession lies against the seller when the buyer has either allowed judgment to go against him or her in the Court of Appeal, or has allowed a judgment to become final by allowing the time for appeal to pass without making the seller a party thereto, provided that the latter can prove that adequate grounds existed to reject the action.

1641. The seller is bound by the warranty against latent defects of the property sold which render it unfit to use for the purpose for which it was intended, or which reduce its use so substantially that the buyer would not have bought it or would have paid a lesser price had the buyer known of them.

1642.(1) The seller is not liable for apparent defects that might reasonably have come to the notice of the buyer.

(2) The seller is liable for latent defects, even if the seller had no reason to know of them.

1643. VACANT

1644. In the cases of articles 1641 and 1642(2), the buyer may elect either to return the property in exchange for the price or to keep the property and recover part of the price paid, the amount to be determined by arbitration of experts or judicially.

1645. A seller who knew of the defects of the property must return not only the price received but also compensate the buyer for any loss suffered.

1646. A seller who could not reasonably have been aware of the defects of the property is bound only to return the price and to reimburse the buyer for the costs of the sale.

1647.(1) The seller of a future building is liable for five years from the date of acceptance of the works for all the latent defects for which the architects, builders and other persons bound to the owner of the building by a contract for work are liable in accordance with articles 1792 and 2270.

(2) These warranties benefit successive owners of the building.

(3) The contract shall not be rescinded nor shall there be a reduction of the price if the seller undertakes to repair the defects.

1648.(1) If the defective thing perishes owing to its bad quality, the loss falls on the seller who is bound to return the price to the buyer and also to pay any other compensation under articles 1646 and 1647.

(2) Where the loss is due to an inevitable accident, the cost falls on the buyer.

1649. An action for latent defects is not available with regard to property sold in a judicial sale unless such sale was a voluntary one in the sense that the seller was not bound to sell the property through a judicial procedure.

1650.(1) The principal obligation of the buyer is to pay the price on the day and at the place agreed upon by the sale.

(2) If nothing has been fixed in this respect at the time of the sale, the buyer shall pay at the place and time of delivery.

1651. VACANT

1652. The buyer owes interest on the price of the sale until payment of the capital—

- (a) if that is agreed at the time of the sale;
- (b) if the thing sold and delivered produces fruits or other income;

- (c) if the buyer is served with notice to pay, in which case the interest runs only from the day of the service of the notice to pay.

1653. If the buyer is sued or has reasonable cause to anticipate being sued, either on a mortgage or by way of vindication, the buyer may suspend payment of the price until the seller has brought that likelihood to an end, unless the seller prefers to give security or unless the contract provides that the buyer will pay notwithstanding the threat of action.

1654.(1) If the buyer does not pay the price, the seller may demand rescission of the sale.

(2) After the extinction of any privilege that the seller may have upon the property, the seller's right to claim rescission cannot be exercised to the detriment of third parties who have, over the property to which the privilege applied, rights derived from the purchaser, and having complied with the law for preserving their rights.

1655.(1) The rescission of the sale of immovable property shall be ordered forthwith if the seller is in danger of losing both the thing and the price.

(2) If that danger does not exist, the judge may grant to the buyer time to pay that is appropriate in the circumstances.

(3) If that time expires without the buyer's having paid, the contract may be rescinded.

1656.(1) Where it is agreed at the time of sale of an immovable that upon failure to pay the price within the agreed time the sale will be rescinded as of right (*de plein droit*), the buyer may nevertheless pay after the expiry of the time, if the buyer has not been served with notice to perform the contract.

(2) Where notice to perform the contract has been received the court may not grant the buyer further time to pay.

1657. With regard to the sale of produce and other movable things, the rescission of the sale is effected as of right (*de plein droit*) for the benefit of the seller and without the need to serve notice once the time agreed for collecting the goods has expired.

1658. In addition to the grounds for nullity and rescission set out in articles 1582 to 1701 and those that are common to all contracts, the contract of sale may be rescinded by the exercise of the option to redeem and by reason of the insufficiency of the price.

1659. The option to redeem is a term in a contract by which the seller reserves the right to take back the thing sold, in accordance with article 1673.

1660.(1) A contract may not create an option to redeem for a period exceeding five years.

(2) A contract that creates an option to redeem for a period exceeding five years shall be deemed to create an option to redeem within five years.

1661. The period fixed in article 1660 is binding and cannot be extended.

1662. A buyer must give at least three months' notice of the impending expiry of the term of the option to redeem or, where that term has expired without the giving of notice, the buyer must give at least three months' notice to the seller before the option to redeem will expire.

1663. Time runs against everyone, even a ward, subject to a right of action against the person who failed to act.

1664. A seller entitled to an option to redeem may bring the action against a subsequent buyer, even if the option to repurchase was not inserted in the later contract.

1665.(1) A buyer bound by an option to redeem may exercise all the rights of the seller.

(2) The buyer may acquire by prescription after a period of ten years against the real owner and against those who claim rights or mortgages on the property.

(3) A buyer may demand that the creditors of the seller first seize the property of the seller.

1666. VACANT

1667. If several persons have joined in selling under the same contract property held in common by them, each can use the right of redemption only in respect of the share held.

1668 - 1672 VACANT

1673.(1) (a) The seller who exercises the option to redeem shall refund not only the principal price but also the costs and notarial fees for drawing up the documents of sale, the costs of any necessary repair and those which have increased the value of the property to the extent of such increase.

(b) The seller shall not enter into possession until all these obligations have been fulfilled.

(2) When the seller takes possession of the property as a result of the exercise of the option to redeem, it is taken free from all encumbrances and mortgages with which the buyer may have burdened it, on condition that the option has been properly registered at the Office of the Registrar-General before the inscription of the said encumbrances and mortgages.

(3) The seller must execute the leases that were granted in good faith by the buyer.

LESION

1674. If the price paid by the buyer is less than one half of the value of the thing bought, whether movable or immovable, the seller may rescind the contract, even if the seller has expressly waived the

right to do so and even if the seller has declared a willingness to give up the surplus value of the property.

1675.(1) In order to establish whether there is a lesion, the value of the property shall be calculated according to its condition at the time of the sale.

(2) In the case of a unilateral promise of a sale the lesion is estimated on the day of its fulfilment.

1676. Articles 1118 and 1674 do not apply to contingent contracts unless it is clear that one of the contracting parties cannot expect to derive a reasonable benefit from the counter promise.

1677. To establish whether lesion occurred a court order must be obtained.

1678.(1) The right to sue for rescission on the ground of lesion is prescribed after two years from the date of the contract.

(2) The time runs against wards.

(3) The time is not suspended while the time agreed upon for the exercise of the option to redeem is still running.

1679, 1680 VACANT

1681.(1) If the action for rescission succeeds the court shall make an order of rescission.

(2) If, in the interim, the property has passed to a third party, the right to a supplement shall be exercised against such party, subject to the right of the third party to recoup any losses against the buyer.

1682.(1) If the buyer prefers to keep the thing and pay a supplement under article 1118, the buyer shall also pay interest on the supplement as from the day when the action for rescission was brought.

(2) If the buyer prefers to return the thing and recover the price, the buyer must also surrender the income of the thing as from the day when the action was brought.

(3) A buyer who has received no income is entitled to interest on the price as from the day fixed for payment of the supplement.

1683.(1) Rescission is not available to a buyer.

(2) Rescission is not available for any sales that, according to the law, can only be concluded with the authority of the court.

1684-1688 VACANT

ASSIGNMENT

1689. In the assignment of a claim or a right or an action to a third party, the delivery shall be effected between the assignor and assignee by assigning title (*remise du titre*).

1690.(1) (a) With regard to third parties, the assignment is effective only when notice of it is given to the debtor.

(b) Nevertheless, the assignment may also be effective as regards the assignee if the debtor accepts the assignment by a document.

(2) Notwithstanding paragraph (1), the rights resulting from any assignment or transfer of any life insurance, or of insurance against fire or any other casualty, vest in such party.

1691. If the debtor pays the assignor before being notified of the assignment by the assignor or the assignee, the debtor is validly discharged.

1692. The sale or assignment of a claim includes the accessories of the claim, such as the security, the privilege and the mortgage.

1693.(1) A person who sells a claim or other incorporeal right guarantees its existence at the time of the assignment, though the sale may have been made without warranty.

(2) That vendor is answerable for the solvency of the debtor only if he or she has agreed to be so answerable, and only to the extent of the price paid by the assignee.

(3) If the vendor has promised to provide a warranty of the solvency of the debtor, that promise applies only to the present solvency of the debtor and does not extend to the future, unless this has been expressly stipulated.

1694, 1695 VACANT

1696.(1) Where a right of inheritance is sold without specifying specific objects, the sale guarantees only the seller's capacity to inherit.

(2) A right to sell an inheritance arises only after the succession has opened.

(3) Where the seller has already received the fruits of any property or the amount of any claims belonging to that inheritance, or where the seller has sold certain items of the succession, the seller must reimburse the buyer unless there is agreement to the contrary.

(4) The buyer must reimburse the seller for all that the seller has paid for the debts and charges of the succession, and the buyer must pay the seller anything which the succession owed the seller, unless there is agreement to the contrary.

1697, 1698 VACANT

1699. A person against whom a right subject to litigation has been assigned may be discharged by paying to the assignee the actual price of the assignment together with the costs and notarial fees, with interest, as from the day when the assignee has paid the price of the assignment.

1700. A right is deemed to be subject to litigation as soon as proceedings are started or a dispute as to its merits arises.

1701. Article 1699 does not apply —

- (a) to an assignment made to a co-heir or co-owner of the right sold;
- (b) to an assignment made to a creditor by way of payment of what is due to the creditor;
- (c) to an assignment made to a possessor of property the right to which is subject to litigation.

EXCHANGE

1702. Exchange is a contract by which each of two parties gives something to the other in return for something.

1703. An exchange is concluded by the mere consent of the parties in the same manner as a sale.

1704. Where a party has received goods in exchange and discovers that the party from whom the goods were received was not their owner, that receiver is not required to deliver his or her part of the exchange, but only to return the thing received.

1705. A party to an exchange who has been dispossessed of the thing received may either sue for damages or to recover the thing given in exchange.

1706.(1) Rescission on the ground of lesion is not available in a contract of exchange.

(2) All other rules laid down for the contract of sale apply to exchanges.

1707. **VACANT**

HIRE

1708. There are two kinds of contract of hire—

- (a) hire of things;
- (b) hire of work or services.

1709. The hire of things is a contract by which one party undertakes to allow another to enjoy a thing during a certain time in return for a certain price, which the latter undertakes to pay.

1710. The hire of work or services is a contract by which one of the parties undertakes to do some work for the other in return for a price agreed between the parties.

1711. Special kinds of hire are—

- (a) the hire of a house or the hire of movable property (bail à loyer);
- (b) the hire of rural property (bail à ferme);
- (c) the hire of animals, the income from which is divided between the owner and the person to whom the animals are entrusted (bail à cheptel);
- (d) estimates (devis), bills of quantity (marchés), and inclusive prices (prix faits) for the carrying out of work at a fixed price where the material for the work is provided by the person for whom the work is to be done.

1712. VACANT

1713. All property, movable or immovable, may be leased or hired.

1714.(1) An agreement for a lease may be written or oral.

(2) A lease must be executed in authentic form.

1715.(1) If an agreement is concluded without writing and has not been executed, and if one of the parties denies its existence, oral evidence is not admissible, however small its price, and even if it is alleged that money has been given by way of earnest.

(2) An oath may be administered to the person who denies the agreement.

1716. If there is a dispute as to the rent in an oral tenancy agreement the term of which has commenced, and if no receipt exists, the landlord shall be believed unless the tenant demands a valuation by experts, in which case the costs of the valuation fall on the tenant if the resultant valuation exceeds the rent declared by the tenant.

1717.(1) A tenant may sublet or assign a lease to another unless excluded by the agreement.

(2) (a) The exclusion may extend to the whole or only part of the premises.

(b) Any such exclusion shall be strictly enforced.

1718.(1) (a) An agreement for a lease confers only personal rights on the parties to it.

(b) It binds a buyer of the property unless the landlord, by the terms of the agreement, has reserved the right to terminate it on the sale of the property.

(c) If the seller has not reserved that right and if the buyer could not reasonably be expected to know of the tenancy, the latter may demand a reduction of the price corresponding to the loss.

(2) An agreement for a lease for less than two years or from year to year is renewable until reasonable notice is given by either party.

(3) (a) A grant of a lease must be executed in an authentic form.

(b) The lease must be registered in the register kept at the Office of the Registrar-General and, if so registered, shall convey a real right in land limited in time as provided in article 543.

(4) Registration constitutes notice to the world.

(5) A lease in an authentic form that has not been registered is construed as an agreement for a lease under paragraph (1).

(6) (a) No lease can extend beyond ninety-nine years.

(b) Nothing in this Code shall affect the right of the Republic to grant perpetual leases of State land for purposes of land settlement in accordance with legislation.

(7) (a) A term of year's lease that has been registered confers a real right of ownership in land limited in time.

(b) As such it may be mortgaged.

(c) The person entitled to a term of years lease has the protection of the possessory actions, but cannot acquire by prescription.

1719.(1) The lease of property of a minor which exceeds nine years only binds the minor who becomes adult, or the minor's heirs for the time which remains to run in the first period of nine years, if that period has not elapsed, or out of the second period and so on, so that the lessee is entitled only to a tenancy for the remainder of the period of nine years in which the minor becomes adult or dies.

(2) Leases of property of a minor executed or renewed before the expiry of the operative lease in the case of agricultural property and in the case of houses, is without effect unless the term has commenced or is intended to commence before the minor attains adulthood.

1720. The owner, by the nature of the contract and without the need for any special stipulation, must—

(a) deliver to the tenant the thing under hire,

(b) maintain that thing in a condition suitable for the use for which it has been hired, and

(c) allow the tenant peaceful enjoyment during the period of the hire.

1721.(1) The owner must deliver the thing in good repair in all respects and during the continuance of the hire carry out all the repairs that may become necessary, except those that are the responsibility of the tenant.

(2) (a) The tenant is entitled to a warranty against any defects of the thing under hire that interfere with its use, even if the owner did not know of them when the hire was concluded.

(b) If the tenant incurs any loss due to these faults or defects, the tenant shall be indemnified.

1722.(1) If during the hire the thing is totally destroyed owing to an inevitable accident, the agreement is terminated as of right.

