Article 198. - (1) The usurper of a usurper has the same status as that of the latter: where any person has usurped the property usurped from the (original) usurper and damaged it, or where it sustained damage while in his possession the usurpee (owner of the thing) has the option if he so wishes to claim from the first usurper or from the second usurper; he may claim part thereof from the first usurper and the other part from the second usurper; the first usurper who has paid may claim from the first usurper but the second usurper may not if he has paid claim from the first usurper.

(2) Similarly where a third party has damaged the thing usurped which is in possession of the usurper the usurpee will have the option of either claiming from the usurper who may in turn claim from the third party who did the damage, or he may claim from the person who did the damage where the latter may not claim from the usurper.

Article 199. - Where a usurper of the property has restituted the thing usurped to the latter usurper his liability only will be discharged and if he has restituted it to the usurpee the liability of both usurpers will be discharged.

Article 200. - Where the usurper has disposed against or without a consideration of the thing usurped which sustained total or partial damage the usurpee has the option to claim from whomever he chooses; the disposal of the usurper shall be valid if he has discharged his liability in respect of the thing usurped; if the transferee of the thing usurped has discharged his liability he will claim from the usurper the replevy warranty in accordance with the provisions of the law.

Article 201. - A situation which is equal to usurpation in debarring disposal is tantamount to usurpation: a depositary who denies the deposit (entrusted into his care)

is tantamount to a usurper; if after denial the deposit has perished while in his possession without encroachment he shall be liable.

(2) Unlawful Acts Committed on Persons

Article 202. - Every act which is injurious to persons such as murder, wounding, assault, or any other kind of inflicting injury entails payment of damages by the perpetrator.

Article 203. - In case of murder and in case of death resulting from wounds or any other injurious act renders the perpetrator liable to pay compensation to the dependants of the victim who have been deprived of sustenance on account of the murder or death.

(3) Provisions Common to Unlawful Acts

Article 204. - Every assault which causes other than the injuries mentioned in the preceding Articles entails payment of compensation.

Article 205. - (1) The right to compensation also covers moral injury: any encroachment (assault) on the freedom, morality, honour, reputation, social standing, or financial position (credibility) of a third party renders the perpetrator liable for compensation (damages).

(2) Damages may be adjudged to spouses and the next of kin of the family in respect of the moral injury sustained by them as a result of the victim's disease.

(3) Damages for moral injury do not pass to a third party unless its value has been determined pursuant to an agreement or a final judgment.

Article 206. - (1) The civil damages shall not be prejudicial to imposition of the criminal penalty if its

elements have been satisfied.

(2) The court will decide the civil liability and the amount of the compensation (damages) without being bound by the principles of criminal liability or by the judgment rendered by a criminal court.

Article 207. - (1) In all cases the court will estimate the damages commensurately with the injury and the loss of gain sustained by the victim provided that the same was a natural result of the unlawful act.

(2) Deprivation from (loss of) benefits of things will be included in the estimation of the damages and the liability may cover the wage (fee/remuneration).

Article 208. - Where it is not possible for the court to estimate the damages adequately it may reserve a right to the victim to apply within a reasonable period for reconsideration of the estimate.

Article 209. - (1) The court will determine the method of payment of the damages according to the circumstances; the damages may be payable in instalments or as a revenue in the form of a salary in which case the debtor may be required to provide a security.

(2) The compensation (damages) will be estimated in cash; the court may however depending on the circumstances and upon application being filed by the victim (injure) order that the situation be reinstated to its original state or adjudge performance of a certain specified matter or restitution of a similar thing of the fungibles by way of compensation.

Article 210. - The court may reduce the sum of or refuse to adjudge payment of any compensation whatsoever if the injured person has contributed through his fault to causing or aggravating the injury or had worsened the debtor's situation.

Article 211. - A person who has established that the injury had arisen from a cause beyond his control such as by an act of God, an accident, a force majeure, by the act of a third party or the fault of the injured himself shall not be liable on damages unless there is a provision (in the law) or an agreement otherwise.

Article 212. - (1) Exigencies permit (legitimise) prohibitions and will be assessed commensurately with the need for them.

(2) He who in legitimate self defence or in defence of a third party had caused injury shall not be liable provided in so doing he does not use force more than is needed (for the defence) otherwise he will be obligated to pay compensation (damages) where the principles of equity must be observed.

Article 213. - (1) The lesser of two evils will be chosen and in case of conflict of two evils the evil with greatest injury will be considered (taken into account): the greater injury will be eliminated by the lesser injury; but an exigency (the compelling circumstances) will not nullify completely the right of a third party.

(2) He who has caused injury in order to protect himself or a third party against a much greater impending danger than the injury he has caused shall not be liable except on the compensation which the court deems appropriate.

Explanation according to Al Majalla: Paragraph (1): A's hen swallowed B's pearl consideration shall be had of that which is of greater value and who will take the hen and the pearl in its stomach. The pearl obviously is of greater value and the owner of the pearl is entitled to take the hen together with the pearl in its stomach; he will have to compensate the owner of the hen.

It would be permitted for the abdomen of a dead person to be opened in order to get out a child if there is hope of its survival.

Article 214. - (1) Personal injury will be tolerated (allowed) to ward off the public injury.

(2) A person who has demolished a house without permission from the owner in order to avoid (ward off) the breaking out of a fire in the quarter (vicinity) and the fire was actually extinguished there (at that place) shall not be liable for damages if the demolition was in compliance with an order by the competent authorities but where the demolishing was of his own accord he shall be liable to pay a suitable compensation.

Article 215. - (1) The act will be attributed to the perpetrator not to the commander (orderer) unless he was under duress where only the compelling coercion will be considered as duress in the actual disposals.

(2) A public official however will not be responsible for his act which caused injury to a third party if such action was performed in compliance with an order issued to him by his superior where compliance with such order was incumbent or believed to be incumbent; he who has caused the injury will have to establish that he believed that the act performed by him was lawful by adducing proof that in so doing he observed caution and that his belief was based on reasonable grounds.

Article 216. - (1) No ab initio or retaliatory injury: the injury will not be eliminated by inflicting a similar injury; a person who has suffered a grievance shall not inflict the same grievance as he had suffered on another person.

(2) Where a person has destroyed the property of a third party to counter said party's destruction of his property each party may claim for the damage suffered from

the other party: a person who has been cheated accepted counterfeit money from a third party may not dispense said (counterfeit) money to a third party.

Explanation according to Al Majalla: It was interpreted in Morocco that a man may not injure ab initio or in retaliation his brother (Ashbah), i.e. he may not be the first in inflicting the injury or retaliate the injury, e.g. no person is allowed to demolish the wall of a third party and if he did such party may not retaliate by demolishing his wall as in such case he must refer the matter to the courts which will order the demolisher to pay the value of the wall he had destroyed. A situation stemming from this is where a joint property needs a wall built and a co-partner asked for the construction to be done but the other refused the latter shall not be forced to do so; if the joint property is indivisible it will be divided and each party will do as he pleases with his share but where the property is indivisible the judge will allow the applicant for building to build and withhold the property from his co-partner until he pays to him the costs pertaining to his share. Where the right of a third party relates to the jointly owned property the co-partner who has refused shall be compelled to build.

Article 217. - (1) The several persons responsible for an unlawful act will be jointly liable in their obligation to pay damages for the injury done without distinction between the perpetrator, the accomplice, and the instigator (incitor).

(2) He (of the foregoing persons) who has paid the entire compensation may claim from the others such part which is assessed by the court according to circumstances and the gravity of the encroachment committed by each one of them; if it was not possible to determine the extent of the responsibility of each one of them the liability will be apportioned among them equally.

Section (ii) - Responsibility for the acts of a third party and for things

(1) Responsibility for the Acts of a Third Party

Article 218. - (1) The father and then the grandfather shall be obligated to compensate the injury caused by a minor.

(2) The father or the grandfather will be able to waive his responsibility if he has established that he had exercised the duty of control (over the minor) or that the injury would have taken place even where he had performed said duty.

Article 219. - (1) Government municipalities and other institutions which perform a public service as well as every person who exploits an industrial or commercial enterprise are responsible for the damage (injury) caused by their employees if the injury resulted from an encroachment committed by them in the course of their service.

(2) The employer will be able to relieve himself of the responsibility if he establishes that he had exercised the necessary care to prevent the injury or that the injury would have happened had he exercised the necessary care (caution).

Article 220. - A person who is responsible for the action of a third party is entitled to claim from such third party that which he had paid (in compensation).

(2) Responsibility for Things

The Offence of an Animal

Article 221. - The crime of an animal is excusable (reparable): the owner of an animal which causes injury

shall not be liable (on damages) unless it was established that the owner has failed to take adequate caution to prevent the injury.

Example quoted in Al Majalla: If a man tied his animal within the compound of his house and the animal kicked and injured a third party the owner will not be liable; there are however restrictions on this rule as for example where a man saw his animal destroying something but failed to prevent it from so doing the owner will be liable for damages for that which the animal has destroyed.

Article 222. (1) The owner who has seen his animal causing injury to the property of an individual but failed to prevent it from causing the damage shall be liable (for damages).

(2) The owner of a knocker ox and a biter dog shall pay damages for the injury caused by these animals if an individual of his village or quarter had asked him to control the animal but he failed to do so, or he was or must have been aware of the vice (defect) of the animal.

Article 223. - (1) A person who without permission of the owner has brought into the property of a third party a riding beast shall be liable on reparation for the damage caused by said beast regardless of whether he was riding, driving, or leading the beast and whether or not he was present near it.

(2) Where the beast got loose (strayed) and entered and caused damage to a third party's property the owner of the beast will not be liable unless it is established that he had failed to take adequate precautions to prevent the beast straying.

(3) Similarly where the owner has led his beast into the property with the permission of a third party he shall not be liable on the damage caused by the beast save where it is proved that he has failed to take adequate

precautions to prevent the damage.

Article 224. - (1) A person shall not be liable if while riding, leading, or driving his animal on a public road the animal caused unavoidable injury such as where the feet of the animal spread dust or splashed clay which soiled the clothes of a third party there is no liability.

(2) The owner (of a beast) will be liable where the injury could have been avoided such as in case of collision (bump) of the animal, a knock from its hand or head unless he has established that he had taken adequate precautions to prevent the collision (accident).

Article 225. - (1) A person who unnecessarily stops (parks) or ties a beast on the public road in other than the places assigned for (the parking of) beasts shall in all cases be liable for damages.

(2) A person who has let loose or left to stray a beast on the public road will be liable for damages if it is established that he has failed to take adequate precautions to prevent its straying.

Article 226. - (1) If a beast which has been tied by the owner in his property has injured another beast which was brought and tied by its owner in the property and without the permission of the former no liability will accrue; but where the latter (intruder) beast has injured the beast of the owner of the property the owner of the intruder beast will be liable.

(2) If two persons tied their two beasts in a place wherein they are entitled to tie their beasts (parking lot?) and one of the two beasts injured the other there is no liability unless the owner of the injured beast has established that the other owner had failed to take adequate precautions to prevent this injury.

(3) If two persons tied their two beasts in a place wherein they have no right to tie their animals there will

be no liability where the beast which was tied first has injured the beast of the person who tied his beast later; where the reverse is true (i.e. the second has injured the beast which was parked first) there is liability.

That which Takes Place on the Public Road

Article 227. - (1) Every person has the right of passage on the public road provided he (observes) the safety (precautions) so that he will not cause injury to a third party or to himself in the cases where (safety) precautions may be taken.

(2) A porter will be liable if the load he was carrying fell from his back in circumstances that could have been avoided and injured a third party; when beating (hot) iron in his shop a spark flew out and hit the clothes of a passer by on the public road the blacksmith will be liable (for the price of) the clothes of said passer by if it had been possible for the blacksmith to take precautions to prevent the flying of sparks.

Article 228. - (1) No person may place anything on the public road without having obtained a licence from the authority concerned otherwise he will be liable for the injury that results from such act.

(2) Liability will accrue where a person has placed on the public road stones and construction tools which caused the stumbling and injury of an animal or a person; similarly liability accrues where a person has poured (sprayed) something slippery on the public road which caused the slipping of a man or animal.

Responsibility in Respect of Buildings (Constructions)

Article 229. - (1) Liability will accrue where a building fell down causing injury to a third party if the building was dilapidated or contained a defect that led to its

falling and if the owner had been warned of (had his attention brought to) the same or where he was or should have been aware of the state of the building.