(2) If it is partly destroyed, the tenant may, according to the circumstances, either demand a reduction of the price or the termination of the hire.

(3) In neither case shall compensation be payable.

1723. The owner may not, during the hire, change the condition of the thing under hire.

1724.(1) If during the hire the thing is in need of urgent repairs that may not be postponed until the end, the tenant must allow them to be carried out, however inconvenient it may be, and even if deprived of part of the thing under hire while they are being carried out.

(2) If the time for repairs extends beyond a reasonable time, the price of the hire shall be reduced in proportion to the time and part of the thing under hire of which the tenant has been deprived.

(3) If the repairs are of such nature that they render the premises necessary for the accommodation of the tenant and his or her family uninhabitable, the tenant may demand the cancellation of the lease.

1725.(1) The owner is not required to warrant the tenant against any disturbance of enjoyment caused by any acts of trespass of third

parties, even if caused without a claim of right on the thing under hire; the tenant may personally sue such parties.

(2) If a lessee or agricultural tenant has been disturbed in the enjoyment of a lease as a result of proceedings concerning the ownership of the property, the lessee or tenant is entitled to a proportional reduction of the rent provided that the disturbance and the interference have been brought to the notice of the landlord.

1726. VACANT

1727. If persons who have committed acts of trespass claim to have rights over the property leased, or if the tenant is sued with a view to securing the total or partial eviction from that property, or with a view to submitting the tenant to the exercise of an easement, the tenant shall call the lessor in guarantee and may be put out of cause by citing the landlord from whom possession is held.

1728. The tenant is bound by two principal obligations—

- (a) to use reasonable care in respect of the thing under hire and to use it in accordance with the purposes of the hire or, if these are not stated, in accordance with such purposes as may be presumed from the circumstances, and
- (b) to pay the price of the hire in accordance with the terms agreed.

1729. If the tenant uses the thing under hire for some purpose other than the purpose for which it was intended or in a way that may cause loss to the owner, the latter may, according to the circumstances, cause the hire to be cancelled.

1730. If an inventory of the condition of the premises between the landlord and the tenant has been made, the latter must return the property in the condition according to the inventory, excluding anything that has perished or deteriorated by wear and tear or by cas fortuit.

1731. If no inventory of the condition of the premises has been made, the tenant is presumed to have received them in good repair, suitable for the tenancy, and must return them in the same condition unless there is evidence to the contrary.

1732. The tenant is responsible for damage to the property during the tenancy, unless the tenant proves that the damage was sustained without his or her fault.

1733. The tenant is answerable for fire unless he or she proves that the fire was due to an inevitable accident, or that it was due to a defect of construction, or that the fire spread from a neighbouring house.

1734.(1) If there are several tenants, they are liable for fire in proportion to the rental value of the part of the premises that they occupy.

(2) If the tenants prove that the fire began on the premises of one of them, that one alone is liable.

(3) If some of them prove the fire could not have started on their premises, they are not liable.

1735. A tenant is liable for the damage and losses caused by the acts of those in his or her household or his or her sub-tenants.

1736. If a hire was concluded without writing, one of the parties may only serve the other with notice to quit by following the time limits fixed by local practice.

1737. If the hire was in writing, it shall be terminated as of right at the end of the term fixed, without the requirement of notice.

1738. If at the expiry of a written hire agreement the tenant is allowed to remain in possession, a new term shall arise the incidents of which shall be subject to the articles which relate to hire without writing.

1739. When a notice to quit has been served the tenant, even where the tenant continued to enjoy the property, may not claim that the hire was tacitly renewed.

1740. The security given for the hire shall not cover any obligations arising from the extension of time under articles 1738 or 1739.

1741. The contract of hire shall be terminated by the loss of the thing under hire and by the failure of the owner and the tenant respectively to fulfil their obligations.

1742. The contract of hire shall not be terminated by the death of either the owner or the tenant.

1743. If the lessor sells the property leased the buyer shall not evict the agricultural tenant or the lessee under a lease in an authentic form the term of which is certain, unless the right was expressly reserved in the lease.

1744.(1) If it is agreed, at the time of the lease, that in the case of sale the buyer may evict the agricultural tenant or lessee, without any provision having been made with regard to damages, the lessor must indemnify the agricultural tenant or the lessee as set out in this article.

(2) If the lease is of a house, flat or shop, the lessor must pay, by way of damages, to the evicted lessee a sum equal to the rent for the period of time which, in accordance with local practice, is allowed between the service of a notice to quit and the eviction.

(3) If the lease is of agricultural land, the indemnity that the lessor must pay to the tenant is one third of the rent payable during the whole of the remaining period of the lease.

(4) The indemnity shall be fixed by experts if the property consists of factories, works or other business requiring significant outlay.

1745 - 1747 VACANT

1748. The buyer who wants to take advantage of the right reserved by the lease to evict the agricultural tenant or lessee in case of a sale must give the lessee notice to quit within such reasonable time as is required for such notices according to local practice and must, in the case of an agricultural tenant, give at least one year's notice.

1749. Agricultural tenants or lessees shall not be evicted unless the damages specified in articles 1744 to 1748 are paid by the lessor or, where the lessor fails to do so, by the buyer.

1750. If the lease has not been drawn up in authentic form or if it has no fixed term, the buyer is not liable to pay damages.

1751. The buyer subject to an option to repurchase shall not make use of the right to evict the lessee until the former has become the absolute owner at the expiry of the time for redemption.

1752. The tenant who does not furnish the house with sufficient furniture may be evicted, unless sufficient security is given for the rent.

1753.(1) The sub-tenant is only bound towards the owner to the extent of any rent of the sub-lease that is owing at the time of the seizure.

(2) The sub-tenant cannot plead payments of rent made in advance.

(3) Payments made by the sub-tenant in pursuance of a term of the contract or in accordance with local practice are deemed not to have been made in advance.

1754. Minor repairs are the responsibility of the tenant and structural repairs are the responsibility of the landlord, unless there is agreement to the contrary.

1755. Minor repairs are not the responsibility of the tenant where they are required by wear and tear or a casfortuit.

1756. Maintenance of the wastewater system is the responsibility of the landlord unless there is agreement to the contrary.

1757. The hire of movables for furnishing a whole house or the whole of a main building or a shop or all kinds of flats is presumed to have been concluded for the usual period of a lease of a house, or main building, shop or flat, according to local practice.

1758.(1) The lease of a furnished flat is deemed to have been concluded —

- (a) on an annual basis when the rent is so much per annum;
- (b) on a monthly basis when the rent is so much per month;
- (c) on a daily basis when the rent is so much per day.

(2) If there is nothing to indicate that the lease is on an annual, monthly or daily basis, the tenancy shall be presumed to have been concluded on a monthly basis.

1759.(1) If a tenant remains in occupation after the expiry of a written lease without any objection on the part of the lessor, the tenant shall be deemed to occupy on the same conditions for a monthly term.

(2) The tenant shall no longer be able to quit or be evicted without giving notice as for a monthly tenancy.

1760. In addition to any damages that may result from a wrongful act, where a tenancy is cancelled due to the fault of a tenant, the tenant must pay the rent for the period reasonably necessary to re-let the premises.

1761. Unless there is agreement to the contrary, the lessor shall not terminate the lease.

1762. Where a lease provides a right for the lessor to occupy the house, and the lessor decides to occupy the house, the lessor must

give notice to quit in accordance with the rules relating to monthly tenancies.

1763.(1) Unless expressly agreed, a person who cultivates land on condition that the produce is shared with the lessor must not sublet or assign the lease.

(2) Where a tenant acts in breach of paragraph (1), the lessor may re-enter the property and the tenant must pay damages for breach of the lease.

1764. VACANT

1765. If the land area of an agricultural lease has been described as smaller or greater than it is, the rent can be raised or reduced only in accordance with articles 1582 to 1682.

1766.(1) A lessor may cancel a lease of agricultural property where the tenant—

- (a) does not stock it with animals and implements essential for its exploitation;
- (b) gives up cultivating the property or cultivates it carelessly;
- (c) uses the property for a purpose different from that intended;
- (d) fails to observe the terms of the lease as a result of which the lessor suffers some damage.

(2) Where a cancellation under paragraph (1) was caused by the fault of the tenant, the tenant must pay damages.

1767. The tenant of agricultural property must store the crops in the place provided for that purpose in the lease.

1768.(1) (a) The tenant of agricultural land must give the owner of agricultural land notice of any encroachments on the property.

(b) A tenant who fails to give notice as required by sub paragraph (a) is liable to the owner of the land for all costs and loss suffered as a result of the failure.

(2) The giving of notice must follow the rules for the service of a summons.

1769.(1) If a lease is granted for a term of years, and during its continuance the whole or at least half of the crop has been lost due to inevitable accident, the tenant may request a reduction of the rent, unless the profits from the crops of previous years offset the loss suffered.

(2) Where there is no such offsetting, the reduction of rent shall be calculated only at the termination of the lease, and the tenant may then claim the reduction of rent on the basis of comparison with the average crop over the whole term of the lease.

(3) A judge may, provisionally, allow the tenant a reduction of the rent because of the loss suffered.

1770.(1) If a lease is granted for one year only and the loss amounts to half of the crop or more, the tenant is released from payment of a proportionate amount of the rent.

(2) No reduction will be allowed where the loss is less than one half.

1771.(1) An agricultural tenant is not entitled to any reduction of rent where the loss occurs after the crop has been harvested.

(2) (a) In the case of a sharecropping arrangement the owner must bear the loss proportionate to the owner's share of the crop.

(b) Subparagraph (a) does not apply where the tenant was in default in providing the owner's share and had been given notice to do so by the owner.

(3) Notwithstanding paragraph (2), the tenant can obtain no reduction when the cause of the loss existed and was known to the tenant when the lease was concluded.

1772.(1) The tenant is liable for loss caused by an inevitable accident only if that is expressly provided for in the lease.

(2) Paragraph (1) —

(a) includes ordinary inevitable accidents such as cyclonic winds, lightning, or drought;

(b) does not include extraordinary inevitable accidents, such as devastation caused by war or floods, unless the tenant has agreed to be liable for all extraordinary inevitable accidents, foreseen or unforeseen.

1773.(1) An oral lease of agricultural land is deemed to be made for a period sufficient to enable the tenant to harvest the crops.

(2) A lease of arable land, divided according to rotation and by seasons, is deemed to be made for as many years as the period of rotation requires.

1774. A lease of agricultural land, including an oral lease, terminates de plein droit at the expiry of the time for which it is deemed to have been made under article 1773.

1775. If at the expiry of a written lease of agricultural land the tenant remains on and is left in possession, a new lease is implied, the effects of which are those provided in article 1773.

1776.(1) The outgoing tenant of agricultural land must leave to the incoming tenant suitable lodgings and other facilities necessary for the work of the following year.

(2) The incoming tenant must provide the outgoing tenant with suitable lodgings and other facilities for the consumption of fodder and for the harvesting which remains to be done.

(3) In both cases, local practice shall be followed.

1777.(1) The outgoing tenant of agricultural land must also leave the straw and manure of the year if that tenant had received them on entering into possession.

(2) If the tenant had not so received the straw and manure, the owner may, on payment of their value, retain them.

1778.(1) A building lease is a lease by which the tenant undertakes to build on the land of the lessor and to preserve what has been built in good condition during the term of the lease.

(2) (a) The parties shall agree with regard to their respective rights of ownership in the existing buildings and in those that are to be built.

(b) In the absence of such an agreement, the lessor becomes, at the termination of the lease, owner of all the buildings, structures and other improvements on the land.

(3) The rights and duties to a building lease are regulated by the contract.

(4) In the absence of specific provisions for building leases, articles 1713 to 1777 apply.

1779. There are three main kinds of hire of work and services—

(a) the hire of workers who enter the service of a person;

(b) the hire of carriers for passengers or goods;

(c) the hire of architects, contractors, and technicians who undertake work on the basis of a plan, estimate or tender for an inclusive price.

1780. The hire of workers is governed by the Employment Act.

1781.(1) The terms on which a person undertakes to provide services must be settled between the parties.

(2) If there is any doubt as to terms after the services have been rendered and the doubt cannot be resolved by any evidence, the parties shall be deemed to have agreed to reasonable terms, having regard to the surrounding circumstances and local practice.

1782.(1) Carriers by land, water and air shall be subject, in respect of the safekeeping of things entrusted to them, to the same obligations as hoteliers under articles 1915 to 1963.

(2) Carriers are responsible not only for property which they have received in the vehicle of carriage, but also for what has been delivered at the station, garage, warehouse, port or airport for the purpose of carriage by them.

(3) Carriers are responsible for the loss or damage of things entrusted to them, unless they prove that such loss or damage occurred through an inevitable accident.

(4) Carriers may not exclude liability for loss or damage caused to persons or goods by their negligence.

(5) Where the liability of carriers for certain types of carriage is limited by the effect of international conventions that have been ratified by Seychelles, paragraphs (3) and (4) do not apply.

1783 - 1784 VACANT

1785. Operators of public vehicles on land or in water or in the air and carriers of public goods must keep a record of the money, articles and parcels of which they are in charge.

1786. VACANT

1787. When a worker undertakes to carry out a piece of work it may be agreed that the worker will supply only labour and skill and not the materials.

1788.(1) Where a worker supplies the materials and the thing made perishes in whatever manner before delivery, the loss falls on the worker, unless the employer is late in taking delivery.

(2) Where a worker supplies only labour and skill, the worker is liable for the destruction of the thing only if the worker is negligent.

(3) If without any fault on the part of the worker the thing perishes before delivery and before the employer was able to examine it, the worker is not entitled to be paid unless the thing perished by reason of a defect in the materials.

(4) (a) If the thing consists of several pieces or is able to be measured, the examination may be done in parts.

(b) The examination is deemed to cover all the parts paid for if the employer pays the worker in proportion to the amount of work done.

1789 - 1791 VACANT

1792. Where a building perishes in part or entirely within ten years of construction, as a result of faulty construction or a defect in the foundations, the architects, contractors and other persons who had the building contract with the owner are liable for that loss.

1793. When an architect or a contractor is in charge of the construction of a building for a lump sum in accordance with a specific plan settled with the owner of the land, no increase may be asked of such owner either on the ground of an increase of the cost of labour or of materials or for any changes or additions made to the plan, unless —

- (a) these changes or additions were authorised in writing and the price fixed by agreement with the owner, or

- (b) the contract is made subject to an escalation clause by reference to a distinct and precise standard appropriate to the building trade.

1794. The employer may annul the agreement for a lump sum, even if the work has already started, subject to indemnifying the contractor for all the contractor's expenses, labour, and profit that would have been made from the agreement.

1795.(1) A contract for work or services is terminated by the death of the workman, the architect or the contractor.

(2) The owner, however, must pay the heirs such proportion of the agreed price as corresponds to the value of the work done and that of the materials supplied, but only if such work or such materials are of use to the owner.

1796. VACANT

1797. A contractor is liable for the acts of his or her employees.

1798. Masons, carpenters and other workers who were employed in the construction of a building or other work made in workshops have no right of action against the person for whom the work was done, except to the extent of that person's debt to the contractor at the time when proceedings are commenced.

1799.(1) Masons, carpenters, locksmiths and other workers who make contracts for a lump sum are bound by articles 1787 to 1798.

(2) They shall be regarded as contractors in respect of the work undertaken.

1800. The lease of livestock is a contract by which one of the parties delivers to the other livestock to be kept, fed and looked after under conditions agreed upon between them.

1801. There are several kinds of livestock lease —

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- (a) simple livestock lease;
 - (b) half and half livestock lease;
 - (c) lease of livestock to a tenant farmer or to a share farmer;
 - (d) a lease of livestock (cheptel), as described in article 1831.

1802. Any kind of animal that can have young and that can benefit agriculture or commerce can be leased.

1803. VACANT

1804. The simple lease of livestock is a contract whereby animals are delivered from one person to another to guard, feed and look after on condition that the lessee takes one half of the young animals born and also bears one half of the loss (*de mwatye*).

1805.(1) The reference in the lease to the number, description and value of the animals delivered does not confer the ownership upon the lessee.

(2) Its only effect is to serve as a basis for the settlement on the day of the expiry of the contract.

1806. The lessee shall exercise reasonable care with regard to the safe keeping of the livestock.

1807.(1) The lessee is liable for accidental loss only if such loss was preceded by a fault on the lessee's part.

(2) In case of dispute, the lessee must prove that the loss was accidental and the lessor must prove that the loss was due to the fault of the lessee.

(3) The lessee who can prove that the loss was accidental must, nevertheless, account for the skins of the animals.

1808 - 1809 VACANT

1810.(1) If the livestock totally perishes without the fault of the lessee, the loss falls on the lessor.

(2) If the livestock perishes in part, the loss is borne by both in common on the basis of the difference between the original valuation and that at the end of the lease.

1811.(1) The parties cannot by contract agree that—

- (a) the lessee must bear the total loss of the livestock, even if that occurs by accident or without fault on the part of the lessee;
- (b) the lessee will bear a greater part of loss than the lessee would have of profit;
- (c) the lessor will be entitled at the end of the lease to something more than the livestock originally delivered.

1812.(1) The lessee alone is entitled to the milk, manure and work of the animals the subject of the lease.

(2) The wool and the young shall be shared.

1813.(1) The lessee may not dispose of any animal of the herd, whether of the original stock or of the young, without the consent of the lessor, who in turn may not dispose of it without the consent of the lessee.

(2) (a) When the livestock is given to the tenant farmer of another owner the latter must be notified of the lease.

(b) Where such notice is not given, the owner of the land may seize and sell the animals in satisfaction of debts due by the owner's tenant farmer.

1814. The lessee may not shear animals without notifying the lessor.

1815.(1) If the date of expiry of the lease is not fixed by the agreement, the lease is deemed to have been made for three years.

(2) The lessor may demand the cancellation of the lease earlier if there is a breach of the obligations by the lessee.

1816. VACANT

1817.(1) (a) At the end of the lease, or on its cancellation, the lessor is entitled to take animals of every kind, in a way which will permit the lessor to take a stock of animals similar to the animals originally delivered, having special regard to their number, breed, age, weight and quality.

(b) Excess shall be shared.

(2) If there are not enough animals to provide the stock, as described in paragraph (1), the parties shall take account of the loss on the basis of the value of the animals on the day of the expiry of the contract.

(3) Any agreement by which the lessee, at the expiry of the contract or its cancellation, must provide livestock of equal value to that of the original estimate is null.

1818. The lease of livestock on the basis of half and half is a partnership by which each party provides one half of the animals and the whole is held in common for profit or for loss (*de mwatye*).

1819.(1) The lessee alone shall take the profit from the milk, the manure and work of the animals.

(2) (a) The lessor is entitled only to one half of the wool and of the young.

(b) Any agreement to the contrary is null unless the lessor is the owner of the farm of which the lessee is a tenant farmer or share farmer.

1820. All other rules of the simple lease apply to the half and half lease.

1821. The lease of livestock is one by which the owner of a farm lets it on condition that, at the expiry of the lease, the lessee shall leave a similar stock of animals to those received at the commencement of the lease.

1822.(1) The reference to the number, description and value of the animals delivered, as stated in the lease, does not transfer property in the animals to the lessee.

(2) The only purpose of the reference is to serve as the basis of settlement when the contract comes to an end.

1823. All the profits belong to the farmer during the period of the lease unless there is agreement to the contrary.

1824. In leases of livestock, the manure is not included in the personal profits of the lessee but goes with the farm, for the benefit of which alone it must be used.

1825. A loss, even a total loss caused accidentally, is borne by the lessee unless there is agreement to the contrary.

1826.(1) At the end of the lease, or when it is terminated, the lessee shall leave animals of each kind in such a manner as to make up a stock of animals similar to the stock received, especially with regard to the number, breed, age, weight and quality of the animals.

(2) If there is an excess, it belongs to the lessee.

(3) If there is a deficit, settlement between the parties shall be made on the basis of the value of the animals at the termination of the contract.

(4) An agreement by which a lessee, at the end of the lease or at its earlier termination, must redeliver a stock of animals of an equal value to that of the animals originally delivered shall be null.

1827. If livestock perishes without any fault of a share farmer, the loss falls on the lessor.

1828.(1) The parties may agree that—

- (a) the share farmer shall deliver the lessee's share of the wool to the lessor at below its ordinary value;
- (b) the lessor shall take a greater part of the profit;
- (c) the lessor shall have one half of the milk.

(2) An agreement that the lessee share farmer should bear the total loss is null.

1829. A share farmer lease expires with the lease of the farm.

1830. All other rules of the simple lease apply to the lease of livestock to a share farmer.

1831. When one or more cows are delivered to be kept and fed the lessor remains the owner but may only take the young that are born.

PARTNERSHIP

1832. Partnership is a contract whereby two or more persons agree to make a joint contribution for the purpose of sharing any benefit that may result from it.

1833.(1) A partnership must have a lawful object and must be made in the common interest of the parties.

(2) Every partner must contribute either money or other property or work to the partnership.

1834.(1) A partnership agreement must be drawn up in writing when the object exceeds the value of R50,000.

(2) Oral evidence is not admissible against and beyond the terms of the document of partnership nor as to any terms allegedly

agreed before, during, or after the drawing-up of the document, even if it relates to R50,000 or less.

1835. Partnerships are either universal or particular.

1836. There are two kinds of universal partnerships—

- (a) the partnership of all present property;
- (b) the universal partnership of profits.

1837.(1) In the partnership of all present property, the parties jointly contribute all the movable and immovable property that they possess and any profits they may derive from it.

(2) (a) They may also include every other kind of profit, but the property that may devolve on them by way of succession, gift or legacy is not included except to the extent of the enjoyment of such property.

(b) An agreement, the purpose of which is to include the ownership of such property in the partnership, is null.

1838.(1) The universal partnership of profits consists of —

- (a) everything which the parties acquire through work, however obtained, during the continuance of the partnership;
- (b) any movable property that each partner possesses at the time of the contract.

(2) Immovable property that each partner owns personally is included in the partnership only to the extent of its enjoyment.

1839. The simple agreement to set up a universal partnership without any further explanation shall be construed as setting up a universal partnership only as to profits.

1840. A universal partnership can only be set up amongst persons who have capacity to transfer to or to receive from one another and who are not forbidden to receive any advantage to the detriment of others.

1841. The particular partnership is a partnership that only applies to determinate things or to their use or to any fruits derived from them.

1842. The contract whereby several persons become partners either for a specific venture or for the exercise of some trade or profession is also a particular partnership.

1843. A partnership begins when the contract is made unless a different time is stipulated.

1844. Subject to article 1868, if a partnership does not contain a term relating to its duration, it is deemed to extend over the lifetime of all the partners, or if it relates to a venture of limited duration, over the whole of the time for which the venture lasts.

1845.(1) Each partner is a debtor to the partnership in respect of all the property that that partner promised to contribute.

(2) When that contribution consists of a specific thing of the possession of which the partnership has been deprived, the partner stands security for it to the partnership in the same manner as the seller towards the buyer.

1846.(1) A partner who is bound to contribute a sum to the partnership and has not done so becomes, by operation of law and without the need for a demand —

- (a) a debtor for the interest of that sum as from the day when that sum becomes due;
- (b) a debtor for sums which the partner has taken out of the partnership as from the day on which they were withdrawn for that partner's personal benefit.

(2) Paragraph (1) applies without prejudice to the right to claim damages.

1847. Partners who are bound to provide their work to the partnership must render account to the partnership of all the gains they have made through the kind of skill that is the object of that partnership.

1848.(1) When one of the partners is, on that partner's personal account, creditor of a third party who is also a debtor to the partnership of a sum also due, the sum which the partner receives from such debtor shall be used towards the discharge of both debts in proportion to each amount due, even if the creditor by receipt accepted the payment in full settlement of the creditor's private claim.

(2) If the creditor by receipt accepted the payment in full settlement of the debt to the partnership, that is a valid discharge.

1849. When one of the partners has received his or her full share of the partnership claim and the debtor has since become insolvent, that partner must transfer the share to the common fund, even if the receipt was expressly stated to be in respect of that partner's share of the debt.

1850. Every partner is liable to the partnership for any loss caused by that partner's fault, and cannot set-off against a claim for such loss any advantage the partnership may have derived from that partner's skill in other matters.

1851.(1) If the things the enjoyment of which alone is contributed to the partnership are certain and determinate and cannot be consumed by use, the partner who owns them bears the risk.

(2) If the things can be consumed or if they deteriorate or if they are intended for sale, or if they are brought into the partnership on the basis of a valuation based on an inventory, the partnership bears the risks.

(3) If the thing has been valued, the partner shall only be liable for the amount of the valuation.

1852. A partner has a right of action not only for any sums paid on behalf of the partnership but also for any obligations which that partner has incurred in good faith in the course of the business of the partnership, and for the risks inherent in the management.

1853.(1) When the document of partnership does not provide for the contribution of each partner to the profits and losses, such contribution is in proportion to the share that each partner has brought into the capital of the partnership.

(2) Where a partner contributes only work, that partner's share of the profits and losses is deemed to be equal to that of the partner who has brought in the least capital.

(3) Where work, skill or know-how contributed justifies a higher participation, the court may, if the contract is silent on the matter, adjust the contributions on an equitable basis.

1854.(1) If the partners have agreed that their respective contributions are to be decided by one of them or by a third party, the decision shall not be challenged unless it is manifestly unfair.

(2) No challenge shall be admitted in this respect after three months from the time when the party who has a grievance becomes aware of such decision or has acted on it.

1855.(1) An agreement by which one of the partners obtains all the profits is null.

(2) A term that exempts the sums or things brought into the capital of the partnership by one or more partners from all contribution to losses is null.

1856.(1) A partner who has been put in charge of the management by a special term in the contract of partnership may perform, notwithstanding the opposition of the other partners, all acts relating to that management, provided that there is no fraud on the part of that partner.

(2) (a) This authority cannot be revoked without legitimate reason for as long as the partnership lasts.

(b) If it was granted by a document subsequent to the contract of partnership it is revocable in the same way as the simple power of attorney.

1857. When several partners have been put in charge of the management without their respective duties having been specified or without an indication that one shall not be able to act without the other, each may separately perform all the duties of such management.

1858. If it is agreed that one of the managers shall not act without the other, one cannot, without a new agreement, act in the absence of the other even if that other is in fact unable to concur on the acts of management.

1859.(1) This article applies in the absence of special terms relating to management.

(2) (a) The partners are deemed to have granted one another the power to manage.

(b) What is done by one is valid, even in respect of the shares of the other partners, although their consent has not been obtained.

(c) The other partners, or one of them, retain the power to oppose an act before its completion.

(3) Every partner may use the things belonging to the partnership, provided they are used for the purpose for which they are intended as established by practice, and provided their use is not against the interest of the partnership or such as to prevent the other partners from using the things according to their rights.

(4) Every partner may demand that the other partners contribute to the costs necessary for the maintenance of the property belonging to the partnership.

(5) A partner may not make renovations to immovable property of the partnership if the other partners do not consent even if, in the partner's view, the renovations are beneficial to the partnership.

1860.(1) The partner who does not manage the affairs of the partnership cannot transfer or pledge the movable property that belongs to it.

(2) The legal representatives of the partnership may consent to a mortgage in the name of the partnership by virtue of any power of attorney written in the contract or by virtue of a decision of the partners taken in accordance with the terms of the contract, even if the terms were established by a document under private signature.

1861.(1) Every partner may, without the consent of the other partners, take a third party as a partner in respect of that partner's share in the partnership.

(2) A partner, even if in charge of the partnership management, cannot, without the consent of the other partners, bring a third party in as a partner of the partnership.

1862. In non-commercial partnerships, the partners are not jointly and severally liable for the partnership debts and one of the parties cannot bind the others unless he or she has been empowered by them to do so.

1863. The partners are bound towards the creditors with whom they have concluded a contract, each one for an equal sum and share, even if the share of one of them is smaller, unless the contract has specifically limited the liability of the latter to the extent of his or her share.

1864. The proviso that the obligation has been contracted on behalf of the partnership only binds the contracting partner and not the others unless they have given the contracting partner the power to enter into such a contract, or unless the partnership has benefited from it.

1865. A partnership is terminated by—

- (a) the expiry of the time for which it was set up;
- (b) the destruction of the thing or the conclusion of the business;

- (c) the death of one of the partners;
- (d) the interdiction or insolvency of one of them;
- (e) the expressed intention of one or several partners to no longer remain in partnership.

1866. The agreement to extend a partnership set up for a limited time is valid only if it is made in the same writing and form as the contract of partnership.

1867.(1) When one of the partners promises to bring into the partnership the ownership of a thing, the loss of it prior to the transfer brings the partnership to an end for all the partners.