(2) A person who is threatened by suffering injury from a building may demand the owner to take the necessary precautions to ward off the danger and if the latter has failed to take the necessary precautions the court may be petitioned to issue a permit to take such precautionary measures at the owner's cost.

Article 230. - Every person who resides in a dwelling (house) (residence) will be liable for the damage caused as a result of that which is thrown out of or falls from this dwelling place (residence) unless he will establish that he has taken adequate precautions to prevent the injury.

Article 231. - Every person who has at his disposal mechanical machines or such other things which require special care for protection against injury shall be responsible for the injury caused thereby unless he can establish that he has taken adequate precautions for preventing this injury without prejudice to any specific provisions in this regard.

Article 232. - A claim for damages resulting from whatever (kind) of unlawful act shall not be heard after the lapse of three years from the day on which the injured person became aware of the injury and of the person who caused it; in all cases the claim will not be heard after the lapse of 15 years from the day of occurrence of the unlawful act.

Chapter 4 - Gain without Cause

Section (i) - Payment for that which is not due

Article 233. - (1) He who has paid a thing thinking that it is but was revealed not to be due from him may have

recourse against the person who has received it unlawfully.

(2) The person who has received that which is not due (to him) and was at the time of or after receiving (the thing) of bad faith he will also be obligated to restitute all the benefit he had or could have obtained from the thing as of the day on which he had received that which was not due or from the day when he became of bad faith; in all cases he will be obligated to restitute that which he had or could have earned (benefited) from the day of commencement of the proceedings; he shall be liable from the time he became of bad faith if the thing has perished or was lost even without encroachment on his part.

Article 234. - (1) A person of diminished capacity who receives the thing which was not due to him (to which he was not entitled) shall not be obligated to restitute except that which he had gained even if he was of bad faith.

(2) The same thing applies if the contract (concluded) by a person of diminished capacity is rescinded that which he had gained as a result of the performance of the contract only shall be restituted.

Article 235. - (1) The debtor who has discharged an obligation which has not matured thinking that it had matured may recover that which he had paid.

(2) A creditor may however confine the restitution of the benefit he has obtained as a result of the advance performance (of the obligation) to the extent of the injury suffered by the debtor; where the unmatured obligation was money the creditor will be obligated to restitute the interest thereof at the legal or contractual rate in respect of the period remaining for the maturity.

Section (ii) - Payment of a third party's debt

Article 236. - Where a person (A)* has ordered another person (B) to pay his debt the person ordered to pay (B) will claim from (A) that which he had paid and will subrogate the original creditor in claiming the debt regardless of whether or not he had stipulated recourse.

Article 237. - If a person (A) who ordered another person (B) to pay his debt has himself (A) paid the debt to his creditor and (B) has also paid that debt the latter if he was the first to pay the debt may claim from (A) that which he had paid; but where (A) was the first to pay the debt (B) may claim either from the receiver (of the payment) or from (A).

Article 238. - Where a person (A) has mortgaged his property (as security) for the debt of another person (B) and then paid the debt to release the mortgage of his property he will claim that which he had paid from the debtor.

Article 239. - If a person (A) has paid the debt of another person (B) who did not order (A) to pay the liability of (B) on the debt will be discharged regardless of whether (B) had agreed or not; the payer in this case will be deemed as having volunteered (the payment of the debt) and thus may not claim from the debtor any sum of that which he had paid without being ordered unless it is revealed from the circumstances that the payer had an interest in paying the debt or that he did not intend to volunteer.

* The letters A, B & C do not appear in the original text; they have been used to simplify the references. (Translator)

Section (iii) - Other situations (cases) of gain without cause

Article 240. - (1) If a person (A) has used the property of another person (B) without his permission he shall be obligated to pay the benefits thereof regardless of whether the property was for investment or otherwise without prejudice to the provisions of Article 1165 (hereof).

(2) He who dwells in the house of another person without (concluding) a contract shall be liable on the comparable rent; where the term of lease of a sown land has expired before the crop has ripened the tenant (lessee) may leave the plants in the land until they have ripened and pay the comparable rent.

Article 241. - Where a person has hired a minor without his natural guardian's permission the minor will deserve (be entitled to) the comparable rent of his service.

Article 242. - (1) Where a person has unintentionally lost possession of his property (an item belonging to him) which fortuitously became attached to another person's property such as would render the separation thereof impossible without causing injury to either property the property with the lesser (having the lesser) value shall after payment of its value be joined to the property having the higher value.

(2) If a pearl fell from the hand of a person and was picked up and swallowed by a hen the owner of the pearl will acquire the hen and pay the value thereof.

Article 243. - Every person even if he is imprudent who without just cause obtained gain for himself to the detriment of another person is liable to the extent of his profit to compensate such other person for the loss sustained by him; this obligation will remain existing even where the profit has thereafter disappeared.

Section (iv) - Non-hearing of cases of gain without cause

Article 244. - A claim for compensation for enrichment without just cause is prescribed in all the foregoing cases after the lapse of three years from the day on which the creditor became aware of his right of recourse; the claim also shall not be heard after the lapse of 15 years from the date of arisal of the right of recourse (claiming).

Chapter 5 - The Law

Article 245. - Obligations which arise directly and solely from the law shall be governed by the legal provisions giving rise thereto.

PART II - THE EFFECTS OF OBLIGATIONS

Chapter 1 - Forcible (Compulsory) Performance

Section (i) - Performance in rem

Article 246. - (1) The debtor will where possible be compelled to perform his obligation in rem.

(2) Where however performance in rem is too onerous for the debtor he may limit performance to payment of a sum of money as indemnity provided that this method of performance does not prejudice the creditor seriously.

Article 247. - An obligation to transfer ownership or any other right in rem will ipso facto transfer said right if the object of the obligation is a certain specified thing owned by the obligee without prejudice to the rules concerning registration.

Article 248. - (1) Where the object of the obligation to

transfer ownership or any other thing in rem is a thing which has been described as to its kind only the right will not be conveyed unless the object is identified as regards its individuality.

(2) If the debtor has failed to perform his obligation the creditor may after having obtained leave from the court or in case of urgency without such leave obtain at the debtor's expense a thing of the same kind; he (the creditor) may also claim the value of the thing without prejudice in the preceding two cases to his right to compensation.

Article 249. - In case of an agreement to perform work which stipulated or where the nature of the debt presupposes that the debtor must himself perform the obligation the creditor may refuse performance by other than the debtor.

Article 250. - (1) Where the debtor has failed to perform his obligation to do the work and if it was not necessary to perform it himself the creditor may seek leave from the court to perform the obligation at debtor's cost if such performance is possible.

(2) In case of urgency the creditor may perform the obligation at the debtor's cost without seeking leave from the court.

Article 251. - (1) In case of an obligation to perform work: if the obligation stipulated that the debtor will safekeep (maintain) or manage the thing or if it was required of him to exercise caution in performing the obligation the debtor would have performed the obligation if he had exercised the care of an ordinary person even where the intended object has not been realised.

(2) The debtor would however have performed the obligation if he had exercised the care he would customarily have exercised in carrying out his own affairs

if it would be revealed from the circumstances that the intention of the contracting parties was directed to that end.

Article 252. - Where the debtor has violated an obligation to refrain from doing a work (something) the creditor may demand suppression of that which he has done in violation of the obligation and compensation where necessary.

Section (ii) - Performance by way of deterrent fines

Article 253. - Where performance of the obligation in rem is impossible or inappropriate (not practical) unless performed by the debtor himself and the latter has refused performance of the obligation the court may upon application being made by the creditor issue a decision ordering the debtor to perform the obligation himself and if he persists in refusing performance to pay a deterrent fine.

Article 254. - Where performance in rem has been carried out or where the debtor has persisted in his refusal to perform the obligation the court shall fix finally the amount of the damages which must be paid by the debtor taking into account the injury sustained by the creditor and the intransigence of the debtor.

Section (iii) - Compensation in lieu of performance

Article 255. - An obligation will be performed by way of compensation in the circumstances and according to the provisions of the law.

Article 256. - Save where otherwise provided in the law the compensation shall not become due except after service of formal notice on the debtor.

Article 257. - A debtor is formally served by service of notice through the court; it may also be by any other demand in writing; it may also result from an agreement stipulating that notice (summons) would have been served on the debtor on mere maturity without the need for service of notice.

Article 258. - There will be no need to serve notice on the debtor in the following cases:

(a) if it has become impossible to perform the obligation in rem through an act of the debtor especially where the object of the obligation was the conveyance of a right in rem or the carrying out of an act which must have been but was not performed within a specified time limit; or where the obligation was to abstain from doing an act which the debtor has not performed;

(b) where the object of the obligation was payment of damages resulting from an unlawful act;

(c) if the object of the obligation was the restitution of a thing which the debtor knows to be stolen or a thing which he has received knowing that it was not due to him;

(d) if the debtor has declared in writing that he does not intend to perform his obligation.

Article 259. - (1) It may be agreed that the debtor will bear the consequences of an unforeseen act and of a force majeure.

(2) It may also be agreed that the debtor will be exonerated from every responsibility which may result from non-performance of his contractual obligations except the liability which results from his cheating or gross fault;

the debtor may however stipulate that he will not be responsible for cheating or gross fault committed by persons whom he employs for the performance of his obligation.

(3) Every stipulation exonerating from responsibility which results from an unlawful act shall be null and void.

Chapter 2 - Means Securing Payment (Realisation) of Creditors' Rights

Article 260. - (1) All the properties of a debtor are a security for the discharge of his debts.

(2) This security applies on an equal footing (pari passu) to all the creditors other than those of whom who according to the law have a right of preference.

Section (i) - Indirect actions (suits)

Article 261. - Every creditor even where his right has not matured for payment may in the name of his debtor exercise the rights of such debtor except such right which is purely personal or which is not attachable; the exercise by the creditor of his debtor's right will not be admissible unless he establishes that the debtor has failed to exercise said rights and such failure tends to cause or aggravate his insolvency; it will not be necessary to serve formal notice on the debtor but he must be joined in the proceedings.

Article 262. - In exercising the right of his debtor the creditor is deemed to be acting for him; every benefit resulting from the exercise of these rights will be included in the debtor's patrimonium and service as security for all his creditors.

Section (ii) - Proceedings of non-effectuality of the debtor's disposals against the creditor

Article 263. - Every creditor whose right has matured for payment may if his debtor has made a disposal prejudicial to him demand that such disposal will not be effective against his right if the disposal has diminished the debtor's rights or increased his obligations and has in consequence resulted in or increased the insolvency of the debtor when the conditions provided for in the following Article have been satisfied.

Article 264. - (1) In order that the disposal shall not be effectual against the creditor the debtor's disposal must have been against a consideration and involved fraud by the latter and that the transferee was aware of said fraud; the mere awareness of the debtor that he is insolvent is sufficient for presuming that he has committed fraud; it will also be presumed that the transferee was aware of the debtor's fraud if he had or must have known that this debtor was insolvent.

(2) But where the disposal was without a consideration (gratuitous) it will not be effectual against the creditor even where the transferee was of good faith and even where it has been established that the debtor did not commit fraud.

(3) If the successor to whom the debtor has alienated the thing has disposed of it to another successor against a valuable consideration the creditor may not claim validly the ineffectuality (voidance) of the disposal unless the second transferee (successor) had been aware of the debtor's fraud at the time of the alienation to the first transferee (successor) if the debtor's disposal was against valuable consideration or if such second transferee (successor) had been aware of the debtor's insolvency at the time of his disposal to the first transferee (successor) if the debtor's alienation was gratuitous.

Article 265. - If the creditor alleges that the debtor is insolvent all he has to do is to establish the amounts of the debt due from the debtor; the debtor will have to prove that he has property of a value equal to or in excess of the amount of the debts.

Article 266. - When voidance of the disposal has been declared the benefits which result from the cancellation of the alienation shall benefit all the creditors to whose prejudice the alienation was made.

Article 267. - (1) If the debtor has performed his obligation and his property (assets) has become adequate to discharge his debts the creditor shall forfeit his right to claim voidance of the disposal made by the debtor.

(2) The beneficiary of the disposal which was made to the detriment of the creditors will be capable to rid himself of the suit if he has discharged their rights or if he has established that the debtor has sufficient property (assets) to effect such discharge.

(3) Where a person who has received a right from the insolvent debtor had not paid the price thereof he will rid himself of the suit if he has deposited the comparable price of the right in the treasury of the court.