(2) The partnership is also dissolved in all cases of loss of the thing, if its enjoyment only had been brought into the partnership, the ownership having remained in the hands of a partner.

(3) The partnership shall not come to an end by the loss of the thing the ownership of which had already been brought into the partnership.

1868.(1) If it is provided that on the death of one of the partners, the partnership should either continue with the deceased's heir or only with the surviving partners, such provisions must be observed.

(2) Where the partnership continues only with the surviving partners, the heir of the deceased partner is only entitled to a distribution in accordance with the assets of that partnership at the time of the death and shall not participate in any later distribution unless such distribution necessarily arises from acts done before the death of the deceased partner.

1869.(1) (a) The dissolution of the partnership at the will of one of the partners only applies to partnerships the duration of which is unlimited.

(b) It shall be effected by a renunciation served on all the partners, provided that such renunciation is made in good faith and not inopportune.

(2) (a) A renunciation is not in good faith when it is made in order that the renouncing partner alone derives a benefit, which all the partners had intended to derive jointly.

(b) A renunciation is inopportune when the things are no longer in their former state and it is important for the partnership that its dissolution be postponed.

(3) A partner who may freely assign his or her share or who may transfer at will a share corresponding to his or her contribution, is deemed to have renounced the right to bring about the dissolution of the partnership at will.

1870. VACANT

1871. The dissolution of partnerships limited in time may not be demanded by one of the partners before the expiry of the period agreed upon, unless there is just cause, as when another partner fails in his or her obligations or a permanent disablement has rendered that partner unfit in respect of the business of the partnership, or in other similar cases the soundness and gravity of which shall be left to the discretion of the court.

1872. The rules relating to the division of inheritances, the forms of that division and the obligations amongst all the co-heirs arising therefrom, apply to the division amongst partners.

1873 VACANT

LOAN

1874. There are two kinds of loans—

- (a) the loan of things that may be used without being destroyed (*prêt à usage*);

- (b) the loan of things that can be consumed by their use (*prêt de consommation*).

1875. The loan for use is a contract by which one of the parties delivers a thing to another to be used on condition that the borrower return it after having used it.

1876. The loan for use is essentially gratuitous.

1877. The lender remains owner of the thing lent.

1878. Everything which is in commercial exchange (*dans le commerce*) and which is not consumed by use may be the subject-matter of a contract of loan.

1879.(1) The rights and duties that are created by the loan for use are transmissible to the heirs of the lender and the borrower.

(2) The heirs of a person who lends to another personally and solely in consideration of that person have no enjoyment of the thing lent.

1880.(1) A borrower must show reasonable care with regard to the safe keeping and preservation of the thing lent.

(2) A borrower must use it only for the purpose for which it is intended by its nature or by the contract.

(3) A borrower who uses the thing otherwise than for the purpose for which it is intended by its nature or by the agreement is liable for damages.

(4) A borrower who uses the thing for a purpose different from or for a period longer than agreed is liable for the loss, even if the loss is accidental.

1881. VACANT

1882. If the thing lent perishes by an inevitable accident from which the borrower could have preserved it by use of the borrower's

property, or if the borrower could only preserve one of two things and chose to preserve the borrower's, the borrower is liable for the loss of the other.

1883. If the thing had been valued when it was lent, the supervening loss, even if due to an inevitable accident, falls on the borrower unless there is agreement to the contrary.

1884. If the thing deteriorates merely by the use for which it is borrowed, provided there is no fault on the part of the borrower, the borrower is not liable for the deterioration.

1885. The borrower shall not retain the thing by way of compensation for what is due from the lender.

1886. If the borrower in using the property has incurred some expense, the borrower is not able to recover it.

1887. If several persons have jointly borrowed the same property, they are jointly and severally liable to the lender.

1888.(1) The lender shall not take back the property lent until the expiry of the agreed period or, if there is no agreement, until after it has served the purpose for which it was borrowed.

(2) If during the period of the loan or before the need of the borrower ceases, a pressing and unexpected need for the property arises for the lender, the court may, according to the circumstances, order the borrower to restore it.

1889. VACANT

1890. If, during the period of the loan, the borrower is obliged, in order to preserve the property, to incur any extraordinary and necessary expense that is of such urgent nature that the borrower is not able to notify the lender, the latter is bound to reimburse the borrower.

1891. When the property lent has such defects as could cause some detriment to its user, the lender is liable for loss caused by those

defects where the lender knew of them and failed to warn the borrower.

1892. The loan for consumption is a contract by which one of the parties delivers to the other a certain quantity of things that are consumed by use on condition that the borrower returns goods of the same kind and quality.

1893. The effect of this loan is to make the borrower the owner of the thing lent, and the risk of the loss falls on the borrower, however it occurs.

1894.(1) Things that, although of the same kind, differ one from the other, such as animals, may not be given by way of a loan for consumption.

(2) In that case the loan is for use.

1895.(1) The obligation that arises from a loan of money is always a numerical sum.

(2) If there is an increase or a decrease in the value of the money before the time of payment, the debtor must restore that sum which is legal tender at the moment of payment.

(3) This obligation shall not be construed as preventing the parties from agreeing to a readjustment of their monetary obligations by reference to some recognised index.

(4) This article does not apply if the loan is of bullion.

1896. VACANT

1897. If the loan is of bullion or of commodities, whatever the increase or decrease in their price, the debtor must always return the same quantity and quality.

1898.(1) In the loan for consumption, the lender is bound by article 1891.

(2) The lender shall not demand the return of the things lent before the expiry of the agreed term.

(3) If no time had been fixed for the return of the thing, the court may grant the borrower an extension according to the circumstances.

(4) If it had been agreed that the borrower would pay when the borrower found the means to do so, the court shall fix a time for payment according to the circumstances.

1899 - 1901 VACANT

1902.(1) The borrower must return things of the same quantity and quality as the things lent and at the time agreed.

(2) A borrower who finds it impossible to do that must pay the value of the things having regard to the time and place at which the thing ought to have been returned according to the contract.

(3) If the time and place is not fixed, the payment must be made at the price prevailing at the time and place at which the loan was contracted.

1903. VACANT

1904. A borrower who does not return the things lent or their value at the agreed time is liable for interest as from the date of the filing of the action.

1905. Interest for a simple loan may be agreed to be paid either in money or movables.

1906. The borrower who has paid interest that has not been agreed on may neither demand its return nor deduct it from the capital.

1907.(1) Interest is either legal or conventional.

(2) Legal interest is prescribed by legislation.

(3) Conventional interest may exceed the legal interest where that is not prohibited by legislation.

(4) A conventional rate of interest must be agreed on in writing.

1908. The receipt for the capital given without a reservation as to interest creates a presumption that interest has been paid, and operates as a discharge for the interest.

1909.(1) Parties may agree to pay interest on capital, which capital the lender undertakes not to claim back.

(2) In that event, the loan is an annuity.

1910. An annuity may be in perpetuity or for life.

1911.(1) An annuity contracted in perpetuity is in principle redeemable.

(2) The parties may, however, agree that the redemption shall not be made before the expiry of a period which cannot exceed ten years or that it shall not be made without giving to the creditor such notice in advance as the parties have determined.

1912. The debtor of an annuity contracted in perpetuity may be compelled to redeem it—

(a) where the debtor fails to perform the debtor's obligations for two years;

(b) where the debtor fails to supply to the lender the sureties promised by the contract.

1913. The capital of the annuity contracted in perpetuity becomes due also on the bankruptcy or insolvency of the debtor.

1914. The rules relating to life annuities are in articles 1968 to 1983.

DEPOSIT AND RECEIVERSHIP

1915. Deposit in general is a contract by which a party receives the property of another subject to the obligation of safekeeping and of restoring it in kind.

1916. There are two kinds of deposit—

- (a) deposit properly so called, and
- (b) deposit with a stakeholder or receivership.

1917.(1) The deposit properly so called is in principle a gratuitous contract.

(2) It can apply only to movable property.

(3) It is only completed by actual or symbolic delivery of the property deposited.

(4) Symbolic delivery is sufficient when the depositary is already in possession, under some other title (titre), which it is agreed the depositary shall continue to hold by way of deposit.

1918, 1919 VACANT

1920. The deposit is either voluntary or necessary.

1921. A voluntary deposit is made by the mutual agreement of the person who delivers the property and the person who receives it.

1922. A voluntary deposit may only be validly made by the owner of the property deposited or with the owner's express or implied consent.

1923.(1) A voluntary deposit must be in writing.

(2) Oral evidence is not admissible if the property exceeds R50,000.

1924. Where a deposit valued at R50,000 or less cannot be proved by writing, the depositary's declaration in proceedings is admissible as to whether the deposit was made, as to its subject-matter, or as to the fact of its restitution.

1925.(1) A voluntary deposit can be made only between persons capable of concluding a contract.

(2) A person capable of concluding a contract who accepts a deposit made by a person who has no capacity is bound by all the obligations of a true depositary and may be sued by the guardian of the incapacitated person.

1926. If the deposit is made by a person fully capable with a person of reduced capacity, the person who made the deposit is entitled only to vindicate the property deposited while it is still in the hands of the depositary, or may claim restitution to the extent to which the depositary has benefited from the deposit.

1927.(1) The depositary must exercise, with regard to the safekeeping of the property deposited, the same standard of care as the depositary exercises in relation to the depositary's property.

(2) The standard of reasonable care applies —

- (a) if the depositary offered to receive the deposit;
- (b) if the depositary receives payment for the safekeeping of the deposit;
- (c) if the deposit is made solely in the interest of the depositary;
- (d) if it is expressly agreed that the depositary is liable for fault.

1928. VACANT

1929. The depositary is never liable for any accident caused by *casfortuit*, unless notice has previously been served on the depositary to restore the property.

1930. The depositary must not use the property deposited except with the express or implied permission of the depositor.

1931. The depositary must not seek to find out the nature of the property deposited if it has been deposited in a closed safe or under a sealed cover.

1932.(1) The depositary must return property identical to that which was received.

(2) The deposit of sums of money must be returned in similar coins and notes received, whether their value has increased or diminished.

1933.(1) The depositary is bound only to return the property deposited in the state it is in at the moment of the return.

(2) The depositary is not responsible for any deterioration that did not occur as a result of the depositary's act.

1934. The depositary from whose custody the property was taken by *cas fortuit* and who has received money or something else in its place shall return what was received.

1935. The heir of the depositary who has sold the property in good faith and in ignorance of the deposit is bound only to return the price received or, if no price was received, must assign his or her right of action against the buyer.

1936.(1) If the property deposited has produced any fruits (*fruits*) that were collected by the depositary, the depositary must restore them.

(2) The depositary is not liable for any interest on money deposited unless notice has been served to restore the property, and then only from the date of such notice.

1937. The depositary need not return the property deposited except to the person who deposited it or to the person in whose name the deposit was made or to a person designated to receive it.

1938.(1) The depositary cannot demand from the person who has made the deposit proof that the depositor is the owner of the property deposited.

(2) If the depositary discovers the property is stolen and learns the name of the true owner, the depositary must disclose to the true owner the deposit made and give the true owner notice to claim it within a fixed and reasonable time.

(3) If the person to whom the disclosure was made under paragraph (2) neglects to claim the deposit, the depositary is validly released from liability by delivering the property to the person who deposited it.

1939.(1) Where the person who made the deposit has died, the property deposited may only be returned to that person's heir.

(2) If there are several heirs, it shall be returned to each one of them, in proportion to their share, or to the fiduciary if one is appointed.

(3) If the property deposited cannot be divided, the heirs must come to an agreement amongst themselves before they can receive it.

1940. If the person who has made the deposit has changed status, as for instance, if the person becomes interdicted, the deposit must be restored only to the person who administers the rights and the property of the depositor.

1941. If the deposit had been made by a guardian in that capacity, it must be restored, if the guardianship has come to an end, to the ward.

1942.(1) If the contract of deposit indicates the place where restitution is to be made, the depositary must take the property deposited to such place.

(2) If there are any transport costs, they are borne by the depositor.

(3) If the contract does not indicate the place of restitution, it must be made at the place where the deposit was made.

1943. VACANT

1944. The deposit shall be delivered to the depositor as soon as the depositor claims it, even if the contract had fixed a certain time for its return, unless the depositary has an order for attachment or a court order against the return or removal of the property deposited.

1945. The depositary who acts in bad faith loses the right of assignment.

1946. All the obligations of the depositary come to an end when the depositary is the owner of the property deposited.

1947.(1) A depositor must reimburse the depositary for the costs incurred for the maintenance of the property deposited and indemnify the depositary for all losses that the depositary has incurred because of the deposit.

(2) The depositary may retain the deposit until the complete discharge of the sum due.

1948. VACANT

1949. A necessary deposit is one that is forced upon the parties through an accident or other unforeseen event.

1950. Oral evidence is admissible to prove a necessary deposit, even if its value is more than R50,000.

1951. Articles 1952 to 1954 do not apply to vehicles, property left in a vehicle, or to live animals.

1952.(1) A hotelier is liable, as depositary, for the effects of the guests.

(2) A deposit of this kind is a necessary one.

(3) A hotelier is liable for any damage to or destruction or loss of property brought to the hotel by any guest who has sleeping accommodation.

(4) The following is deemed to be property brought to the hotel—

(a) property which is at the hotel during the time when the guest has the accommodation;

(b) property of which the hotelier or a person for whom the hotelier is responsible takes charge outside the hotel during the time when the guest has the accommodation;

(c) property of which the hotelier or a person for whom the hotelier is responsible takes charge whether at the hotel or outside it during a reasonable period preceding or following the time when the guest has the accommodation.

(5) Liability under this article is limited to one hundred times the daily charge for the accommodation.

1953.(1) The liability of a hotelier is unlimited where the property has been deposited with the hotelier or where the hotelier has refused to receive property that the hotelier is bound to receive for safe custody under paragraph (2).

(2) (a) A hotelier must receive securities, money and valuable articles.

(b) A hotelier may only refuse to receive such property if it is dangerous or if, having regard to the size or standing of the hotel, it is of excessive value or cumbersome.

(c) A hotelier has the right to require that the property to be received for safe custody be in a fastened or sealed container.

1954.(1) A hotelier is not liable for damage, destruction or loss due to—

- (a) the guest or a person accompanying the guest or a person employed by the guest or a person who visits the guest;
- (b) an accident or other unforeseen event;
- (c) the nature of an article brought to the hotel by the guest or any other person.

(2) A hotelier is liable and does not have the benefit of the limitation of liability under article 1952(5) where the damage, destruction or loss is caused by a wilful act or omission or negligence of the hotelier or of any person for whose actions the hotelier is responsible.