Article 268. - (1) Where the intention lying behind the fraud was only to give an unjustified preference to one creditor over another creditor said creditor will forfeit his right of invoking voidance of the debtor's disposal.

(2) If the insolvent debtor has paid off one of his creditors before the date of maturity (prematurely) this payment will not be valid as against the other creditors, neither will the payment be valid against them even when it is made after the maturity date if such payment was made as a result of collusion between the debtor and creditor who received his right.

Article 269. - A suit of ineffectuality (voidance) of a disposal will not be heard after the lapse of three years from the day when the creditor became aware of the cause of ineffectuality (voidance) of the disposal; in all cases the suit will not be heard after the lapse of 25 years from the time of effecting the disposal.

Section (iii) - Interdiction of a bankrupt debtor

Article 270. - The court will interdict a bankrupt debtor whose payable debts exceed his property (assets) if his creditors having feared on reasonable grounds that his property be lost or that he will conceal or transfer it to the name of a third party have petitioned the court pleading that he be interdicted from disposing of his property or from acknowledging a debt to a third party.

Article 271. - (1) Interdiction will be imposed by a judgment rendered by the Court of First Instance upon application being filed by a creditor.

(2) Any creditor may pursuant to this judgment obtain from the Execution Department a decision to levy attachment on all the interdicted debtor's property be it movables, real estate, or debts due from third parties but not non-attachable property; the attachment will continue in effect in favour of all the creditors until the interdiction has ended.

(3) Save where necessity requires otherwise the debtor himself will be constituted custodian over his property the subject matter of the attachment.

Article 272. - The sustenance expenses of the interdicted debtor during the interdiction period will be defrayed from his assets; if the creditors had levied attachment on his revenues the President of the Court having jurisdiction regarding the interdiction may upon a petition filed by the

interdicted decide for him expenses which he will receive from his attached revenues.

Article 273. - (1) All unmatured debts of the debtor shall fall due immediately upon rendering the interdiction order; the sum of the legal or contractual interest shall be deducted in respect of the period that had still to run for maturity.

(2) Upon application being filed by the debtor the court may vis-a-vis his creditors concerned order that the maturity date of the unmatured debts be left intact or be extended; it may also set another date of maturity for the matured debts if it considers that this action is justified by the circumstances and that it is the best way to secure the interests of all the parties - the debtor as well as all the creditors.

Article 274. - The admission of a debt by the interdicted debtor is void; if he had paid out of his property (assets) a debt due from him to one of his creditors the other creditors may have the sum so paid restituted.

Article 275. - In the wake of an interdiction order every creditor may take in his own name whatever proceedings (are needed) to obtain his right without prejudice to the other creditors' interest which is related to the attachment levied on the debtor's property.

Article 276. - The interdicted debtor may subject to the approval of a majority of the creditors representing three quarters of the debts sell all or some of his property (assets) and allocate the price thereof for the discharge of his debts; when all the creditors have failed to agree on the method of distribution of said price it will be deposited in the treasury of the court so that it will be distributed in accordance with the prescribed procedure.

Article 277. - Subject to leave from the court the debtor may dispose of his property (assets) even without the consent of the creditors if such alienation is made for the comparable price and provided the purchaser will deposit the price in the treasury of the court so that the creditors may obtain their rights therefrom.

Article 278. - The interdiction will end in the following cases by an order made by the Court of First Instance upon application being filed by every person who has an interest:

(1) when it has been established that the debts of the debtor do not exceed his property (assets);

(2) when the creditors or some of them have agreed to release the debtor's liability of some of his debts such that his remaining liability on the debt does not exceed his assets;

(3) when the debtor has discharged his debts which have matured independently of the effects of the interdiction in which case the debts which matured as a result of the interdiction will be reinstated into the dates of maturity which existed prior to the interdiction provided that the debtor would have paid all the matured instalments thereof;

(4) when three years have elapsed from the date of the order imposing the interdiction.

Article 279. - The debtor shall in pursuance of the judgment ending the interdiction be entitled to obtain from the Execution Department a decision of lifting the attachment levied on his property (assets) because of the interdiction (order) which thing will be without prejudice

to the proceedings taken by every creditor in his own name and for his sole interest against the debtor's assets.

Section (iv) - Right to withhold as security

Article 280. - (1) The vendor may withhold (delivery of) the thing sold until the purchaser has paid the entire price due; a worker may withhold the thing on which he is working until he has received the wage (remuneration) due regardless of whether or not his work has an effect on this thing; all of the foregoing will be in accordance with the provisions of the law.

(2) Every party to a financial (pecuniary) commutative contract may generally withhold the object of the contract while it is in his possession until he has received the consideration due.

Article 281. - He who has incurred necessary or beneficial expenses on the property of a third party which is in his possession or has erected thereon a construction or planted trees thereon may abstain from restitution thereof until he has received that which is due to him legally save where the obligation of restitution had arisen from an unlawful act.

Article 282. - (1) Every person who has undertaken an obligation to deliver a thing may abstain from performance so long as the creditor has not performed an obligation due from him which arose by reason of and is connected with the debtor's obligation.

(2) If the creditor has provided a security which is adequate to perform his obligation the debtor's right to refrain from delivering that which he had undertaken lapses.

Article 283. - (1) The establishment of the creditor's right to withhold the thing will not alone give him a

privileged right over it.

(2) The withholder (of a thing) shall safekeep the thing and give an account regarding the fruits thereof.

(3) If it is feared that the thing withheld will perish or become defective the withholding person may seek leave from the court to sell it in accordance with the procedure prescribed for the sale of the thing which is the subject of a possessory mortgage and the right to withhold passes from the thing to its price.

Article 284. - (1) The right to withhold ceases by cessation of the possession.

(2) The withholder of the thing who has lost possession thereof clandestinely or in spite of his objection may however have his possession restituted if he has claimed restitution within 30 days from the time when he became aware (knew) and before the lapse of one year from the time of the loss of possession of the thing.

PART III - CHARACTERISTICS (ATTRIBUTES) AMENDING THE EFFECTS OF OBLIGATIONS

Chapter 1 - Condition and Term

Article 285. - The immediate contract is that which is in absolute form not subject to any condition nor related to a future time and is performable immediately (present consequences*).

Section (i) - The condition

Article 286. - (1) A conditional contract is that which is made subject to a resolutory or suspensive condition.

(2) In order for the suspension to be valid the import

* This phrase is like "present conveyance", i.e. a conveyance made with the intuition that it take effect at once and not at a future time. (Blacks Law Dictionary)

of performing the condition must be non-existent (made dependent) on the risk of existence not realised nor impossible.*

Article 287. - (1) If the condition - resolutory or suspensive - is realised its effect will run as of the time when a suspensive condition was performed but where the condition is resolutory it will be void and disregarded.

(2) A contract will however be void when the condition upon which it depends is resolutory contrary to morality or the public order if said condition was the cause which motivated the contracting.

Article 288. - A contract which depends on a suspensive condition will not be performed until the condition has been realised.

Article 289. - (1) A contract which depends on a resolutory condition shall be effectual but not binding; if the condition has been realised the contract will be voided and the creditor will be obligated to restitute the money (property) he had received and if the restitution is impossible the creditor will incur liability; if the condition has not been realised the contract is binding.

(2) Management acts performed by the creditor will however remain existing (in force) in spite of the fact that the condition has been realised.

Article 290. - (1) Where the condition - resolutory or suspensive - has been realised its effect will operate retrospectively from the time of concluding the contract unless it would be inferred from the intention of the

* As the phrasing in Arabic is somewhat ambiguous I referred to the Civil Code of Egypt on which this code has been partially based where I found Article 265 which is somewhat like this Article and makes better sense; it reads: "An obligation is conditional when its existence or its extinction depends on a future and uncertain event."

contracting parties or from the nature of the contract that the existence of the obligation will be at the time when the condition has been realised.

(2) In any case the condition will not have a retroactive effect if the performance of the obligation prior to realisation of the condition has become impossible due to a cause beyond the control of the debtor.

Section (ii) - The term (time limit)

Article 291. - The contract may be coupled (linked) with a term (time limit) the maturity of which will result in either performance effectuality or voidance of the contract.

Article 292. - Coupling (linking) ownership with a term (time limit) in a contract will not be valid.

Article 293. - (1) A contract coupled (linked) with a suspensive term (time limit) will be concluded forthwith as to the cause but its legal consequence will be delayed until the term stipulated falls due.

(2) A contract coupled (linked) with a resolutory time limit will be effectual immediately but the expiration of the time limit will entail voidance of the contract.

Article 294. - (1) It will be presumed that the time limit is fixed for the debtor's benefit unless it has been revealed from the contract a provision in the law or from the circumstances that the time limit had been fixed for the benefit of the creditor or for the benefit of both the debtor and the creditor.

(2) Where it is revealed that the time limit was for the benefit of either party such party may abandon it unilaterally by his own will.

Article 295. - The debtor will forfeit his right to time

limit:

(a) if he has been adjudged bankrupt;

(b) if by his act he has weakened significantly the special security given to the creditor even where said security had been given by a subsequent contract or in pursuance of the law unless the creditor has elected (opted) to demand replenishment of the security; but where the weakening of the security was due to a cause beyond the control of the debtor the time limit will lapse unless the debtor prevents said lapse by providing to the creditor that which replenishes the security;

(c) if the debtor has failed to provide the securities which he has promised in the contract to supply.

Article 296. - A delayed (term) debt will not fall due by the creditor's death but falls due by the death of the debtor save where securities in rem have been provided.

Article 297. - If it has been revealed from the obligation that the debtor shall not perform the obligation except when he is able to do so or when he has enough wealth the court will fix a suitable time limit for maturity having in so doing consideration of the existing (present) and future resources of the debtor assuming him to be a careful person who is anxious to perform his obligation.

Chapter 2 - Plurality of Objects of an Obligation

Section (i) - Alternative obligations (option to name)

Article 298. - (1) It would be valid if the object of an

obligation is one of the fungible or valuable (non-fungible) things of different kinds where the debtor or the creditor is vested with a right to designate it.

(2) The debtor shall have the option of designation if the same has been left open save where the law has provided or the agreement of the parties stipulated that the option is for the creditor.

Article 299. - (1) A time limit must be fixed for exercising the option of designation.

(2) If the debtor who has the option (of designating) has abstained to exercise it within the time limit fixed the creditor may petition the court pleading that it designates the object of the obligation; but where the creditor who has the option (of designation) has refrained from exercising it the option will pass to the debtor.

Article 300. - The option of designation passes to the heir.

Article 301. - If the option of designation was for the debtor and either one of the two things perished while in his possession he may oblige the creditor to deliver the second thing and if both things have perished the contract is rescinded; where the debtor was responsible for the perishing even of one of the two things he will be obligated to pay the value of the thing that perished last.

Section (ii) - Facultative obligations

Article 302. - (1) An obligation is facultative if its object is one thing only but the debtor's liability will be relieved by performing another thing in place thereof.

(2) The original only and not the substitute is the object of the obligation and will determine its nature.

Chapter 3 - Plurality of Parties to an Obligation

Section (i) - Solidarity of Creditors

(1) Joint Debt

Article 303. - (1) A debt will be owing to several creditors if it has arisen from one cause and is indivisible because of the oneness of the transaction or of prior participation in (ownership of) the property which gave rise to the debt.

(2) A joint debt is deemed to be the price of a thing sold which is jointly owned by two or more (persons) and the price of the two things even where they are not jointly owned so long as the sale in both cases would have been effected in one transaction (bargain) without fixing separately the price of each one of them; a joint debt is also deemed to be that which devolves by succession upon several heirs, the value of joint property if consumed (utilised) and the substitute of a loan borrowed from a jointly owned property.

Article 304. - (1) Every co-creditor may claim his share of the joint debt.

(2) Where a co-creditor has received anything of the joint debt the other co-creditors may if they so wish share with him that which he had received in rem and together with the receiver will claim from the debtor the share of each one of them remaining due from him; or they may if they so wish claim nothing from the receiver and claim their shares from the debtor.

(3) If they have chosen to claim from the debtor they may not claim anything from the receiver except where their lot of the debt has perished in which case they will claim their share of that which the receiver had received and will take from him a thing comparable (and not the same as) that which had been received.

Article 305. - (1) If a co-creditor who has received his share of the joint debt and let it go out of his possession (disposed of it) in any way or has used (consumed) it the other co-creditors may claim from him their proportionate shares thereof.

(2) But where the share received by a co-creditor has perished while in his possession without negligence on his part he shall not be liable on the proportionate shares of his co-creditors of the thing received and would have received his right; that which remained of the debt due from the debtor will be for the other co-creditors.

Article 306. - Where a co-creditor has obtained from the debtor a surety for or a transfer to a third party of his share of the debt the co-creditors may share with him (claim their proportionate shares of) the sum taken from the surety or the subrogee debtor (drawee).

Article 307. - Where a co-creditor has purchased a property from the debtor in consideration of his share of the joint debt the other co-creditors may if they so wish either claim from him their proportionate shares of the price of the property purchased or claim their shares from the debtor but they may not share with him the property purchased unless they have agreed mutually to do so.

Article 308. - If in consideration of his share of the joint debt a co-creditor has rented a thing he will be in receipt of his share (of the joint debt) and his co-creditors will have an option to claim from him their proportionate shares or from the debtor.

Article 309. - Where the consideration of a composition made by a co-creditor and the debtor was his share of the joint debt and is of the same kind as that of the debt his co-creditors will have an option either to share with him

(proportionately to their shares) that which he has received or claim from the debtor; where the consideration of the composition was of a different kind than that of the debt the co-creditors will also have an option to claim from the debtor or the co-creditor who made the composition and in this case the latter may if he so wishes either deliver to them their (proportionate) shares of the thing received or pay to them their shares of the joint debt.

Article 310. - Where a debtor who owes a joint debt has died leaving a co-creditor as heir and property which is insufficient to discharge the debt all the co-creditors will share the property left by the debtor each according to his share (pro rata).

Article 311. - (1) If the debtor who owes a joint debt has a personal debt owing from a co-creditor which has been established for him prior to the maturity of the joint debt and this debt has become such as it could be set off against the co-creditor's share of the joint debt the other co-creditors may not claim from said co-creditor anything of their shares.

(2) Where a co-creditor has incurred a debt from the debtor which has been established after the maturity date of the joint debt and this debt became a set off therefor the other co-creditors may claim from said co-creditor their pro rata shares of such debt.

Article 312. - (1) If a co-creditor of a joint debt has destroyed a property belonging to the debtor who made a set off with him on his joint share (of the debt) the other co-creditors may take their (pro rata) shares from him (the creditor).

(2) But where the co-creditor has guaranteed to the debtor a debt owing to him from a third party and his share (of the joint debt) became a set off against the debt he had secured his co-creditors may not claim anything from

him; if he has claimed and received from said third party the sum secured the other co-creditors may not share with him said sum.

Article 313. - Where a co-creditor has volunteered his share of the joint debt to the debtor or relieved his liability thereon the donation and the discharge are valid and he will not be liable to his (the other) co-creditors for their lot of that which he has donated or discharged.

Article 314.- (1) The co-creditors of a joint debt may among themselves agree that each one of them is entitled to receive his share of the debt and the other co-creditors may not claim from him even when their shares have perished.

(2) In this case the joint debt is finally (definitively) divided among the joint creditors where each one of them will have his own (separate) share of the debt and no other co-creditor may in any way share it with him.

(2) Solidarity of Creditors (Joint and Several Creditors)

Article 315. - Solidarity among creditors does not exist unless there is an agreement or a provision in the law to that effect.

Article 316. - (1) The joint and several creditors may jointly or severally claim the entire (sum) of the debt from the debtor.

(2) A debtor who is sued for payment by a co-creditor cannot set up defences against that creditor that are pertinent to another co-creditor except to the extent of the share of such co-creditor if his liability has been relieved in respect thereof but may adduce the defences

that are (personal to the creditor suing him)* as well as the defences which are common to all the creditors.

Article 317. - The debtor may pay the entire (sum) of the debt validly to any of the several and joint creditors unless another co-creditor has served notice on him to abstain from payment.

Article 318. - (1) If the debtor's liability has been relieved by a co-creditor for other than payment the debtor's liability vis-a-vis the other co-creditors will not be discharged except to the extent of the share of the co-creditor who discharged the debtor's liability in respect of his share.

(2) If a co-creditor has committed an act which tends to be detrimental to the other creditors such act shall have no effect on (vis-a-vis) the other creditors.

Article 319. - All that which a co-creditor receives of the debt reverts to all the co-creditors and will be divided equally among them save provision or agreement providing for other than equal sharing.

Section (ii) - Solidarity of debtors

Article 320. - Solidarity among debtors is not presumed but will be pursuant to an agreement or a provision in the law.

(1) The Relationship of a Creditor with Joint and Several Debtors

Article 321. - (1) A creditor may claim payment of all the debt from any of the joint and several debtors or from all

* The construction of the one sentence constituting this Section is somewhat ambiguous as regards the words in parentheses which may also be taken to mean: "personal to him (i.e. the debtor)". (Translator)

of them jointly; claiming payment from one co-debtor will not bar the creditor from claiming from the other co-debtors.

(2) A co-debtor if sued for payment by the creditor cannot set up the defences against such creditor which are pertinent to another co-debtor except to the extent of the share of such other co-debtor if it has been paid in any manner but he may set up the defences pertinent to himself as well as the defences which are common to all the co-debtors.

Article 322. - Where a co-debtor has paid the entire (sum) of the debt in rem by a consideration or by way of a transfer (negotiation) his liability and that of the other co-debtors will be discharged.

Article 323. - Revival (novation) of the debt between the creditor and a co-debtor entails discharge of the liability of the other co-debtors except where the creditor has reserved his right vis-a-vis them.

Article 324. - A co-debtor* may not set up as defence a set off concluded by the creditor and another co-debtor except to the extent of the share of such other co-debtor.

Article 325. - Where the liability of a co-debtor has been merged with that of the creditor the debt will not be extinguished in respect of the other co-debtors except to the extent of the merged share of the co-debtor.

Article 326. - (1) The debt will lapse in respect of a co-debtor whose liability has been released by the creditor but the liability of the other co-debtors on the debt will not be released except where the creditor has made a

* Co-debtor and co-creditor are used herein wherever they occur to denote "joint and several". (Translator)

declaration to that effect.

(2) In the absence of such a declaration the creditor may not claim from the other co-debtors except the debt remaining after deduction of the share of the co-debtor whose liability has been released.

Article 327. - Save where otherwise agreed a creditor who has released the joint and several liability of a co-debtor his right of recourse against the other co-debtors for the entire sum of the debt remains.

Article 328. - (1) In all the cases where the creditor has released a co-debtor from the debt or from the joint and several liability the other co-debtors may where necessary in accordance with Article 334 (hereof) claim from said debtor who has been so released his contribution in the share of whichever co-debtor is insolvent.

(2) Where however it is established that the creditor intended to free the co-debtor so relieved of any liability on the debt the former himself will bear the contribution of said co-debtor in the share of the insolvent.

Article 329. - (1) If the suit for the debt may not be heard against a co-debtor on account of prescription the other co-debtors will benefit from this prescription to the extent of the share of that co-debtor against whom the suit cannot be heard.

(2) Where the running of time limitation (prescription) has been suspended or interrupted in regard to a co-debtor the creditor may not claim interruption or suspension as regards the other co-debtors.

Article 330. - A co-debtor will not be responsible as regards performance of the obligation except for his act; a formal demand to or proceedings taken by the creditor against a co-debtor will not have effect against the other co-debtors; but where a co-debtor has issued a formal

demand against the creditor the other co-debtors will benefit from said demand.

Article 331. - If the creditor has made a composition with a co-debtor which contained a waiver (release) or discharge of liability in any other way the remaining co-debtors will benefit from it; but if the said composition tends to create a (new) obligation on them or to increase their liability it will not be enforceable against them unless they have accepted such obligation or increased obligation.

Article 332. - (1) An acknowledgement of the debt by a co-debtor will not apply against (bind) the other co-debtors.

(2) If a co-debtor has refused to take the oath or tendered the oath to the creditor who took it the other co-debtors will not be prejudiced (affected) thereby.

(3) But if a co-debtor has taken the oath the other co-debtors will benefit of the same if the oath concerned the indebtedness and not the joint liability.

Article 333. - (1) A judgment which has been rendered against a co-debtor may not be set up (adduced) against the other co-debtors.

(2) A judgment rendered in favour of a co-debtor will benefit the other co-debtors except where the judgment was based on a cause peculiar to the co-debtor in whose favour the judgment has been rendered.

(2) Inter-relationship of the Co-debtors

Article 334. (1) He of the co-debtors who has paid the debt may have recourse against the other co-debtors, each according to his share, for that which he has paid surplus to what is due from him.

(2) When a co-debtor is insolvent the effects of such insolvency will be borne by the co-debtor, who had paid the debt, and by the other solvent co-debtors, each according

to his share.

Article 335. - (1) If a co-debtor has paid the (entire) debt by other than the thing in which it is payable or by any other way substituting payment such as a grant or transfer he will have recourse against the other co-debtors for that which he had paid in discharge of their liability but not for what he had paid.

(2) If a co-debtor is the only one who has interest in the debt he alone will bear the entire (sum of the) debt vis-a-vis the other co-debtors.

Article 336. - The obligation will be indivisible:

(1) if it is in respect of a thing which due to its nature is indivisible;

(2) if it is revealed from the purpose pursued by or it was the intention of the parties that the performance of the obligation should not be divided.

Article 337. - (1) In the case of plurality of the debtors on an indivisible obligation each one of them will be obligated to pay the entire (sum of) the debt.

(2) A co-debtor who has paid the debt has a right of recourse against the others each according to his share except where it is revealed otherwise from the circumstances.

Article 338. - (1) In case of several creditors or of several heirs to a creditor of an indivisible obligation every creditor or heir may demand performance of the entire obligation; if a creditor or an heir has objected to said action (measure) the debtor will be obligated to perform the obligation to all the creditors (assembled) together or to perform the thing the object of the obligation.

(2) The creditors will claim each according to his share from the creditor who has received the obligation.

PART IV - ASSIGNMENT OF OBLIGATIONS

Chapter 1 - Drafts (Bills of Exchange)

Article 339. - (1) A bill of exchange (draft) is a transfer of the debt and the claim from the liability of the drawer to the liability of the drawee.

(2) A bill of exchange is general if the debtor has transferred the debt of his creditor to a drawee which is not confined to payment from the debt of the drawer owing from the drawee or from the thing deposited with or usurped by him (drawee) or where a drawer has drawn on a person who does not owe nor has in his custody anything belonging to the drawer.

(3) A bill of exchange (draft) will be restricted if it is drawn by a debtor owing a debt to his creditor on a drawee confining it to payment from the debt owing by the drawee to the drawer or from the thing deposited with or usurped by the drawee.

Section (i) - Elements and conditions

Article 340. - (1) A bill of exchange drawn by a drawer on a drawee will be concluded subject to the consent of the party in whose favour it is made (the beneficiary).

(2) Where the drawer or drawee has notified the person in whose favour it was made (beneficiary) and fixed a reasonable time limit for acceptance which has lapsed without such acceptance being expressed the silence of the beneficiary is deemed to be a rejection of the bill.

Article 341. - A bill of exchange (draft) is valid if concluded by the creditor and the drawee who will be obligated to pay but may not claim from the original debtor

unless the latter has accepted the bill.

Article 342. - In order for the bill of exchange to be valid the drawer must be indebted to the person in whose favour it is made (beneficiary) otherwise it will be power of attorney (agency).

Article 343. - Every debt which is susceptible of suretyship may be assigned validly provided the debt is known (specified).

Article 344. - A beneficiary of a waqf may draw in favour of his creditor a bill of exchange (draft) confined to his entitlement on the superintendent of the waqf if the superintendent has the fruit of the waqf in his possession and accepts the bill (draft); a bill will not be valid if the entitlement (of the drawer) is not in the possession of the superintendent.

Article 345. - Acceptance of the father or guardian of a bill of exchange (draft) drawn on a third party is permissible if it is beneficial to the minor where the drawee is more credible than the drawer but will not be permissible if the drawee is as solvent or nearly as solvent as the drawer.

Section (ii) - The legal consequences

(1) The Relationship of the Beneficiary and the Drawee

Article 346. - Where the beneficiary has accepted and the drawee has consented to the draft the drawer's liability on and the right to claim the debt is waived and the beneficiary's right to claim from the drawee is established.

Article 347. - The debt will pass to the drawee in the same

state that existed on the drawer: if it had matured the bill will be mature and if it is deferred (delayed) the bill is deferred.