(3) Except where paragraph (1) applies, the guest shall cease to be entitled to the benefit of these provisions if after discovering the damage, destruction or loss the guest does not inform the hotelier without undue delay.

(4) Any notice or agreement that purports to exclude or diminish the hotelier's liability given or made before the damage, destruction or loss has occurred is void.

1955. A deposit may take the form of a deposit with a stakeholder if concluded by the agreement of the parties, or of a receivership if judicially imposed.

1956. The deposit with a stakeholder is concluded by agreement and is made by one or more persons placing property in dispute in the hands of a third party, who must deliver it, after the settlement of the dispute, to the person entitled.

1957. The deposit with a stakeholder need not be gratuitous.

1958. VACANT

1959. The deposit with a stakeholder may be movable or immovable property.

1960. The stakeholder is not discharged before the dispute is settled except by the consent of all the interested parties or by a court for just cause.

1961. A court may order into receivership—

- (a) movables seized from a debtor;
- (b) immovable property or movable property the ownership or possession of which is subject to litigation;
- (c) things tendered by a debtor to secure release.

1962.(1) The appointment of a judicial custodian gives rise to mutual obligations between the person entitled to the attachment and the custodian.

(2) The custodian must exercise reasonable care with regard to the maintenance of the seized property.

(3) The custodian must deliver such property either to the person entitled to the attachment on the conclusion of the proceedings so that the property may be sold, or to the party against whom execution was levied if the attachment order is lifted.

(4) The person whose property is seized must pay the custodian remuneration as set down by legislation.

1963.(1) Judicial receivership is conferred on either a custodian agreed on by the interested parties or a custodian nominated by the court.

(2) The custodian is subject to the obligations that are attached to a deposit with a stakeholder.

CONTINGENT CONTRACTS

1964. A contingent contract is a mutual agreement the effects of which, with regard to the profits and losses, whether for all the parties or one or more of them, depend on an uncertain event.

1965.(1) There is no right of action for the recovery of a gaming debt or of a wager.

(2) Paragraph (1) does not apply to a game of skill.

(3) A loser may not recover any money paid voluntarily unless there has been fraud, deceit, or false pretences on the part of the winner.

1966, 1967 VACANT

1968.(1) A life annuity may be granted in a manner involving mutual obligations in return for a sum of money, or for movable property of some value, or for immovable property.

(2) A life annuity may be granted by gift inter vivos or by will.

1969, 1970 VACANT

1971.(1) A life annuity may be granted for the extent of the life of the person who pays for it or for the life of a third party who has no right to its enjoyment.

(2) A life annuity may be granted on the life of one or more persons.

1972 - 1974 VACANT

1975. A contract of life annuity has no effect where it is made on the life of a person suffering from an illness from which that person died within the twenty days following the date of the contract.

1976. A life annuity may be granted at whatever rate the contracting parties choose to fix.

1977. The person in whose favour the life annuity for value is granted, may demand the rescission of the contract if the debtor does not supply the security agreed upon for its performance.

1978.(1) The failure to pay the arrears of the annuity does not entitle the person in whose favour it was granted to demand the return of the capital or to seize the property that was alienated.

(2) The person in whose favour the annuity was granted is entitled to seize the property of the debtor, to cause a sale of such property, and to obtain an order or the consent of the debtor to deduct from the proceeds of the sale a sufficient sum for the payment of arrears due.

1979.(1) The debtor of the annuity is not released from the payment of the annuity either by offering to return the capital or by renouncing the ability to reclaim the payments already made.

(2) The debtor of the annuity must service the annuity during the whole life of the person or persons on whose life the annuity was granted, whatever the length of the life of such persons and however onerous the service of the annuity may have become.

1980.(1) A life annuity is only due to the person entitled to the extent of the number of days that the person on whose life it has been granted is alive.

(2) If it is agreed the annuity will be paid in advance, the period for which the full payment is due to the creditor runs from the day on which it should have been made.

1981. A term that a life annuity may not be seized is void unless the life annuity was granted gratuitously.

1982.(1) An annuity established in perpetuity that represents the price of the sale of an immovable, or is a condition for the transfer, gratuitously or for value, of immovable property, is redeemable.

(2) The creditor is free to fix the terms and conditions of the redemption and may also stipulate that the annuity shall not be redeemable within a fixed period.

(3) (a) A period fixed under paragraph (2) must not exceed thirty years.

(b) Any provision to the contrary is null.

1983. The person entitled to a life annuity may demand payment of it on establishing his or her existence or that of the person on whose life the annuity was granted.

AGENCY

1984.(1) Agency or power of attorney is an act by which a person called the principal gives to another called the agent the power to do something for the principal and in the principal's name.

(2) The contract is made by acceptance by the agent.

1985.(1) A power of attorney may be given by a notarial document, by a document under private signature, or by a letter.

(2) A power of attorney may be given orally but oral evidence of it is only admissible in accordance with articles 1101 to 1369.

(3) The acceptance of the agency may be implied and may result from the acts done by the agent.

1986.(1) Agency is a gratuitous contract unless there is evidence to the contrary.

(2) Agency is either special and for certain cases, or general.

1987. VACANT

1988.(1) The power of attorney couched in general terms only covers acts of administration.

(2) A power to act in relation to a sale or mortgage or some other act of ownership must be expressly granted.

1989.(1) An agent must do nothing beyond the terms of the agency.

(2) An agent's power to compromise does not include the power to submit to arbitration.

1990. VACANT

1991.(1) An agent must—

- (a) give effect to the agency agreement for as long as the agent remains bound, and
- (b) is liable for damages that arise from a failure to perform the obligations.

(2) An agent must complete any act begun at the death of the principal if there is any risk of damage through delay.

1992. The agent is liable for fraud and for negligence in the performance of the agency.

1993. Every agent must render accounts of the management of the agency and deliver and pay to the principal all that has been received by virtue of the agency, even though what is received is not owed to the principal.

1994. An agent is liable for the acts of any person the agent has put in charge of management —

- (a) when the agent has no power to delegate;
- (b) when the power to delegate existed but the person chosen was well known to lack ability or was insolvent.

1995. When several persons with powers to act as agents are appointed by the same instrument, there shall be joint and several liability only to the extent provided.

1996.(1) An agent must pay interest on any sums of the principal that the agent has used personally as from the date of the first such use.

(2) The agent must also pay any sums the balance of which the agent holds as from the date the agent receives formal notice to pay.

1997. An agent who has given sufficient notice to the person with whom the agent contracts of the extent of the agency authority is bound by any warranty for anything done beyond such authority, unless the agent acts in a personal capacity.

1998.(1) The principal must perform the obligations contracted by the agent in accordance with the authority conferred on the agent.

(2) The principal is not bound for anything done beyond the authority of the agent except to the extent that the principal has expressly or tacitly ratified the action of the agent.

1999.(1) The principal must refund to the agent any payments and costs incurred by the agent in the performance of the contract of agency and pay any salary promised.

(2) If no fault can be imputed to the agent, the principal must make the payments under paragraph (1) even if the venture was not successful and may not reduce the amount of costs and payments on the ground that these could have been lower.

2000. The principal must indemnify the agent for any loss which the agent has incurred in the course of the agency and which cannot be attributed to the agent's negligence.

2001.(1) Interest on any payments made by the agent is due to the agent by the principal.

(2) The interest runs as from the day when such payments were made.

2002. When several persons have appointed an agent for a common venture, each one of them is jointly and severally liable towards the agent for all the consequences of the agency.

2003. Agency can be terminated by—

- (a) revocation of the agency;
- (b) the agent's resignation;
- (c) the death, interdiction or insolvency of the principal or of the agent.

2004.(1) The principal may at any time revoke the agency and oblige the agent, if necessary, to return the document under private signature which contains the power or the original document conferring such power of attorney if it was drafted by a notary, or the notarially authenticated copy if a deed had been made.

(2) Nothing in paragraph (1) precludes the parties from agreeing to make the agency irrevocable for a fixed period or for a specific venture.

(3) The irrevocability of the agency may be implied from the object for which it provides or if the agent has a lawful interest in the object other than the regular remuneration due.

2005. A notice of revocation communicated to the agent alone does not affect third parties who have contracted with the agent in ignorance of the revocation, but the principal retains the right of action against the agent.

2006. The appointment of a new agent for the same venture has the effect of revoking the previous agency as from the date on which the previous agent was notified of the subsequent appointment.

2007.(1) An agent may renounce the agency by giving notice to the principal.

(2) If such renunciation causes loss to the principal, the agent shall indemnify the principal unless the agent is unable to carry on the agency agreement without sustaining considerable personal loss.

2008.(1) If the agent is unaware of the death of the principal or of any of the other grounds that terminate the agency, anything the agent may have done in ignorance of those matters is valid.

(2) In such circumstances the obligations must be performed with regard to third parties who are in good faith.

2009.(1) A third party who has treated with an agent whose authority has been withdrawn is not penalised if it was reasonable in the circumstances to assume that the agent was acting with the authority of the principal.

(2) In such a case the court may make such award as it considers just.

2010. On the death of the agent, the heirs of the agent must give notice to the principal and in the meantime must take such steps as are necessary in the circumstances in the interest of the principal.

SURETYSHIP

2011. A person who acts as guarantor undertakes towards the creditor the duty to perform the obligation if the debtor fails to do so.

2012.(1) A guarantee can only be given to secure a valid obligation.

(2) A person may stand as guarantor for an obligation even if the obligation can be annulled by the debtor on a plea that is purely personal to the debtor.

2013.(1) Suretyship shall not be contracted for a sum that exceeds the sum due by the principal debtor nor shall it contain more onerous conditions.

(2) It may be contracted in relation to part of the debt only and under less onerous conditions.

(3) The suretyship which exceeds the debt or which contains more onerous conditions shall be scaled down in such a way as to correspond with the principal obligation.

2014.(1) A person may become a guarantor without a request from the principal debtor and without the principal debtor's knowledge.

(2) A person may become a guarantor not only of the principal debtor but also of the guarantor of the principal debtor.

2015. Suretyship is never presumed and must be expressly given and cannot be extended beyond the limits within which it was contracted.

2016. A general suretyship of a principal obligation extends to all its accessory parts, even to the costs of the principal action and to all the costs incurred subsequent to the notice of such action given to the guarantor.

2017. The obligations of a suretyship in the nature of caution personelle terminate on death of the guarantor.

2018. The debtor who is bound to provide a guarantee must provide a person who has legal capacity to enter into a contract and who has sufficient property to secure the performance of the principal obligation.

2019. VACANT

2020.(1) If a guarantor becomes insolvent another must be provided.

(2) Paragraph (1) does not apply where the guarantee is given by an agreement in which the creditor insists on a particular individual standing as guarantor.

2021.(1) The guarantor is bound to pay the creditor only if there is a default of the debtor.

(2) The debtor's property must have previously been seized, unless the guarantor has waived the benefit of seizure or unless the guarantor is bound jointly and severally with the debtor.

(3) If paragraph (2) applies the liability of the guarantor is governed by articles 1197 to 1216.

2022. The creditor need not seize the property of the principal debtor unless the guarantor demands it when proceedings are started against the guarantor.

2023.(1) The guarantor who demands the seizure must indicate to the creditor the property of the principal debtor and make adequate funds available to effect the seizure.

(2) The guarantor is not expected to indicate the property of the debtor which is outside Seychelles or property subject to litigation or property that was mortgaged to secure the debt which property is no longer in the possession of the debtor.

2024. Where the guarantor has indicated the property authorised for seizure under article 2023, and has provided adequate funds to effect the seizure, the creditor is liable to the guarantor up to the extent of the value of the property indicated, if the debtor is insolvent because of the failure to initiate proceedings.

2025.(1) When several persons act as guarantors of the same debtor for the same debt each of them is liable for the whole amount of the debt.

(2) Each guarantor who has not waived the benefit of division may require the creditor to split up the creditor's action and reduce it to the part and share of each guarantor.

(3) If, when one of the guarantors has caused a division to be made under paragraph (1), some were insolvent, that guarantor must pay his or her share of the insolvencies but will not be liable for any insolvencies subsequent to the division.

2026. VACANT

2027. If the creditor has voluntarily divided the action, the creditor may not ignore the division even if before it some of the guarantors were insolvent.

2028.(1) The guarantor who has paid has a right of action against the principal debtor, whether the suretyship was contracted with or without the knowledge of the debtor.

(2) (a) The right of action in paragraph (1) must be exercised for the principal sum as well as for the interest and costs.

(b) The guarantor may claim only the costs incurred after serving notice on the principal debtor of the proceedings started against the guarantor.

(3) The guarantor may also claim damages for any loss suffered.

2029. The guarantor who has discharged the debt is subrogated in all the rights of the creditor against the debtor.

2030. When there is more than one principal debtor jointly and severally bound to the same debt, the guarantor who has answered for them all may recover the whole sum paid against each one of them.

2031.(1) The guarantor who pays the debt has no right of action against the principal debtor who has paid the debt because the guarantor gave no notice of having paid, but may sue the creditor to recover the money paid.

(2) (a) A guarantor who pays without being constrained to do so by any action and without notifying the principal debtor has no right of action against the debtor if at the moment of payment that debtor has legal grounds to declare the debt discharged.

(b) The guarantor may sue the creditor to recover the money paid.

2032. A guarantor may, even before paying the debt, sue the debtor in order to be indemnified—

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- (a) when the guarantor is sued;
 - (b) when the debtor has become bankrupt or insolvent;
 - (c) when the debtor is bound to effect the discharge of the surety within a certain time;
 - (d) when the debt becomes due at the end of the period for which it was contracted;
 - (e) after ten years, where the principal obligation is not subject to a time limit, unless the principal obligation is not of a kind that can expire within a definite period.

2033.(1) When several persons have stood as guarantors for the same debtor and the same debt, the guarantor who discharges the debt may sue each of the other guarantors for their part and share.

(2) This right is available only when the guarantor pays in one of the situations listed in article 2032.

2034. The obligations that arise from suretyship are extinguished on the same grounds as other obligations.

2035. The merger that occurs between the principal debtor and the guarantor when one becomes the heir of the other does not extinguish the action of the creditor against the guarantor of such guarantor.

2036.(1) The guarantor may plead against the creditor all the exceptions to which the principal debtor is entitled and which arise from the nature of the debt.

(2) The guarantor may not plead exceptions that are purely personal to the debtor.

2037. The guarantor is discharged when subrogation in the rights, mortgages and privileges of the creditor can no longer, owing to an act of the creditor, operate in favour of the guarantor.

2038. The voluntary acceptance by the creditor of any property in payment of the principal debt discharges the guarantor even if the creditor is afterwards forced to give up possession of that property.

2039. The mere extension of time granted by the creditor to the principal debtor does not discharge the guarantor who may, in such a case, seek an order to compel the debtor to pay.

2040. When a person is bound by legislation or by an order of court to supply a guarantor, the guarantor proposed must satisfy the conditions in article 2018.

2041. VACANT

2042. A judicial guarantor may not demand the seizure of the property of the principal debtor.

2043. A guarantor of a judicial guarantor may not demand the seizure of the property either of the principal debtor or of the guarantor.

COMPROMISE

2044. Compromise is a written contract by which the parties put an end to a dispute already begun or prevent a dispute from arising.

2045.(1) A compromise may be made by any person who has a power to dispose of the matter which is the subject of the compromise.

(2) A guardian may not compromise on behalf of a ward except as provided in article 457 and may not compromise with a former ward in respect of a guardianship except in accordance with article 472.

(3) Public bodies may compromise only with the express consent of the President.

(4) Matters relating to the capacity of persons, the grounds of divorce and judicial separation, and matters of public policy may not be the subject of compromise.

2046.(1) Civil liability arising from a criminal offence may be the subject of compromise.

(2) Any such compromise is not a bar to criminal proceedings instituted by the Attorney-General.

2047. A compromise may include a penal clause that applies in case of failure to perform.

2048.(1) A compromise relates to its subject-matter.

(2) A waiver made of all rights, actions, and claims extends only to matters relating to the compromise, however general the meaning of the expressed or implied terms.

2049. A compromise only settles matters included in it, whether or not the parties have manifested their intention by special or general expressions or whether such expressions are necessarily implied.

2050. A person who compromises a personal right and later obtains a similar right from another person is not bound, with regard to the later right, by the previously concluded compromise.

2051. A compromise concluded by one of the interested parties does not bind the other parties nor may it be pleaded against them.

2052.(1) (a) A compromise has, with regard to the parties to it, the authority of a judgment against which there is no appeal.

(b) Its validity may not be disputed on the ground of error of law or lesion.

(2) (a) Where the compromise relates to the settlement of compensation for the victim of an accident, the acceptance of such compensation does not prevent the victim from demanding a

supplement if the original compensation was derisory or if later the condition of the victim becomes substantially worse.

(b) A waiver by a victim of rights under this paragraph is null.

2053. VACANT

2054. A compromise may be rescinded when it relates to a void title, unless the parties have expressly taken the contingency of nullity into account.

2055. A compromise based upon documents that are subsequently found to be false is null.

2056. A compromise of litigation that has ended in a final judgment of which the parties to the compromise or one of them were unaware is null, unless the compromise was subject to an appeal.

2057.(1) When the parties have made a general compromise with regard to all matters outstanding amongst them, documents which were at that time unknown and which are subsequently discovered do not provide a ground for rescission unless one of the parties had failed to produce them.

(2) The compromise is null if it relates to a matter with respect to which newly discovered documents establish that one of the parties had no legal right.

2058. An error of calculation in a compromise will be rectified.

2059 - 2070 VACANT

PLEDGES AND FLOATING CHARGES

2071.(1) A pledge is a contract by which a debtor delivers a thing to the creditor as security for the debt.

(2) A pledge of a movable thing is a pawn.

(3) A pledge of immovable property is antichresis.

2072.(1) A floating charge is a security created over a class of assets belonging to a person when the act (acte) that creates the security does not identify the constituent items comprised in the said class or classes and does not restrict the security to assets held by the person at the time when the charge is created.

(2) (a) A floating charge is created by an authentic document.

(b) Such a charge must include a statement of the sum due, as well as an indication of the kind and nature of the things charged.

(c) Property subject to a floating charge remains in the possession of its owner whose rights cannot be defeated by a third party claiming possession in good faith.

(3) It is of the essence of the floating charge that it remains dormant until the debtor becomes insolvent or until the person in whose favour the charge operates intervenes.

(4) (a) When a floating charge crystallises, the court shall decide whether any, and if so which, assets of the debtor shall be sold and whether, in addition to the sale or in lieu of it, a receiver must be appointed.

(b) Such a receiver is bound by the instructions, orders or rules that the court makes.

2073. A pawn confers on a creditor the right to receive payment from the sale of it by ranking by way of a privilege and priority before other creditors.

2074 - 2076 VACANT

2077. A pawn may be given by a third party on behalf of the debtor.

2078.(1) The creditor may not dispose of the property pawned in default of payment.

(2) A clause that authorises a creditor to appropriate the pawn or to dispose of it is null.

(3) A court may order that property pawned may be kept by way of payment to the extent that its value corresponds to the debt or that the pawn be sold at auction.

2079.(1) The debtor remains owner of the pawn until the debtor has been judicially deprived of it.

(2) Until such occurrence, the pawn in the hands of the creditor is merely a deposit by way of security ensuring the creditor's privilege.

2080.(1) The creditor is liable, in accordance with articles 1101 to 1369, for loss or deterioration of the pawn that occurs through the creditor's negligence.

(2) The debtor must refund to the creditor the appropriate and necessary costs incurred for the preservation of the pawn.

2081.(1) If the pawn consists of a claim and such claim bears interest, the creditor must set off the interest against any other interest that may be due to the creditor.

(2) If the debt for the security of which the claim has been pawned bears no interest, the set-off operates towards the capital due.

2082.(1) The debtor must not, unless the holder of the pawn makes an improper use of it, claim the restitution of the pawn until the principal, interest, and costs of the debt for the security of which the pawn has been delivered have been entirely discharged.

(2) If the same debtor owes to the same creditor another debt contracted subsequent to the delivery of the pawn, and if the later debt becomes due before the discharge of the first debt, the creditor shall not be compelled to deliver the pawn before both debts are completely discharged, even in the absence of an agreement to retain the pawn as security for the later debt.

2083.(1) A pawn shall not be delivered notwithstanding the possibility of a split of the debt towards the heirs of the debtor or those of the creditor.

(2) The heir of the debtor whose part of the debt has been discharged may not demand the restitution of that part of the pawn so long as the debt has not been completely discharged.

(3) Equally, the heir of the creditor who has received part of the debt shall not deliver the pawn to the detriment of those of the co-heirs who have not been paid.

2084. VACANT

2085.(1) An antichresis must be in writing.

(2) The creditor acquires by the contract only the right to collect the income of the immovable property, which shall be set off every year against the interest due and, if there is a surplus, against the capital.

2086.(1) The creditor must, unless otherwise agreed, pay the annual contributions and charges relating to the immovable property, the income of which has been assigned to the creditor under a contract of antichresis.

(2) The creditor is also bound, and the duty may be enforced by an action for damages, to provide for the maintenance and for the appropriate and necessary repairs of the immovable property, subject to the creditor's right to deduct from the income any costs incurred for these purposes.

2087.(1) The debtor may not, before the complete discharge of the debt, claim the enjoyment of the immovable property the income of which has been assigned under the antichresis.

(2) The creditor who wants to avoid the duties in article 2086 may, if that right has not been renounced, compel the debtor to resume the enjoyment of the immovable property.

2088.(1) (a) The creditor shall not become owner of a building simply because the debtor has failed to pay at the agreed time.

(b) Any provision to the contrary is null.

(2) If the debtor fails to pay, the creditor may bring legal proceedings for a declaration that the debtor's right of ownership has lapsed.

2089. VACANT

2090.(1) Articles 2077 and 2083 apply to antichresis as they do to pawn.

(2) Articles 2085 to 2088 and this article apply without prejudice to the rights of third parties on the immovable property delivered by way of antichresis.

(3) A creditor entitled to the income, who also has over the same property privileges or mortgages legally created and preserved, must exercise them according to their priority and in the manner of any other creditor.

2091. VACANT

PRIVILEGES AND MORTGAGES

2092. A person who incurs an obligation is answerable with all his or her property, present or future, for its performance.

2093.(1) The property of the debtor shall be used as common security for the debtor's creditors.

(2) The proceeds of such property shall be distributed amongst the creditors in proportion to their debts, unless there are amongst such creditors lawful grounds of priority.

2094. Lawful grounds of priority are privileges and mortgages.

2095. A privilege is a right, the nature of which confers on a creditor a priority over other creditors, even those whose debts are secured by a mortgage.

2096. Amongst creditors entitled to a privilege the priority is settled in accordance with the class of privilege applicable.

2097. The creditors entitled to a privilege of the same class shall be paid in proportion to the amount of their claims.

2098. The Republic shall not acquire a privilege to the detriment of rights previously vested in other parties.

2099. Privileges may exist in relation to both movable and immovable property.

2100. Privileges are either general on all movable property, or particular on certain movable property only.

2101. Rights to a privilege on movable property generally are in the following order of priority—

- (a) judicial costs;
- (b) funeral expenses;
- (c) expenses arising from a last illness, which shall be paid pro rata amongst those to whom they are due;
- (d) employees' wages (not exceeding one year) for the period preceding a judgment ordering the employer to pay arrears;
- (e) the cost of alimentation to the debtor and the debtor's family over the preceding twelve months.

2102.(1) (a) The rent of immovable property is a debt that carries privilege.

(b) Sub-paragraph (a) includes everything that is due or will become due if the tenancy is concluded by an authentic document or by a document under private signature whose date is certain.

(c) Creditors other than the landlord may re-let the house or the farm for the remainder of the tenancy to satisfy their claims on the tenancies, if they pay the landlord all that is still due.

(d) If there is no authentic document or no document under private signature that has a certain date, the creditors are able to re-let for a year from the end of the current year.

(2) The principles in paragraph (1) apply to the tenant's repairs and everything concerning the performance of the tenancy agreement, and to any claim, whether of the landlord or the tenant, arising from the occupation of the premises.

(3) The owner may seize the furniture of the house or the farm equipment if it has been moved without consent, and shall retain privileges over it where the owner has made a claim within 40 days for furniture or 15 days for farm equipment.

(4) The following claims also carry privilege—

- (a) claims upon a pledge held by the creditor;
- (b) costs incurred for the maintenance of a thing;
- (c) the claim of a hotelier on the property that a traveller has in the hotel;
- (d) the costs involved with the carriage of things.

(5) (a) Where movable property has been sold and the purchase price has not been paid, the seller has a privilege over the movable property if it is still in the possession of the debtor.

(b) Where the sale was for cash, the vendor may vindicate the property while it is in the possession of the buyer and stop a resale.

(c) The privileges of the vendor rank after those of the privileges of the landlord under paragraph (1) unless the landlord knew that the furniture and equipment did not belong to the tenant.

2103.(1) The following creditors are entitled to a privilege—

- (a) the seller of immovable property for the purchase price and, where there are successive sales the price of which is wholly or partly due, the first seller has priority over the second, the second over the third and so on;
- (b) a person who has advanced money for the purchase of immovable property where it is expressly stated in an authentic document of loan that that sum was intended for that purpose and also stated in the receipt of the seller that that payment was made from the borrowed money;
- (c) co-heirs on the immovables of the inheritance to secure their claims on the proceeds of a licitation or the co-owners on any immovable property held on their behalf by a fiduciary;
- (d) architects, contractors, masons and other workers employed to build, reconstruct or repair buildings, canals or any other works, provided that an expert appointed by the court has first drafted a report showing the condition of the premises with respect to the work that the landlord intends to carry out, and provided that such work once completed is approved within six months by another expert appointed by the court;
- (e) persons who have lent money to pay or reimburse workers, provided that that use is

confirmed by an authentic document of loan and by the receipt of the workers stating that that payment was made from the borrowed money.

(2) (a) Under paragraph (1)(c), a fiduciary may apply to the court for permission to erase the inscriptions if the fiduciary can provide proof of adequate security for the payment of the debts owed to the co-heirs.

(b) Under paragraph (1)(d), the amount for which this privilege can exist cannot be more than the value of the works stated in the second report and may be reduced to the amount by which the property has increased in value, at the date of its sale, through the work done.

2104.(1) The privileges over movable and immovable property are those referred to in article 2101.

(2) When those entitled to the privilege claim to be paid out of the price of immovable property concurrently with other creditors entitled to privileges upon immovables, the payments must be made in the following order—

- (a) judicial costs and other debts set out in article 2101;
- (b) the debts mentioned in article 2103.

(3) (a) The privileges of the Republic on immovable property exist only where the privileges are inscribed within two months from the date of judgment against the debtor.

(b) After that period the rights of the Republic shall be exercised only in accordance with article 2113.

2105. Unless otherwise expressly stated, a privilege created by special legislation will rank after the privileges in this Code and in order of their date of enactment.

2106.(1) As among creditors, privileges shall not be enforced with regard to immovable property unless they have been registered in the Office of the Registrar-General.

(2) They shall have effect as from the date of such registration except in the cases referred to in articles 2107 to 2113.

2107. The claims specified in article 2101 are exempt from registration.

2108.(1) (a) The seller entitled to a privilege shall retain the privilege by the transcription of the deed of transfer of ownership to the buyer, which shows that the whole or part of the price is due to the seller.

(b) For that purpose the transcription of the transfer to the buyer shall have the effect of an inscription for the benefit of the seller and the lender who has advanced the money paid and is subrogated to the right of the seller by the same transaction.

(2) (a) The Registrar-General must enter in the register the claims arising out of the deed transferring title, both in favour of the seller and in favour of the lender.

(b) The lender may effect the transcription of the deed of sale, if it had not been done, for the purpose of obtaining the inscription of what is due to the lender from the sale price.

(3) (a) The seller may, within forty-five days of the deed of sale, inscribe the privileges under this article and article 2109 notwithstanding the transcription of any deed in the interval.

(b) Such right shall be subject to the Immovable Property (Judicial Sales) Act.

(4) (a) The privileges of heirs and legatees may be secured by an inscription on any immovable property held by a fiduciary on their behalf.

(b) Inscriptions made under this paragraph may be erased in accordance with article 2103(2)(a).

2109.(1) The privilege of a co-heir on property held by a fiduciary or sold by licitation for the payment of the share due to the co-heir is retained.

(2) The inscription must be made by the co-heir within sixty days from the registration by the fiduciary of the property or from the date of the licitation.

(3) During this time no mortgage shall, subject to article 2103(1)(c), be granted over the property that is subject to the claims, or sold by licitation to the prejudice of a person entitled to a share.