Article 348. - (1) The securities of the debt transferred (object of a draft) remain existing in spite of a change of the debtor's person; where a mortgager has transferred the debt of the mortgagee to a third party or when the purchaser has drawn a bill (draft) of the price on a third party in favour of the vendor the right of the mortgagee to the mortgage will not lapse nor will the right of the vendor to withhold the thing sold; but where the mortgagee has drawn a bill (draft) in favour of his creditor on the mortgager his right to the mortgage will lapse and will not be a mortgage for the beneficiary; the same thing applies where the vendor has drawn a bill (draft) of the price on the purchaser in favour of his creditor his right to withhold the thing sold will lapse.

(2) Where however a person who has accommodated in rem or in personam the debt being transferred does not accommodate the drawee unless the accommodation party has consented to (accepted) the bill.

Article 349. - The drawee may adduce against the beneficiary the defences which pertained to the drawer and are related to the same debt and may not set up defences which are personal to the drawer but may adduce defences which are personal to him.

Article 350. - The liability of the drawee on the debt is discharged by payment of the debt assigned by drawing a draft of the sum of the debt on a third party by a waiver (relinquishment) by grant by a merger of liability or by any other cause.

Article 351. - If the drawee dies indebted (still owing debts) his assets will be divided between the creditors and

the beneficiary pro rata and anything that remains owing to the beneficiary after the division will be claimed from the drawer if he has a right of recourse.

Article 352. - If the drawer stipulated in the draft that the drawee will sell a thing owned by the drawer and pay the debt the object of the draft out of the price thereof and if the drawee accepted this stipulation the draft is valid and he will not be compelled to pay before the sale (is effected) but will be compelled to sell and pay the debt out of the price.

Article 353. - The draft will not be voided if the debt to which the draft was confined (restricted) has lapsed by an impediment occurring after the drawing of the draft: if the vendor has drawn a draft on the purchaser in favour of his creditor in the sum of the price and if the object of the sale has perished prior to delivery thereof to the purchaser and the price has lapsed (been extinguished) as a result or where the object of the sale has been restituted on account of a defect or other cause the draft will not be voided and the drawee shall after having paid have recourse for that which he had paid.

(2) But where the debt to which the draft has been restricted has lapsed (been extinguished) due to a matter preceding the drawing of the draft and if it was revealed that the drawee was free of any liability thereon then the draft will be voided: if the vendor has drawn a draft on the purchaser in favour of his creditor in the sum of the sale price and then the object of the sale was replevined by a third party the draft is voided ad the debt is restituted to the liability of the drawer.

Article 354. - In all cases of replevin of the thing sold the price of which was the subject of a draft the drawee if he had paid the price shall have an option of recourse either against the drawer or the creditor (beneficiary) to

whom he had paid.

Article 355. - (1) Where the debtor has drawn a draft in favour of his creditor on the depositary restricted to the thing deposited with him which perished prior to being delivered to the beneficiary without encroachment on the part of the depositary the draft is voided and the debt is restituted to the drawer's liability; revendication by a third party of the deposited thing voids the draft as when it is voided by the perishing thereof.

(2) The draft will not be voided if the perishing of the deposited thing was due to a fault or encroachment by the depositary.

Article 356. - (1) The draft is not voided if the debtor has drawn in favour of his creditor a bill on a usurper restricting it to the thing usurped which perished while in the hands (custody) of the usurper prior to being delivered to the beneficiary.

(2) The draft will be void if the thing usurped has been revendicated (replevined) by a third party and the beneficiary will have recourse for his right against the drawer.

(2) The Relationship between the Beneficiary and the Drawer

Article 357. - (1) The beneficiary (of a draft) may not have recourse for his debt against the drawer unless the draft contained a stipulation for recourse or if a restrictive draft became void by extinction of the debt the perishing of the thing (ayn) or the revendication thereof in accordance with the preceding provisions.

(2) The mere impossibility of collecting the debt from the drawee and his being bankrupt even when adjudged bankrupt by the court does not necessitate voidance of the draft and restitution of the debt to the drawer's

liability.

Article 358. - A draft which contains a stipulation of non-release of the drawer's liability is a surety devoid of the right of dispossession in which case the beneficiary may claim from whomever he wishes: the drawer or the drawee.

(3) The Relationship between the Drawee and the Drawer

Article 359. - Where the drawer who has drawn an absolute (unrestricted) draft and did not have a debt owing from or a thing deposited with or usurped by the drawee the latter will have recourse against the drawer after, not before, having effected the payment for the sum named in the draft and not that which he had paid.

Article 360. - If the drawer has drawn an absolute (unrestricted) draft and had with the drawee a debt or a deposited or usurped thing (ayn) he may after the draft claim from the drawee until (such time when) the latter has paid the debt to the beneficiary; and if the drawee has paid the debt that which he owes will be set off against that which he had paid.

Article 361. - (1) If the draft has been restricted (confined) to a debt owing to the drawer from the drawee or a thing (ayn) which has been deposited with or usurped (by the drawee) the drawer cannot after having drawn the draft claim from the drawee nor the drawee can pay to the drawer and if he has paid he will be liable vis-a-vis the beneficiary and can have recourse against the drawer.

(2) If the drawer has become insolvent before the drawee has paid the debt the other creditors may not claim their shares from the beneficiary.

Chapter 2 - Assignment of a Right

Section (i) - Elements and conditions

Article 362. - A creditor may assign whatever right is owing to him from his debtor except where the assignment is barred by a provision in the law an agreement of the contracting parties or the nature of the obligation; the assignment is completed without need for the assignee's (debtor) consent.

Article 363. - An assignment shall not be effectual against the assignee (debtor) or a third party unless it has been accepted by or served on the assignee provided that the effectuality thereof vis-a-vis a third party with the assignee's approval (acceptance) makes it necessary (presupposes) that such acceptance has a certified (established) date (date certaine).

Article 364. - A right may not be assigned except to the extent of that which thereof is attachable (distrainable).

Section (ii) - Legal consequences

(1) The Relationship between the Beneficiary and the Assignee

Article 365. - The right is transmitted to the assignee together with its attributes and warranties such as suretyship, privilege, and mortgage; the assignment is deemed to comprise (cover) the interests and instalments which had fallen due.

Article 366. - The drawee (assignee) may set up against the beneficiary the defences which he was entitled to invoke against the assignor at the time when the assignment became effectual against him; he may also invoke the defences

which are strictly personal to the beneficiary.

(2) The Relationship between the Beneficiary and the Assignor

Article 367. - The assignor shall deliver to the beneficiary the title deed the subject matter of the assignment and must provide to him the means to establish this right and any particulars which may be needed to enable him to acquire his right.

Article 368. - (1) Where the assignment is for valuable consideration the assignor shall not guarantee except the existence of the right assigned at the time of the assignment save where there is an agreement otherwise.

(2) Where the assignment has no valuable consideration the assignor shall not be guarantor even of the existence of the right.

Article 369. - The guarantee of the solvency of a debtor by the assignor applies only to solvency at the time of the assignment except where agreed otherwise.

Article 370. - Where the beneficiary (creditor) has exercised his right of recourse in respect of the guarantee (warranty) against the assignor in accordance with the preceding two Articles the assignor shall not be bound to restore except that which he had taken from the beneficiary together with interest and costs even if there is an agreement stipulating restoration of more than that.

Article 371. - The assignor shall be liable for his encroachment even where the assignment was without valuable consideration and even where there was a stipulation exonerating from warranty.

(3) The Relationship between the Assignee and the Assignor

Article 372. - (1) The debtor's liability shall be relieved if he has not accepted the assignment and had paid the debt to the assignor prior to being served of the assignment.

(2) His (the debtor's) liability shall not however be relieved by such payment if the beneficiary has established that the debtor had been aware at the time of payment of the issue of the assignment.

(4) The Relationship between the Beneficiary and Third Parties

Article 373. - In case of several assignments of the same right the assignment which becomes effectual before the others against a third party shall have precedence.

Article 374. - (1) Where an attachment has been levied on the right while it was still in possession (in the hand) of the assignee (debtor) before the assignment became effectual against the distrainer the assignment shall in regard to the distrainer be tantamount to another attachment.

(2) In the case provided for in the preceding paragraph if a second attachment has been levied after the assignment has become effectual against a third party the debt shall be divided pro rata among the first distrainer, the assignee creditor (beneficiary), and the second distrainer and such part shall be taken from the share of the second distrainer which complements the value of the right assigned to the assignee creditor (beneficiary).

PART V - LAPSE (EXTINCTION) OF THE OBLIGATION

Chapter 1 - Payment (Discharge)

Section (i) - Payment parties

(1) Who Will Effect Payment

Simple Payment (Discharge)

Article 375. - (1) Payment of the debt by the debtor or whoever acts for him will be valid; it will also be valid if it is paid by a third party who has an interest to pay such as a surety and a joint debtor subject to the provisions of Article 250 (hereof).

(2) Payment of the debt will also be valid if made by a stranger who has no interest to pay upon the order or without the order of the debtor; the creditor may however refuse to accept payment from a third party if the debtor has objected to such discharge and served notice on the creditor to that effect.

Article 376. - In order for the discharge to be valid and for the relieving of liability thereon the payer must be the owner of that which he has paid; but if it is revendicated (replevined) by evidence and was repossessed by the owner or it perished and the owner took a substitute thereof the creditor shall claim his debt from his debtor.

Article 377. - If the debtor is a prudent minor or of major age but is mentally retarded or is interdicted for imprudence or simple-mindedness who has paid the debt owing from him his payment shall be valid save where the discharge is prejudicial to the payer.

Article 378. - It would not be valid for the debtor to

discharge the debt of one of his creditors during his death illness* (the illness which led to his death) if such discharge was prejudicial to the other creditors.

Payment on Maturity

Article 379. - If a person other than the debtor has paid the debt the payer shall subrogate the creditor by the rule (operation) of the law in the following cases:

(a) where he is liable on the debt jointly with the debtor or was under an obligation to discharge the debt on his behalf;

(b) if he is a creditor who even does not hold a security has discharged the debt of another creditor who has precedence over him by reason of a security in rem;

(c) if he had purchased an immovable and paid the price thereof in settlement (to the debt) of one of the creditors who holds a security on the immovable for securing their rights;

(d) if there is a provision vesting in the payer the right of subrogation.

Article 380. - (1) The creditor who has received his right from other than the debtor may by agreement with such third party subrogate him his rights even where the debtor does not agree to such subrogation; the agreement must be by a formal paper the date of which must not be later than the time of the discharge.

(2) The debtor who has borrowed money by which he discharged the debt may subrogate the lender into the

* See explanation of 'death illness' in the Foreword.

rights of the creditor who has received his right even without the consent of said creditor provided the agreement to subrogate was by means of a formal paper and provided he mentions in the contract of the loan that the loan money was allocated for the discharge and in the quit-claim (disclaimer) that discharge was effected by the money borrowed from the new creditor.

Article 381. - He who is subrogated in law or by an agreement into the rights of the creditor is vested with the creditor's rights as much as regards the attributes, accessories, and the securities of as well as the defences pertaining to the said right; this subrogation shall be to the extent of that which the subrogee creditor had paid.

Article 382. - (1) In the absence of an agreement otherwise if other than the debtor has discharged part of the creditor's right and has subrogated him in regard to said part the creditor will not be prejudiced by this discharge and in receiving the balance of his right shall have preference over he who made the discharge to him.

(2) Where another party is subrogated in the rights of the creditor in regard to that which remained due to the latter the second subrogee together with the third party subrogated before him shall have a right of recourse in respect of what is due to each of them pro rata.

(2) To Whom Payment Must Be Made

The Acceptance of the Discharge

Article 383. - (1) It would be valid if the debt is paid to the creditor or to his agent (representative if he is not interdicted; but if he is interdicted payment of the debt to him is not valid which must be paid to whomever is vested with a right to receive the same such as a guardian a selected guardian or a curator.

(2) Payment of the debt by the debtor to the interdicted creditor will not be effective nor will it discharge his liability on the debt; but where that which the debtor has paid has perished or been lost from the interdicted, the guardian, selected guardian, or curator may claim the debt from the debtor.

Article 384. - Where the discharge is made to other than the creditor or whoever acts for him the debtor's liability shall not be discharged unless the creditor has admitted that such discharge was made or where the discharge was made in good faith to a person to whom the debt was apparent like the apparent heir (who had the appearance of the creditor).