2110. Architects, contractors, masons and other workers employed to build, reconstruct or repair buildings, canals or other works and those who have lent money to pay them and reimburse them, provided that the use for such purposes can be proved, retain their privileges by the double inscription—

- (a) of the report which ascertains the condition of the premises;
- (b) of the report of approval of the works as from the date of the inscription of the first report.

2111.(1) The creditors and legatees who are entitled to a share of the inheritance of the deceased, as provided under articles 718 to 892, shall retain with regard to the creditors of the heirs or other representatives of the deceased their privileges on immovable property held by the fiduciary, provided that the inscription on each immovable has been entered within six months from the opening of the succession.

(2) The deed giving rise to the privilege or mortgages is not required for such an inscription.

(3) Before the end of the six months, no mortgage shall be granted binding the property by the heirs to the detriment of the creditors or legatees, subject to article 2103(1)(c).

2112. The assignees of claims carrying a privilege have the same rights as those of the assignors and in their place and stead.

2113. All claims carrying a privilege which are subject to a requirement of inscription and as to which the conditions described above for the purpose of retaining the privilege are not satisfied, shall not cease to be treated as mortgages but shall rank only in relation to third parties from the date when the inscription is made, as explained in articles 2114 to 2124.

2114.(1) A mortgage is a real right upon immovable property intended to secure the discharge of an obligation.

- (2) (a) It cannot be divided.
- (b) It burdens the immovable property charged in its entirety and each one and each part of them.
- (3) A mortgage follows the property.

2115. A mortgage can be created only in the cases and in accordance with the forms established by legislation.

2116. A mortgage is created by legislation or by agreement.

2117.(1) A legal mortgage is created by legislation.

- (2) A conventional mortgage is created by agreement.

2118. Only the following property may be mortgaged —

- (a) immovable property of commercial value;
- (b) a usufruct over immovable property of commercial value for its duration.

2119. Movable property cannot be subject to a mortgage.

2120. VACANT

2121. The rights and claims that a legal mortgage secures are those of wards on the property of their guardians.

2122. A creditor who is entitled to a legal mortgage may enforce the right on the whole of the immovable property of the debtor, and on that which the debtor subsequently acquires, subject to articles 2124 to 2180.

2123. VACANT

2124. Conventional mortgages may be granted only by persons who have capacity to alienate the immovable property which it is intended to charge.

2125.(1) Persons who have a right to immovable property subject to a condition precedent (*condition suspensive*) or, in certain cases, to a condition subsequent (*condition résolutoire*), or a right which is subject to rescission, may only grant mortgages on the property subject to the same conditions or the same rescission.

(2) A mortgage agreed to by all the co owners of immovable property remains valid notwithstanding the outcome of the licitation or division.

2126. The property of wards and of absentees (so long as the court has only put a person in temporary possession of such absent person's property) may not be subject to a mortgage except in the case and forms established by legislation or else by virtue of a judgment of the court.

2127.(1) A conventional mortgage shall be executed in the presence of a notary who shall attest the execution in the prescribed form.

(2) If a party required to execute a mortgage is unable to do so through ignorance, the mortgage is deemed to have been executed if the party's mark is placed on the instrument in the presence of a notary and two witnesses able to sign their names.

(3) If the party's inability to execute such instrument is due to physical disability the party shall declare or acknowledge assent in the presence of a notary and two witnesses.

(4) In either case of inability to execute the instrument, it shall be read out by the notary in the presence of the party required to execute it and of the two witnesses.

(5) Specific mention shall be made on the instrument that the formalities have been observed.

(6) In respect of instruments executed outside Seychelles the Land Registration Act applies.

(7) (a) A conventional mortgage has legal effect only for thirty years from the date of the inscription.

(b) A renewal of any inscription shall be subject to the same formalities and have the same legal effect as an inscription, and may be made by any party having an interest.

2128. VACANT

2129. (1) A conventional mortgage is valid only if the authentic document of the grant or an authentic document subsequently executed specifies the nature and place of each immovable belonging to the debtor by which the debtor agrees to secure the claims.

(2) Every item of the debtor's present property may be subject to a mortgage.

(3) Future property may not be mortgaged.

(4) Nothing in this article prevents the creation of a floating charge on property as provided by article 2072.

2130.(1) If the available property of a debtor is insufficient for the security of the claim, the debtor may admit this insufficiency and agree that any property the debtor may subsequently acquire shall be used as security in the order of acquisition.

(2) If immovable property which is burdened with a mortgage perishes or suffers loss of value of a kind that renders it insufficient for the security of the creditor, the latter may either claim reimbursement forthwith or obtain an additional mortgage.

2131. VACANT

2132.(1) A conventional mortgage is valid only if the sum for which it has been granted is certain and fixed in the document of the grant.

(2) If the claim arising from the obligation is subject to a condition not yet fulfilled or of uncertain value, the creditor may make the inscription under this Code only to the extent of the estimated value of the claim as expressly declared by the creditor, subject to a reduction to be claimed by the debtor if appropriate.

2133. A mortgage extends to all the improvements made to the property mortgaged.

2134. As between creditors, a mortgage whether legal or conventional shall rank only from the inscription made by the creditor in the register of the Registrar General, in the manner and form provided by law, except in the cases referred to in article 2135.

2135.(1) Wards shall be entitled to the legal mortgages provided under this Code.

(2) Each mortgage shall be inscribed for a determined sum and shall rank only from the dates of its inscriptions.

2136.(1) The inscription of the ward's legal mortgage shall be taken by a notary appointed by the court on account of such ward and for a sum to be determined by the court.

(2) It shall specify the immovable property of the guardian which such mortgage affects.

(3) The inscription shall be made within six clear days from the decision of the court.

2137. Except as provided in articles 2138 to 2143, no guardian shall be entitled to receive or take possession of or dispose of moneys or any property whatsoever belonging to the ward or to give a legal

discharge for the same on account or on behalf of such ward until the ward's legal mortgage is inscribed.

2138. A certificate issued by the notary appointed under article 2136 and certified by the Registrar of the court which made the appointment shall be evidence that the guardian has power to receive moneys and otherwise to act as guardian.

2139.(1) The guardian may compel the payment into the Registry of the court of all moneys or claims which the guardian cannot as yet lawfully receive and the guardian must also make or cause to be made all conservatory acts which it may be necessary to make or cause to be made in order to secure the ward's rights of whatsoever nature and may appear in and defend all actions and suits, real and personal, brought against the ward.

(2) Any debtor indebted to a ward may pay the amount of this debt into the Registry of the court when there is no guardian lawfully entitled to receive the same.

(3) Every debtor making such payment shall be lawfully discharged of the debt and entitled to obtain an order from a Judge in Chambers ordering the erasure of any inscription or mortgage or privileged securing the claim so paid.

2140.(1) If the court is satisfied that the guardian either has no immovable property or that such property is not sufficient as security, the court may require the guardian to furnish security or further security in such form and in such amount as the court may deem fit.

(2) A certificate under article 2138 to the effect that such security has been given shall be evidence before all courts that the guardian has the power to receive moneys and otherwise to act as guardian.

2141.(1) Should the guardian subsequently become the owner of immovable property or should the security given under article 2140 lapse, the guardian must apply to the court for the purposes mentioned in articles 2135 and 2136 or for the purpose of deciding on the security to be furnished by the guardian.

(2) Any friend of the ward or the Attorney General also may apply to the court.

2142.(1) If the court is satisfied that the ward has no immovable or movable property it shall declare that no inscription or mortgage shall be taken, and such declaration shall be evidence before all courts that the guardian has power to act as such, but the guardian must apply to the court for the purposes mentioned in articles 2135 and 2136 should the ward at any time during the guardianship acquire property to be administered by the guardian.

(2) No such inscription of mortgages is required when the value of the property owned or acquired by the ward is less than R50,000.

2143.(1) A guardian may at any time apply to a Judge in Chambers for a rule restricting the ward's legal mortgage to part only of the immovable property on which it has been inscribed, or to one or more only of the several properties subsequently acquired by the guardian, but the Judge may grant such application only if satisfied by sufficient evidence that the ward's interest will not be prejudiced.

(2) On application by the guardian or the Attorney General, the Judge may for cause shown, after having heard the guardian or any party having a lawful interest, vary the amount for which the inscription has been taken and the immovable property or properties of the guardian which such mortgage has affected.

(3) (a) The court may on the application of the guardian or of the purchaser of an immovable property burdened with an inscription in favour of a ward allow the erasure of such inscription on such terms as the court deems fit to safeguard the ward's interest.

(b) Such application if made by the purchaser shall be made against the guardian as defendant.

2144. All persons whose duty it is to take an inscription of a legal mortgage on behalf of a ward or to cause it to be taken is jointly and severally liable in damages to the ward should the inscription of

mortgage not be taken at all or not be taken when it should have been taken.

2145. VACANT

2146.(1) Inscriptions shall be effected at the Mortgage and Registration Office.

(2) They shall have no effect if registered at a time or in circumstances contrary to the law relating to bankruptcy.

(3) (a) The same rule shall apply to the creditors of a succession, if the inscription is made by one of them since the opening of the succession and if such succession has been accepted subject to the benefit of inventory.

(b) A creditor who has acquired rights by way of privilege or mortgage, which rights have not been inscribed before the death of the debtor, may cause such rights to be inscribed within thirty days from the opening of the succession.

(4) (a) Creditors whose mortgages were inscribed on the same date rank equally.

(b) No distinction shall be made between an inscription entered in the morning and one entered in the evening, even if this difference in time was noted by the Registrar.

2147 - 2150 VACANT

2151.(1) The creditor whose mortgage is inscribed as security for a claim relating to capital and interest or arrears entitled to be placed in respect of arrears of interest for two years only and for the current year, in the same preference as for the capital.

(2) This shall not prejudice any particular inscription valid as from its own date relating to a mortgage granted as security for arrears other than those secured by the first inscription.

2152, 2153 VACANT

2154.(1) The inscription taken on behalf of wards need not be renewed during minority or whilst the interdiction is in force.

(2) Such inscriptions must be renewed within one year after the cessation of the minority or the interdiction otherwise their effect ceases.

2155.(1) The costs of inscription burden the debtor unless the agreement provides otherwise.

(2) The person who makes the inscription shall pay the money except in the case of legal mortgages for the inscription of which the Registrar General can proceed against the debtor.

(3) If the seller pays the costs of the inscription made the seller may recover them from the buyer.

2156. The rights of action against the creditors which may arise from the inscription shall be exercised by a summons served on them personally or at their last place of residence entered by them into the Register, even though the creditor or the person whose house was chosen as the place of service is dead.

2157. Inscriptions are erased by the consent of an interested party having capacity to do so or by virtue of a final judgment against which no further appeal lies or in accordance with article 2103(2)(a).

2158, 2159 VACANT

2160. The erasure must be ordered by the court when the inscription has been made without a legal ground or without a lawful title, or when it has been made on the strength of an irregular title, extinguished or discharged, or when the rights of privilege or mortgage have been extinguished by operation of law.

2161.(1) Whenever the inscriptions, made by a creditor who by operation of law would be entitled to enforce the debt on the present or future property of the debtor without any limit, cover more properties than necessary for the security of his claims, an action to reduce the inscriptions or to erase the excess shall be available to the debtor.

(2) Paragraph (1) does not apply to conventional mortgages.

2162. The inscriptions which cover several properties shall be deemed excessive when the value of one or several of them exceeds by more than one third the amount of claims in capital and other accessory claims of a legal nature.

2163.(1) Inscriptions which were made after an estimate by the creditor may be reduced as excessive if they relate to claims which, insofar as the mortgages to be granted for the security are concerned, were not settled by agreement and which by their nature are conditional, contingent or indefinite.

(2) (a) The excess in that case is, in the last resort, a matter for the court to decide according to the circumstances, the likelihood of events and the presumptions of fact, in such a manner as to reconcile the probable rights of the creditor with the debtor's interest to retain sufficient credit.

(b) This does not prejudice any new inscriptions of mortgages which shall have effect from the date of inscription, when circumstances have increased the amount of the uncertain claims.

2164. VACANT

2165. The valuation of immovable property under article 2163 for determining the amount to be deducted when the inscriptions are excessive shall be made by valuers selected by the parties, and if not so selected, by those appointed by the court.

2166.(1) Creditors who have inscribed a privilege or a mortgage on immovable property shall follow it into whatever hands it may pass.

(2) They shall rank and be satisfied in accordance with their claims or inscriptions.

2167. A third party who holds the property and who does not comply with the forms established for the purpose of freeing the property, is as holder, by the mere fact of the inscription, bound by all

the mortgage debts but can take advantage of the terms and time limits granted to the original debtor.

2168. A third party holder of property also is bound either to pay all the interest and capital due or to surrender the property subject to the mortgage, without any reservation.

2169.(1) Failure of the third party holding the property to discharge fully any of obligations entitles each one of the mortgagees to have the property sold thirty days after a notice demanding payment has been served upon the original debtor, and after service of a notice upon the third party holding the property requiring that third party to discharge the debt due or to surrender the property.

(2) The third party holder of the property who is not personally liable for the debt may bar the sale of the mortgaged property if there is in the hands of the principal debtor or debtors other immovable property subject to a mortgage for the same debt.

(3) (a) That third party may require the creditor first to seize such property in accordance with articles 2011 to 2043.

(b) While the seizure is proceeded with, the third party shall have the benefit of a postponement of the sale of the property.

2170. VACANT

2171. The plea of seizure may not be set up against a creditor entitled to a privilege or having a specific mortgage upon the property.

2172.(1) All third party holders who are not personally liable for the debt and who have capacity to transfer the property may surrender it to the creditors.

(2) The same rule shall apply if a third party holder of the property acknowledges the obligation or has been condemned by a court only in the capacity of holder.

(3) The surrender shall not, until the judicial sale of the property, be a bar to the third party holder recovering the property by discharging the whole debt and costs.

2173. VACANT

2174.(1) (a) The surrender by reason of a mortgage shall be made at the Registry of the court.

(b) A certificate of surrender shall be delivered by that court.

(2) On the application of the most diligent of the interested parties, a curator of the surrendered property shall be appointed against whom proceedings may be taken in accordance with the forms laid down for judicial sales.

2175. Dilapidations to the detriment of mortgagees or persons entitled to a privilege which result from the negligence of a third party holder of the property give rise to an action for damages against that person who is not entitled to any costs incurred or improvements except to the extent of the increased value of the property which is the result of such improvement.