Refusal to Pay

Offer and deposit

Article 385. - (1) If the creditor has without acceptable justification refused the discharge validly offered to him, or has refused to perform the acts without which discharge cannot be effected, or has declared that he will not accept discharge the debtor may serve formal notice on the creditor requiring him to receive his right within a suitable time limit as indicated in the notice.

(2) Formal summons on the creditor will not be effected unless the debtor has after the lapse of this time limit made a deposit in the name of the creditor and served notice of such deposit on him.

Article 386. - (1) The deposit will replace (be tantamount to) the discharge if it has been accepted by the creditor or if a judgment has been rendered of its validity.

(2) In this case the costs of deposit will be borne by the creditor who will also bear the consequences of the perishing of the thing as of the time of the deposit from

which time the running of interest also ceases.

Article 387. - (1) If the object of the discharge was an immovable or a thing destined to remain where it lies and if the debtor petitioned the court pleading for it to be placed under the custody of a ('Adl)* (person who is trustworthy and known for his good character and behaviour); delivery to the 'Adl of the thing is tantamount to deposit.

(2) If the thing is of a perishable nature or the deposit of which will cost heavy expenses the debtor may after seeking or in case of necessity without seeking permission from the court sell it at the market price and if this is impossible it will be sold by public auction and the deposit of the price will be tantamount to depositing the thing itself.

Article 388. - The deposit or any alternative procedure (measure) substituting (tantamount to) deposit will also be permissible if the debtor does not know the person or domicile of the creditor or if the creditor was interdicted and had no one acting for him to accept the debt on his behalf, or where the debt was the subject of a dispute among several persons, or if there were other serious causes which justify this measure (procedure).

Article 389. - (1) The debtor who has made an actual offer of the debt and followed the offer by a deposit or an alternative action may withdraw his offer so long as the creditor has not accepted it or so long as the validity thereof has not been acknowledged by a final judgment; where the debtor has withdrawn his offer the liability of neither the co-debtors nor the sureties will be discharged.

(2) Where the debtor has withdrawn his offer after being accepted by the creditor or being declared valid by a

* A person whose good deeds outweigh his bad deeds.

judgment and if the creditor has accepted such withdrawal the latter may not thereafter invoke the securities guaranteeing his right and the liability of the co-debtors as well as of the sureties (accommodation parties) shall be discharged.

Section (ii) - Object, time, place, and expenses (costs) of discharge

(1) Object of the Discharge

Article 390. - (1) If the object of the debt can be designated (identified by designating it) the debtor shall not pay another thing in place thereof without the consent of the creditor even where such substitution is equal in value to the thing which matured or if it is of a higher value.

(2) But where the object of the debt cannot be designated (identified by designation) but was designated in the contract the debtor may pay a comparable something even if the creditor has not accepted.

Article 391. - If the owner of the debt (creditor) has accidentally acquired a thing of his debtor's property which is of the same type and of the same quality (has the same attributes) as his right he may keep it.

Article 392. - If the debt has matured the debtor may not compel his creditor to accept some (part) of the debt to the exclusion of the other part even where the debt is divisible.

Article 393. - (1) If the debtor has paid either of the two debts owing from him and if one of them is free and the other is covered by a surety or a mortgage, or if one of them was a loan and the other was included within the object of a sale, or if one was jointly owned and the other

personal (individually owned), or if the two debts were different in any way and the parties have differed as to the nature of the debt the word of the debtor shall be effectual (taken into consideration) as to designating the party who is to receive the payment.

(2) Where the debtor who is under an obligation to compensate with the debt expenses and interest and if that which he has paid is insufficient to satisfy the debt and these ancillaries that which has been paid will be deducted (at first) from the expenses then from the interest and then from the debt unless in all cases there is an agreement stipulating otherwise.

(2) The Time of Discharge

Article 394. - (1) If the debt is for a term or if it has been made payable in instalments the creditor may not claim from the debtor either the debt or the instalments before the date of maturity.

(2) The debt must be paid immediately (forthwith) if it is not for a term or it has matured; the court may however where necessary if it is not barred by a provision in the law accord the debtor a suitable time limit (to pay) if his condition necessitates such action provided no great prejudice is caused thereby to the creditor.

Article 395. - (1) Where the debt is for a term the debtor may discharge it prematurely if such term was solely to his benefit and the creditor will be obligated to accept (payment).

(2) Where the debtor has paid the debt prematurely and then that which has been received is revendicated the debt regains (is restituted to) its former status.

(3) The Place of Discharge

Article 396. - (1) If the subject matter of an obligation to be delivered is one which has value and weight such as things that are measured by volume or weight (quantitatives and weightables) commodities and similar things and if the contract is absolute (unrestricted) which did not specify a place for delivery the thing will be delivered at the place wherein it was lying at the time of the contract.

(2) As regards the other obligations the discharge will take place at the debtor's domicile at the time of maturity or at the place wherein lies his business premises if the obligation is related to this business unless there is an agreement otherwise.

Article 397. - If the debtor has sent the debt by his messenger to the creditor and the debt perished in the hand of the messenger before his arrival the debtor will bear the perishing (it would have perished as being one of his assets); but if the creditor ordered the debtor to pay the debt to the creditor's messenger which he did and the debt perished in the hand of said messenger the debtor will be released of the debt and the loss will be borne by the creditor.

(4) The Expense (Cost) of Discharge

Article 398. - In the absence of an agreement, a provision in the law, or custom otherwise the expenses of discharge shall be borne by the debtor.

Chapter 2 - Lapse (Extinguishment) of an Obligation by an Equivalent of Discharge

Section (i) - Discharge by an equivalent

Article 399. - A thing other than that which is due which is accepted by the creditor in satisfaction of his right shall take the place of discharge.

Article 400. - Because the discharge by an equivalent transmits the ownership of the thing given for the debt it shall be governed by the provisions of sale and particularly that which thereof pertains to the legal capacity of the parties and warranty of revendication and of the invisible defects; and because the discharge extinguishes the debt it will be governed by the provisions of discharge particularly such provisions which relate to designation of the adversary for discharge (to whom payment is to be made) and to extinction of the securities.

Section (ii) - Renovation (renovara) and substitution

(1) Renovation (Renovara)

Article 401. - The obligation is re-created (revived) by an agreement of the contracting parties to substitute (subrogate) the original obligation for a new obligation the object or source of which is different.

Article 402. - An obligation may also be re-created by changing the creditor if the creditor debtor and a third party have agreed that such third party is to be the new creditor, or by changing the debtor if the creditor has agreed with a third party that such third party will be the debtor in place of the original debtor whose liability shall be released without need for his consent or where the

third party has accepted to be the new debtor where the original debtor has obtained the consent of the creditor to this substitution.

Article 403. - If the obligation is re-created the original obligation is extinguished and the new obligation replaces it.

Article 404. - Where the original debt which is secured by securities in rem or in personam has been re-created the securities will lapse unless they have also been re-created.

(2) Substitution in Discharge

Article 405. - (1) Substitution is effected if the debtor has obtained the consent of the creditor to make a third party to assume the obligation to discharge the debt in his stead.

(2) Substitution does not necessitate the existence of a previous indebtedness between the debtor and the third party.

Article 406. - (1) If the contracting parties to a substitution have agreed to substitute a new obligation for the first (original) obligation the substitution is a re-creation of the obligation by changing the debtor.

(2) Basically re-creation is not presumed in a substitution; in the absence of an express agreement for re-creation the new obligation exists alongside (concurrently with) the original obligation.

Article 407. - The obligation of a substitute is valid even where his obligation to the original debtor is null or liable to be contested where the only right of the substitute is to have recourse against the original debtor save in all cases where there is an agreement otherwise.

Section (iii) - Set-off

(1) The Conditions

Article 408. - A set-off is the extinction of a debt owing to a person from his creditor against the extinction of a debt owing from said person to his creditor.

Article 409. - (1) A set-off is either compulsory (obligatory) effected by the force of the law or voluntarily effected as a result of the mutual consent of the inter-debtors (debtors who are indebted to each other).

(2) In order for the compulsory set-off to be effected the two debts must be concordant as to kind, description (attributes), the date of maturity, strength and weakness, which thing is not a condition for effecting a voluntary set-off; if the two debts are of different kinds, have different attributes, or for a term, or where one has and the other has not matured, or where one is strong and the other is weak they will not be liable to set-off except by the mutual consent of the inter-debtors regardless of whether the cause thereof is the same or not.

Article 410. - If the depositary has a debt owing from the depositor (owner) and if the deposit and the debt are of the same kind, or if the usurper has a debt owing from the owner of the thing usurped which is of the same kind as the debt, neither the thing deposited nor the thing usurped can be set off against the debt except by the mutual consent of the parties.

Article 411. - If the creditor has destroyed a thing belonging to the debtor which was of the same kind as that of the debt it is extinguished by set-off; but if it is of a different kind than that of the debt the set-off will not be effected save with their mutual consent.

Article 412. - If the surety (the accommodation party) who is barred from the right of dispossession has a debt owing from the secured creditor of the same kind as that of the debt secured the two debts can be set off the one against the other without the parties' consent; but where the debt is not of the same kind as that of the secured debt a set-off may not be effected except with the mutual consent of the secured creditor and the surety (accommodation party) and not that of the debtor.

(2) Effects of a Set-off

Article 413. - A set-off entails extinguishment of both debts to the extent of the lesser debt but it will not be effected unless the person having an interest therein has invoked (claimed) it.

Article 414. - If the action on a debt cannot be heard on grounds of prescription (time limitation) at the time when a set-off has been invoked the set-off shall not be barred thereby so long as the time limit needed for not hearing the case has not been completed (run out) at the time when the set-off became impossible.

Article 415. - (1) A set-off may not take place to the detriment of the rights acquired by a third party.

(2) Where a third party has levied attachment on property held by the debtor after which the debtor became creditor to his creditor he may not invoke a set-off to cause harm to the distrainer.

Article 416. - A debtor who had the right to set up set-off but nevertheless paid his debt cannot avail himself to the prejudice of a third party of the securities guaranteeing his right unless he did not know of the existence of his right provided he has an acceptable excuse therefor.

Article 417. - (1) If a creditor has transferred his debt to a third party the debtor who has consented to such transference without reserve may not set up a set-off against the transferee which he had the right to set up prior to his consent to the transference; his only alternative it to have recourse for his right against the transferor.

(2) Where the debtor has not accepted the transference but notice in respect thereof had been served on him he shall not be barred by such transference from invoking the set-off unless the right he wishes to set off has been established to be owing from the transferor after service of the notice of the transference.

Section (iv) - Merger of liability

Article 418. - When the qualities of debtor and creditor in the same obligation are united in the same person the debt is extinguished to the extent of the merger.

Article 419. - Where the cause which gave rise to the merger has ceased and its cessation is retrospective the debt revives with its accessories as regards all the interested parties and the merger is deemed to have never existed.

Chapter 3 - Extinction of Obligations without Payment

Section (i) - Release of liability

Article 420. - A debt is extinguished if the creditor has released the debtor's liability.

Article 421. - In order for the discharge to be valid the person waiving it must have the capacity to donate (make gifts).

Article 422. - (1) The release (waiver) is not subject to the acceptance of the debtor but it will not have effect if he rejects it; if he has died before acceptance has been expressed the debt will not be taken from his estate.

(2) Release of a deceased person of his liability on the debt is valid.

Article 423. - The conditional release is valid: if the creditor has released his debtor's liability on some of the debt subject to payment of the other part which he did the debtor's liability on the debt will be released but if he has failed to pay the other part of the debt his liability on the debt shall not be released and he remains liable on the entire debt.

Article 424. - (1) If a composition has resulted in a specific release of the subject matter of the composition the action shall not be heard in respect thereof but will be heard in respect to other than that; if the composition has related to a general release of liability on all the rights and actions the suit will not be heard against the person whose liability has been released regarding any right that existed before the composition but will be heard in regard to that which took place thereafter.

(2) A judgment which releases the liability independently of the composition is like a judgment of acquittal related thereto specifically and generally.

Section (ii) - Impossibility of performance

Article 425. - An obligation is extinguished if the debtor has established that its performance has become impossible due to a cause beyond his control.

Article 426. - Where the thing which has been transferred pursuant to or without a contract to the (personal) possession of other than its owner has perished without

encroachment or negligence the possessor will suffer (bear) the perishing if the thing was transferred as security; but if it was transferred as a trust (deposit) the perishing will be borne by the owner of the thing.