2176. The income from the mortgaged property is only due by the third party holder as from the day of notice to pay or surrender, and if the legal proceedings begun have been abandoned for three years as from the date of the new notice served.

2177.(1) The easements and other real rights which the third party holder enjoyed on the immovable property before obtaining possession of it shall revive after the surrender or after the judicial sale.

(2) The personal creditors of the third party shall enforce their rights or mortgages according to their rank on the property which has been subject to a surrender or a judicial sale, but after those who had made inscriptions of mortgages against previous owners.

2178. The third party holder who has discharged the debt secured by the mortgage or who has abandoned the mortgaged property or has been subject to a judicial sale of the property is entitled

to a legal remedy with all the guarantees which the law provides against the principal debtor.

2179. The third party holder who wants to free the property by paying the price must comply with the forms laid down in articles 2181 and 2182.

2180.(1) Privileges and mortgages are extinguished by—

- (a) the extinction of the principal obligation;
- (b) the waiver by a creditor of his or her mortgage;
- (c) compliance with the forms and conditions required to redeem the property and applicable to third party holders of property;
- (d) prescription of 30 years.

(2) The prescription runs in favour of the debtor, with regard to the property in the debtor's possession, by the lapse of time required for the prescription of actions for the enforcement of a mortgage or a privilege.

(3) (a) With regard to property held by a third party, the debtor shall acquire by prescription through the lapse of time required for the acquisition of ownership.

(b) Prescription is based on presumption of title and begins to run only from the date of transcription in the register of the Registrar General.

(4) The inscription made by a creditor shall not interrupt the running of the prescription period in favour of a debtor or in favour of a third party who holds the property.

2181.(1) Contracts transferring ownership of immovable property or real rights on such property which third parties holding the property want to redeem from the privileges and mortgages shall be transcribed in full by the Registrar General.

(2) This transcription must be made on a register specifically provided.

(3) The Registrar General must issue a certificate to the applicant.

2182.(1) The transcription of documents of title transferring ownership on the register of the Registrar General does not redeem, on its own, the mortgages and privileges which burden the property.

(2) (a) The seller can only convey to the buyer the right of property and other rights that the seller has on the property sold.

(b) The seller conveys them subject to the same privileges and mortgages which burdened them previously.

2183 - 2195 VACANT

2196. The Registrar General must deliver to all those who apply for them copies of the documents transcribed in the register and copies of the existing inscriptions, or a certificate that none exists.

2197. The Registrar-General is liable for any damage arising—

(a) from an omission from the register of any transcription of documents of conveyance and of any inscriptions applied for at the Registry;

(b) in the absence of a reference in the certificates to one or several existing inscriptions, unless in this case the error is due to the Registrar-General having been supplied insufficient data for which no error can be attributed to the Registrar-General.

2198. VACANT

2199.(1) The Registrar General must without delay transcribe documents of conveyance, inscribe mortgage rights and deliver certificates which have been applied for.

(2) Reports of a refusal or delay shall be drawn up forthwith at the request of the applicants, either by the Registrar of the court or by an usher or notary in the presence of two witnesses.

(3) Where the Registrar-General refuses to fulfil the duties under paragraph (1) or delays their performance the Registrar-General shall be liable in damages to the parties for the refusal or delay.

2200.(1) The Registrar General must keep a register in which is inscribed, day by day and in numerical order, the delivery made to the Registrar-General of any documents of transfer for the purpose of transcription, or of any memoranda for the purpose of inscription.

(2) The Registrar-General must deliver to the applicant an acknowledgement which shall refer to the number of the entry in the register in which the delivery was recorded and must transcribe any documents of transfer and inscribe any memoranda in the appropriate registers only in accordance with the date and in the order in which they were delivered.

2201. The registers shall be closed every day in the same manner as those kept for the registration of documents.

2202.(1) The Registrar General must comply with articles 2196 to 2201.

(2) This rule applies without prejudice to any damages payable to the parties which shall be paid before any fine imposed on the Registrar-General.

2203. VACANT

THE COMPULSORY SALE OF PROPERTY AND THE ORDER OF PRIORITY AMONG CREDITORS

2204. The creditor may start proceedings for the judicial sale—

- (a) of immovable property and its accessory parts deemed to be immovable which are in the ownership of the debtor;

- (b) of the usufruct upon property of the same kind belonging to the debtor.

2205. VACANT

2206. Subject to article 2207, the immovable property of a ward must not be sold before the seizure of the ward's movable property except with the consent of the court.

2207. The seizure of movable property is not a prerequisite of the judicial sale of the immovable property of an adult or of an adult who has subsequently become interdicted.

2208. VACANT

2209.(1) The separate immovable properties belonging to the same debtor shall be seized successively unless they are worked together as one estate or unless they have been specially mortgaged for the security of one debt.

(2) No second or subsequent seizure shall take place unless the price of the first sale was insufficient to pay the claims of the seizing creditor.

2210. When several immovable properties belonging to the same owner or co owners are ordered to be sold before the judge they shall be sold in separate lots under one and the same memorandum of charges.

2211.(1) When several portions of land have been united into one property and are cultivated or occupied as such by the execution debtor, if a portion only of such property has been seized, the execution debtor or any of the inscribed or judgment creditors may ask that the whole property be included in the same sale and adjudication.

(2) A separate valuation shall be made of the price which may be obtained at the public sale of each of the various properties.

2212. If the debtor can establish by an authentic tenancy agreement that the net and available yearly income from the debtor's immovable property is sufficient for the payment of the debt, principal,

interest and costs included, and if the debtor offers to assign such income to the creditor, proceedings may be stayed by the court but may be continued if there is any opposition or obstacle to the payment.

2213.(1) Proceedings for the judicial sale of immovable property shall be pursued only if there is an authentic document of title for a debt which is certain and definite.

(2) If the debt is for an unliquidated sum, the proceedings may continue but the judicial sale must be made when the amount of the debt has been ascertained.

2214. The assignee of an authentic document of title must not start proceedings for a judicial sale until after notice of the assignment is served upon the debtor.

2215.(1) Proceedings may begin on the basis, interim or otherwise, of a judgment notwithstanding an appeal, but the judicial sale shall only take place after a judgment against which there is no further appeal.

(2) Proceedings shall not be initiated on the basis of a judgment by default during the time in which such judgment may be reversed.

2216. Proceedings shall not be dismissed on the ground that the creditor has sued for a larger sum than the sum due.

2217. All proceedings for the judicial sale of immovable property shall be commenced by a summons to pay issued at the suit and the request of the creditor and served upon the debtor in person by an usher of the court.

2218. VACANT

PRESCRIPTION

2219.(1) Prescription involves loss of rights through a failure to act within the limits established by legislation.

(2) It is a means whereby, after a certain period of time, rights may be acquired (acquisitive prescription) or be lost (extinctive prescription), subject to the conditions established by legislation.

2220.(1) The right of prescription may not be waived in advance.

(2) A right of prescription already acquired may be waived.

2221.(1) The waiver of a right of prescription may be express or implied.

(2) An implied waiver arises from an act which presumes the abandonment of an acquired right.

2222. A person who cannot transfer property cannot waive an acquired right of prescription.

2223. The court cannot, *proprio motu*, take judicial notice of prescription in respect of a claim.

2224. A right of prescription may be pleaded at all stages of legal proceedings, even on appeal, unless the party who has not pleaded it can be presumed to have waived it.

2225. All persons who have a lawful interest in acquiring a right of prescription may plead it, even if the debtor or owner waives it.

2226. There is no right of prescription in respect of things which cannot be the subject of commercial dealings.

2227. The Republic and public bodies are subject to the same rules of prescription as private persons and may likewise plead prescription.

2228.(1) (a) A person who has physical control of a thing or exercises a right over it has possession of it.

(b) It is possible to possess directly or through another person.

(2) The person whose property is temporarily under the control of another or the person who holds land for a fixed period of time has possession of that property.

(3) In the case of easements or other land charges, possession consists of the effective exercise of such rights.

2229. In order to acquire by prescription, possession must be continuous and uninterrupted, peaceful, public, unequivocal and by a person acting in the capacity of owner.

2230. A person shall be presumed to possess as owner unless it is proved that the possession is on behalf of another.

2231. A person who begins to possess on behalf of another shall always be presumed to possess on the same basis unless there is proof to the contrary.

2232. Purely optional acts or acts which are merely permitted do not give rise to possession or prescription.

2233.(1) Acts tainted by duress do not give rise to possession leading to prescription.

(2) Effective possession begins when the duress has ceased.

2234. The present possessor who previously held possession is presumed to have held possession for the intervening period, unless there is proof to the contrary.

2235. In order to complete prescription, a person may add to his or her period of possession that of the person from whom the possession was derived, whether the title (titre) was general or particular or gratuitous or for value.

2236.(1) (a) Those who possess on behalf of another do not acquire by prescription however long they may be in possession.

(b) The tenant farmer, the lessee, the depositary, the usufructuary and all the others who hold the property of the owner for a temporary period are not entitled to prescription.

(2) The heirs of deceased persons who hold property in any of the capacities listed in paragraph (1)(b) are not entitled to prescription.

(3) The persons listed in paragraphs (1) and (2) may be entitled to prescription if the title of their possession changes either through an act of a third party or through acts which are incompatible with the rights of the owner.

(4) Persons to whom tenant farmers, depositaries and other temporary holders have transferred the property by a document transferring ownership are entitled to prescription.

2237 – 2239 VACANT

2240. No one who is entitled to hold a contrary title is entitled to prescription, in the sense that—

- (a) a person may not change unilaterally the ground and nature of his or her possession;
- (b) prescription does not release a person from obligations contracted.

2241. VACANT

2242. Prescription may be interrupted either naturally or by a legal act.

2243. A natural interruption occurs when the possessor is deprived for longer than a year of the enjoyment of the thing through the actions of the former owner or through the action of a third party.

2244. A writ or summons or a seizure served on a person in the process of acquiring by prescription has the effect of a legal interruption of such prescription.

2245. VACANT

2246.(1) A writ or summons to appear before a court, even if that court has no jurisdiction, interrupts the prescription.

(2) The interruption shall be deemed not to have occurred if—

- (a) the proceedings are dismissed owing to a formal defect;
- (b) the plaintiff's claims are withdrawn;
- (c) the plaintiff allows the proceedings to lapse;
- (d) the plaintiff's claim is rejected.

2247. VACANT

2248. The prescription is also interrupted by an acknowledgement by a debtor or a possessor of the right of the person against whom the prescription was running.

2249.(1) Proceedings started, or an acknowledgement made in accordance with articles 2242 to 2248 against any one of joint and several debtors, shall interrupt the prescription against all, and against their heirs.

(2) Proceedings started against one of the heirs of a joint and several debtor, or the acknowledgement of such heir, do not interrupt prescription as regards the other co heirs, even if the claim is secured by a mortgage, unless the debt is indivisible.

(3) Such proceedings or acknowledgement do not interrupt prescription as regards the other co debtors except to the extent of the share for which the heir is liable.

(4) To effect an interruption for the whole with regard to the other co debtors, the proceedings must be directed against all the heirs of the deceased debtor or there must be acknowledgement of all these heirs.

2250. Proceedings started against the principal debtor or the acknowledgement of the debtor interrupt the prescription against the guarantor.

2251. Prescription runs against any person who does not come under an exception established by legislation.

2252.(1) Prescription only runs against wards if, for a minor within two years of reaching majority and for an interdicted person within two years from the removal of the disability, they or their representatives exercise their rights over the property subject to prescription.

(2) In no circumstances shall the period of prescription exceed twenty years including the period of suspension.

2253. Prescription does not run between spouses.

2254 - 2256 VACANT

2257. Prescription does not run with regard to —

- (a) a claim which is subject to a condition, until that condition is fulfilled;
- (b) an action for warranty against eviction, until the eviction has been effected;
- (c) a claim maturing on a fixed date, until such date arrives.

2258.(1) Prescription does not run against an heir accepting under a benefit of inventory with regard to the claims the heir has against the inheritance.

(2) Prescription runs against a vacant inheritance, even if no curator has been appointed.

(3) Prescription runs during the three months in which an inventory is made and during the forty days allowed for reflection.

2259. VACANT

2260. Prescription is calculated on the basis of days not hours.

2261. Rights by prescription are acquired when the last day of the period has ended.

2262.(1) All in rem actions in respect of rights of ownership of land or interests in land are barred by prescription after twenty years.

(2) (a) Where the party claiming the benefit of prescription produces a title (*titre*) which has been acquired for value and in good faith, the period of prescription is ten years.

(b) Good faith shall always be presumed.

(c) The person who makes an allegation of bad faith is required to prove it.

(d) It is sufficient that good faith existed at the moment of acquisition of the property.

2263. Within two years prior to the expiry of the period by which the right to an annuity may be barred by prescription, the debtor may be compelled to furnish, at the debtor's expense, a new title (*titre*) to the creditor or to those entitled under the creditor.

2264 - 2266 VACANT

2267. A title which is null because of a defect of form is not the basis for the prescription of ten years.

2268, 2269 VACANT

2270. Architects, contractors and other persons bound to the owner of the property by a contract for services are discharged from their warranty for work done or directed after ten years.

2271.(1) All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262.

(2) In the case of a judgment debt, the period of prescription shall be ten years.

2272. Articles 2219 to 2280 apply to and bind private parties and the Republic in like manner.

2273. VACANT

2274.(1) Prescription runs even if supplies, deliveries, works and services continue.

(2) Prescription ceases to run only when there is an account stated or a writ of execution or legal proceedings still pending.

(3) Persons who stand to lose by the operation of prescription may demand that those who stand to gain by it swear an oath on the question of whether the thing has in fact been paid for.

2275-2277 VACANT

2278. Prescription under articles 2219 to 2280 runs against wards but they have a remedy against their guardians.

2279.(1) Possession of a movable in good faith is equivalent to ownership (*en fait de meubles, la possession vaut titre*).

(2) A person who has lost something or whose goods were stolen may vindicate the property within five years from the date of the loss or the theft against any person in whose hands the goods are found.

(3) Where property has been vindicated under paragraph (2), any remedy that the person in whose hands the goods were found may have, is against the person from whom the goods were obtained.

2280. Where the present possessor of goods that were stolen or lost bought the goods at a fair or market or at a public sale, or from a trader dealing in similar goods, the original owner may obtain the return of the goods only on paying to the possessor the price that the latter paid for the goods.

REGULATION-MAKING POWER

2281. The President may make regulations for the purposes of this Code.