Article 427. - (1) The possession will be deemed to be a security if the possessor has possessed the thing with intent to appropriate it; it will be deemed as trust if he has possessed the thing not for the purpose of appropriation but in his capacity as acting for the owner.

(2) Custodial possession will be transformed into possession as security if the possessor without intending to appropriate the thing has withheld it from its owner unlawfully or if he has taken it without his permission.

Article 428. - If the thing was assigned pursuant to a contract the possession of the former owner before delivering it is deemed to be a security; it will be transformed into custodial possession if the obligation of delivery is barred by the arisal of a cause for withholding.

Section (iii) - Prescription barring the hearing of a case (statute limitations)

(1) The Condition

Time Limitations

Article 429. - In case of denial a case shall not be heard in respect of an obligation whatever its cause may be if it has not been claimed without lawful cause for a period of 15 years subject to any specific provisions in this respect.

Article 430. - (1) A case in respect of a recurring periodical right such as rent, interest, salaries, and

revenues falling due shall not be heard against the debtor if without lawful excuse it has not been instituted within five years.

(2) If the right is an income due from a possessor in bad faith or an income payable by the superintendent of a waqf to the beneficiaries the hearing thereof is barred in case of denial if it has not been initiated without lawful excuse within a period of 15 years.

Article 431. - (1) In case of denial the case shall not be heard if it was delayed without lawful excuse for one year as regards the following rights:

(a) the rights of physicians, chemists, advocates, professors, teachers, engineers, experts, receivers in bankruptcy, and commission agents, and in general every person who carries on a liberal profession provided said rights have accrued to them in return for work done and expenses incurred;

(b) the rights of traders and industrialists (fabricators) in respect of things supplied to persons who do not trade in such things as well as the rights of hotel and restaurant owners concerning lodging charges and food prices respectively and everything which is spent (incurred) for the account of their clients;

(c) the rights of workers, servants, and wage-earners such as daily and other wages and the price of supplies made.

(2) A case concerning these rights shall not be heard even where the creditors have continued to offer their services, business work, or supplies.

(3) He who invokes prescription of the time limitation

of one year for not hearing the case shall take the oath when the court tenders it to him of its own accord testifying that he is not liable for the debt; the oath shall be required from the heirs or guardians (in case of interdicted persons) testifying that they are not aware of the existence of the debt.

(4) Where a promissory note has been drawn for any of these rights the right shall not prescribe except by the lapse of 15 years.

Article 432. - The case shall not be heard if the predecessor has delayed institution of proceedings for a certain period and the successor has delayed it for another period of time if the total of both periods has reached the time limit prescribed for barring the hearing of the case.

Article 433. - The time limitation prescribed for barring the hearing of the case shall be computed according to the Gregorian Calendar in days not hours.

Article 434. - (1) The time limitation barring the hearing of the case begins to run from the day when the obligation becomes due for payment (fulfilment).

(2) In the case of a delayed debt the time limitation for prescription begins to run from the time of maturity and in case of a conditional debt from the time of satisfaction of the condition and in the case of warranty of revendication from the time on which the revendication is established.

(3) If the time limitation for payment has been made dependent on (subject to) the will of the creditor the time limitation shall begin to run from the date on which the creditor is able to declare his will.

Suspension and Interruption of Time Limitations

Article 435. - (1) The time limit barring the hearing of

defence.

Article 443. - (1) The defence barring the hearing of the case on grounds of prescription may not be abandoned before this right has been established; in like manner it may not be agreed on barring the hearing of the case after a time limitation which is different from that fixed in the law.

(2) Every person who enjoys the right of disposal of his rights may however abandon even impliedly the defence after the right thereto has been established but this abandonment shall not be effective against the rights of creditors if it has been made to harm them.

PART VI - ESTABLISHMENT OF AN OBLIGATION

Chapter 1 - Comprehensive Rules of Proof

Article 444. - Non-liability (innocence) is the basic rule.

Explanation according to Majallat Al Ahkam Al Adliyya: "If a man claimed that another person has caused damage to his property and they differed as to the amount of the damage caused the statement of the latter will be taken into account and the former has to prove the increase claimed; where a person has usurped a thing which perished while in his possession the word of the usurper shall be taken into account if the owner and the usurper have disagreed as to the value and the owner shall have to prove the excess he claims (Ashbah); also where A gave B 1,000 dirhams; if the payer said that the money was a loan and the recipient said it was a donation the recipient's word will be taken into account (Hamawi) because the recipient claims that he is not liable and the basic rule is non-liability (innocence); that is why we see in the courts that the plaintiff has to adduce evidence to prove his case and the defendant who denies liability will be invoking non-liability (innocence) which is the basic rule and thus does not have to prove his

the case is suspended by a lawful excuse such as where the plaintiff is a minor or interdicted and has no guardian or is absent in a remote foreign country, or where the case is between spouses or ascendants and descendants, or if there is another impediment rendering it impossible for the plaintiff to claim his right.

(2) The period which lapses while the excuse still exists (lasts) shall not be taken into account (for the running of the time limitation).

Article 436. - If some of the heirs have failed without excuse to institute proceedings claiming the debt of their de cujus within the prescribed time limit while the other heirs had a lawful excuse (for the delay in instituting proceedings) the proceedings instituted by the latter shall be heard to the extent of their share of the debt.

Article 437. - (1) The time limit barring the hearing of the case shall be interrupted by a claim instituted in the law courts even where the case has been invoked in a court having no jurisdiction due to a pardonable (excusable) fault; if the creditor has filed a suit in the court against his debtor but the court did not decide the case until after the lapse of the time limit (for prescription) the case shall be heard thereafter.

(2) A claim which is filed by a creditor for acceptance of his right in a bankruptcy or a distribution and in general any action taken by the creditor to invoke (claim) his right in the course of a hearing of a case will be like invoking (claiming) his right before the law courts.

Article 438. - (1) The time limitation barring the hearing of the case shall also be interrupted where the debtor has admitted expressly or impliedly the right of the creditor save where there is a provision otherwise.

(2) The debtor is deemed to have impliedly

acknowledged the creditor's right if he left in possession of the creditor property which is the subject matter of a possessory mortgage securing the debt.

Article 439. - (1) If the time limitation barring the hearing of the case has been interrupted a new time limitation like the first time limitation begins to run.

(2) Where however the debt has been confirmed by a judgment which became a res judicata (final) or where the time limitation barring the hearing of the case is one year which was interrupted by the acknowledgement (admission) of the debtor the new time limitation will be 15 years.

(2) The Effects

Article 440. - The right shall not prescribe (be extinguished) by time limitation; where the defendant has acknowledged the right before the court his acknowledgement shall be taken into account save where there is a provision otherwise.

Article 441. - If a case in respect of a right has not been heard due to being barred by time limitation the case in respect of interest and accessories will not be heard even where the time limitation barring the hearing of the case in respect of said accessories has not run out.

Article 442. - (1) The court may not of its own accord abstain from hearing a case on grounds of prescription; said abstention shall be upon an application filed by the debtor or his creditors or any other person having an interest in this defence even where the debtor has not invoked it.

(2) The foregoing defence may be invoked in any stage of the proceedings even where the case is being heard in the court of appeal unless it is revealed from the circumstances that the defendant has abandoned this

innocence; he will assert this non-liability (innocence) by taking the oath."

Article 445. - Certainty is not eliminated by doubt.

Explanation according to Majallat Al Ahkam Al Adliyya: "Certainty is the reassurance (the peace of mind) of the reality of a thing and doubt is the ambivalence regarding the thing such as no one thinking is dominant; in other words certainty is the decisiveness (conclusiveness) supported by conclusive evidence and doubt is the probability of both things where neither has an advantage over the other (Hamawi); this rule means that that which is established and certain basically will not be eliminated by doubt, because that which has been established by a certainty will be eliminated by another certainty (Ashbah); that which branches from this rule is where A owes B 1,000 (dirhams): A proved that he has paid it and thus discharged his liability and B proved that A owes him 1,000: B's evidence will not be admitted until he has proved that it took place after the discharge or payment because the 1,000 proved by A as having been paid was the subject matter of the evidence of discharge or payment and thus his liability will not be engaged by a probability. When a person bought a suit and then wanted to return it on grounds of a defect, when he came to the trader who sold it to him to return it the traders of the area differed about the existence of a defect as some said there is a defect while the others said that it did not have a defect; in such case he may not return it (Khaniyya). The same thing applies where a man said, "I think I owe him 1,000"; this is not deemed as being an acknowledgement of the debt (Hamawi), because the basic rule is non-liability (innocence).

Article 446. - The event will be attributed to its nearest times.

Explanation according to Majallat Al Ahkam Al Adliyya: "Where a person has acknowledged a debt owing from him to an heir who died thereafter: if the other heirs claim that the acknowledgement was made during the illness that resulted in the death and if the heir who claims the debt alleged that the de cujus (deceased) was in perfect good health at the time of the acknowledgement: the acknowledgement will be attributed to its nearest times, i.e. the illness of death unless it is established that the acknowledgement took place at a remote time, i.e. at the time when the de cujus was in perfect health; that is why the claim of the heirs will prevail and the heir in whose favour it is alleged to have occurred must adduce the evidence to corroborate his story (claim). The same thing applies if an interdicted person said: "I sold you the thing after the interdiction has been imposed." The purchaser said: "you sold the thing to me prior to the interdiction", the statement of the interdicted person prevails (Hamidiyya) because the basic rule is to attribute the event to its nearest times which is in this case the interdiction. Exceptions to this rule are such when a judge after being dismissed said: "I took from you 1,000 and paid it to B where the money was for condemning you;" the man replied "you took this money by exercising coercion on me after you have been dismissed." The statement of the judge prevails although the act is an event which should have been attributed to its nearest times which is the time when the dismissal took place (Ashbah). The same applies where a person told another person: "I sold you this thing while I was a minor"; and the purchaser said: "You sold it to me after you came of age"; the statement of the vendor prevails (Al Qurawi) although coming of age is nearer to the present time."

Article 447. - (1) The basic rule is to leave that which existed (in the same state) as that in which it existed.

(2) Nothingness (inexistence) is the basic rule in

incidental (casual) qualities (attributes).

Explanation according to Majallat Al Ahkam Al Adliyya concerning paragraph (1) above: "This is called association that is the permanence of a thing certain the inexistence of which is not assumed: it is of two kinds: the first is the maintenance of the status quo save where it has been established otherwise; and the second is taking the present status as proof of the status of a thing in the past time which is termed the reverse association because it is the opposite of the first kind; that which branches from the first kind is the case of a missing person, i.e. a person whose absence was uninterrupted such as it is not known whether he is living or dead is deemed to be living (surviving) at the present time by association with the past, i.e. his being living before he became missing was a fact thus he will be deemed as surviving at the present time until his death has been established and consequently his property shall not be divided among his heirs nor his lease will be revoked (Tanweer). If the death of a missing person is not established de facto or de jure his property which is deposited with a depositary will not be given to his heirs until it becomes known whether the de cujus is alive or dead.

"Association is valid as proof for defence not for revendication (Ashbah), i.e. for rebutting the obligation of a third party and not for obligating a third party (Hamawi): for example if a Christian male has died and his wife who was a Moslem came and said: I converted to Islam after his death and thus I deserve the inheritance" but heirs said that she converted to Islam before his death and thus she is not entitled to any inheritance the statement of the heirs will prevail; if a Moslem male has died leaving a Christian wife who came as a Moslem after his death and said that she converted to Islam before his death and the heirs said that she converted after his death the statement of the heirs will also prevail; tahkeem al Hal,

i.e. making the present actuality a legal consequence will not be adjudged because that which is apparent (evident/perceptible) is not valid to be used for proving revendication and the wife needs the revendication and the heirs are defending and the obviousness of the occurrence is their supporting evidence (Hindiyya); also a missing person does not inherit from another person nor will he be able to obtain a revendication of that which was bequeathed by him to a third party (Tanweer) because the condition for inheritance is that the heirs must be alive at the time of the death of the de cujus and the survival of a missing person is established by association and is not valid as evidence to support revendication; nevertheless the other heirs may not divide among themselves the share of a missing person because establishing that he is alive through association is adequate to rebut their case and his share shall be left intact until such time when it becomes apparent if he is alive or it becomes known that he dies after his de cujus he shall receive his share but if it became known that he dies before the de cujus the share will be distributed to the other heirs.

"Note: the death of a missing person de facto is the certainty of his death; and his death de jure is a judgment rendered to that effect by the judge if his age has passed the age which his peers had lived (Multaqa) or because he joined the war or travelled by sea or suffered a deadly (fatal) disease after which no trace of him appeared (Radd Muhtar)."

Explanation according to Al Majalla of paragraph (2) of this Article: "A casual quality (attribute) is that which does not exist with the basis (original) but is incidental such as profit defect and sickness; the basic attribute (quality) is a state which exists alongside the basis such as good health, life, and virginity; nothingness is the basic rule in casual qualities (attributes). The following inter alia branch therefrom: where the active partner of a

commendam partnership has disagreed with the dormant partner as to whether the partnership has realised profit or not the active partner's statement will prevail because his claim is basic, i.e. the nothingness of profit; the same thing applies where the active partner said that he did not realise except so much profit because the basis is the nothingness of the surplus claimed by the dormant partner; the same rule applies where the active partner differed with the dormant partner regarding the amount of the capital invested, the statement of the active partner prevails because the basis is the nothingness of the surplus claimed by the former...

"The same thing applies where A paid a sum to B and later said that he paid it to him as a loan and the recipient said that he received it as a commendam capital the statement of B prevails because both parties had agreed that B is authorised to dispose (act) where the basis is the nothingness of liability. It is reported in 'Al Kanz' that if B said that he took the sum from A as a trust (deposit) which perished later on he is not liable but if he said that he took it by usurpation he shall be liable even though he said that it was given to him as a trust and the other reported that it was usurped; but where a person gave to another person a commodity after which they differed as to the cause (of the giving) where the giver said that it was given on loan and the other said that it was given as a present the statement of the giver prevails because the claimant who said that it was a present claims to be released of liability on the value of the commodity..."

Article 447. - (2a) Save where there is proof to the contrary that which has been established (to exist) at a certain time will be adjudged (assumed) as still existing.

Explanation of this paragraph as in the Majalla: "For example where it has been established that a man acquired a

thing through inheritance or purchase or through possession for a period of time which bars the hearing of a case such thing will remain in his possession and it will not be said that it is probable that he might have parted with the ownership thereof by sale or donation; but if it has been established that he lost title thereto a proof would have to be found regarding the loss of title: positive forfeiture is adjudged. Where the defendant has denied that the thing claimed was not in his possession but the plaintiff adduced evidence testifying that he (defendant) had possession thereof for one year, then this evidence will be admitted and the defendant will be forced to produce the thing to the court session so that it may be pointed out (identified) in the case and the evidence is admitted (Fosolayn) and if it is established that the thing was in the possession of the defendant for one year a judgment will be rendered ordering the thing to remain in defendant's possession until the eliminating element is found."

Article 448. - (1) He who makes a claim (plaintiff) must produce evidence in support of his claim and the person who denies (the claim) must take the oath.

(2) The plaintiff is he who claims other than that which is apparent and the denying person is he who claims preservation of the foundation.

Explanation of paragraph (1) according to Al Majalla: "The wisdom in this maxim is that plaintiff's claim is weak because it is contrary to that which is apparent and therefore he must provide strong proof which is the evidence because the claim does not bring benefit to the plaintiff nor does it ward off harm and this strengthens the weakness of the plaintiff's claim; on the other hand we see that the defendant's position is strong because the basic rule is the nothingness of his liability and therefore a weak evidence is enough to support it which is

the oath because he who takes the oath brings to himself the benefit and wards off the harm: this is the utmost wisdom (Takmilat Radd Al Muhtar). On the basis of this rule: if a person claims that another person is indebted to him he has to prove his claim by evidence and if this is impossible the defendant shall have to take the oath; similarly where a person has purchased a thing and then the vendor claimed the price from him adducing that the purchaser was an agent acting for C in the purchase transaction; but if the purchaser claims that he was not an agent but a messenger sent by the purchaser and the messenger may not be the subject of a claim for the price, the vendor has to adduce evidence and the purchaser shall take the oath because he denies attributing the contract of sale to himself and the vendor claims that he was the purchaser. The burden of proof lies on the plaintiff and the oath is on the person denying (Radd Muhtar)."

Explanation regarding paragraph (2) above according to Al Majalla: "Because the person who claims the contrary of the apparent will not be believed without having to adduce evidence to support his claim but the person who invokes the apparent (perceptible) will be relieved when he takes the oath to perpetuate the foundation, such as where a person claims a debt from another person he shall adduce evidence to prove the existence of the debt...the following stems from this rule: A claims that a contract was concluded voluntarily and B claimed that it was concluded under duress. The person who claims duress (B) shall have to prove duress because his claim is contrary to that which is apparent (perceptible) and the oath lies with the person who claims that the contract was concluded by the free will of the parties where he will be perpetuating the foundation (origin) because the foundation in contracts is the free will (volition) (Radd Muhtar)...Also where the debtor has claimed that he paid the debt but the creditor denied payment by the former thereof the creditor's statement

shall prevail (Ashbah).

"It is to be noted that the foundation of lending without consideration and agency (mandate) is the restriction and generality regarding them is contrary to that which is apparent (perceptible) (Ad Durr Al Mukhtar). There is however an exception to this latter rule where the depositary has claimed having returned the trust (deposit) (to its owner) or that it had perished his statement will prevail although the foundation is the perpetuity of the foundation (Hamawi)."

Chapter 2 - Written Documents

Article 449. - Written documents - formal or ordinary- will be (constitute) full proof in the manner provided for in the following Articles.

Section (i) - Documents and official instruments (documentary evidence)

Article 450. - (1) The official (authentic) documents are those wherein a public official or a person assigned to perform a public service records and certifies in accordance with the legal terms and within his jurisdiction and powers that which has been done through him or that which he has received from an interested party.

(2) A document which does not fulfil the requirements of authenticity will have only the value of an ordinary document where the interested parties had subscribed their signatures or affixed their seals or fingerprints thereon.

Article 451. - Formal (authentic) documents will have probative force vis-a-vis all persons regarding matters recorded therein and performed by a public official within the limits of his powers (assignment) or which have been signed by the interested parties in his presence save where it would be revealed through the prescribed legal means

that they have been forged.

Article 452. - (1) If the original of the formal (authentic) document exists its formal (authentic) copy - in writing or in photocopying - which is issued by a public official having jurisdiction shall constitute proof to the extent of its conformity to the original.

(2) A copy will be deemed to conform to the original unless it is contested by either party and if it is disputed (contested) the copy will be checked with the original.

Article 453. - If the authentic document does not exist the copy shall have probative force in the following manner:

(a) The first authentic copy - executory or otherwise - shall have the same probative force as the original thereof if its external appearance does not allow doubt as to its conformity to the original.

(b) The official copy which is taken from the first authentic copy shall have the same probative force but in this case either party may have it checked with the original authentic copy from which it had been taken.

(c) The copies of the copy taken from the original authentic copies will not be effectual except as being informative depending on the circumstances.

Article 454. - Formal (authentic) documents such as licences, exequaturs, firmans, royal wishes (Irada), patents of inventions, trade marks, nationality, the registers and judgments of the courts, settlement registers and documents, the Land Registry (Department), permanent registers and documents shall have probative force against

all persons of that which has been entered therein save when they are contested on grounds of forgery.

Section (ii) - Ordinary documents

Article 455. - (1) An ordinary (regular) document is deemed as having been issued by the signatory thereof unless such signatory himself or anyone acting for him expressly denies that which is attributed to him such as handwriting, signature, seal, or fingerprint.

(2) It would be adequate for an heir or successor in title to testify under oath that he does not know that the handwriting, the signature, seal, or fingerprint is that of the person from whom he obtained the right if the person who adduced the document in evidence is unable to prove it.

Article 456. - (1) The ordinary (regular) document shall not be proof as on its date against a third party unless it has a certified (established) date; the date of a document will be certified (established) as follows:

(a) from the day on which the notary public has certified it;

(b) from the date on which the contents thereof are certified in an allonge having a certified date;

(c) from the day on which a governor, judge, or a public official having jurisdiction has endorsed it;

(d) from the day of the death of any of the persons having an acknowledged effect on the document such as handwriting, signature, seal, or thumbprint, or from the day on which it has become for any of the aforementioned impossible to write or affix his fingerprint due to a bodily

defect (incapacity), illness and in general from the day of occurrence of any other event which is conclusive proof that the document was issued before the occurrence thereof.

(2) The court however taking into account the circumstances may not apply this Article to receipts.

Article 457. - (1) Letters (correspondence) bearing signatures shall have the same probative force as the ordinary (regular) documents.

(2) Telegrams shall have this probative force also if the originals thereof deposited in the despatch (issuing) office are signed by the sender; a telegram is presumed to conform to its original until proof is adduced to the contrary.

(3) If the original of a telegram has been destroyed the telegram will not be effectual except as information.

Section (iii) - Unsigned papers

Article 458. - (1) The books of traders shall not constitute proof vis-a-vis other than traders; the particulars however concerning supplies will be usable as a basis pursuant to which the court may call upon either party to take the complementary oath in regard to that which may be established by evidence.

(2) The provisions of the Commercial Code will be applied in regard to the force of these books among the traders.

Article 459. - The home (domestic) books and papers shall not have a probative force against the author (the person issuing them) except in the following two cases:

(a) if they contain an express mention that he has been repaid a debt;

(b) if they contain an express mention that (the author) intended that the writing in these papers be a replacement for a (promissory) note in favour of a person whose right has been established.

Article 460. - (1) An endorsement on a title deed of a debt purporting to the release of the liability of the debtor is proof against the creditor until he proves the contrary even where the endorsement has not been signed by him so long as the note was never out of his possession.

(2) The same thing applies if the creditor has written in his own handwriting a note without signing it on another original copy of the note of the debt held by the debtor purporting to releasing the latter's liability.

Chapter 3 - Acknowledgement

Section (i) - Acknowledgement conditions

Article 461. - The acknowledgement is an admission made to an adversary before the court that he owes him a right.

Article 462. - A person who makes an acknowledgement must be sane (of sound mind), of major age, and not interdicted; the acknowledgement made by an infant minor, insane, simple minded, and imprudent person shall not be valid; the acknowledgement of their guardians - natural or selected- and curators shall not be valid against them; but an acknowledgement by a prudent authorised minor shall be governed by the same rule as that of a person of major age inasmuch as regards the matters in respect of which he has been authorised.

Article 463. - (1) It is a condition that the thing acknowledged must not be excessively unknown (indefinite) but an insignificant indefiniteness shall not be an

impediment to the validity of the acknowledgement.

(2) It is not a condition that the person in whose favour the acknowledgement is made be prudent (rational); the acknowledgement shall be valid if it is made by a person who acknowledged that he owes property to an irrational minor.

Article 464. - (1) As an acknowledgement of that which is known (definite) is valid so will be the acknowledgement something indefinite except in contracts which will not be valid if there is ignorance (indefiniteness).

(2) Where a person has confessed to holding a trust (deposit), to having committed a theft or usurpation, his confession (admission) will be valid and he will be asked to designate the unknown (indefinite) trust of the property usurped or stolen; but if he has confessed as to the sale or rent of a thing which is indefinite (unknown) his confession will not be valid.

Article 465. - It is a condition that the acknowledgement must not be contradicted by that which is apparent as at the time being; the acknowledgement shall not be valid if a person has admitted to being the father of someone who is older than him.

Article 466. - (1) An acknowledgement is not subject to the acceptance of the person in whose favour it is being made but will be rejected if he has rejected it.

(2) If the person in whose favour the acknowledgement has been made has rejected part of the thing acknowledged the acknowledgement does not apply to the rejected part (of the acknowledgement) and the acknowledgement of the remaining part is valid.

Article 467. - The validity of the acknowledgement shall not be barred by a difference which has arisen between the person who made the acknowledgement and the person in whose

favour the acknowledgement has been made regarding the cause of the admission.

Section (ii) - The legal consequences of an acknowledgement

Article 468. - (1) A person's acknowledgement is binding on him unless it has been refuted by a judgment.

(2) Retractability of an acknowledgement will not be valid.

Article 469. - An acknowledgement is proof restricted to (binding on) the person making it.

Article 470. - An acknowledgement is indivisible as regards its author unless it is in respect of several facts (events) one of which does not necessarily require the existence of the other events.

Chapter 4 - The Oath

Section (i) - The decisive oath

Article 471. - Either party to a litigation may require the other party to take a decisive oath which thing cannot be done without leave from the court.

Article 472. - The decisive oath may be tendered in any stage of the proceedings of the case and in every civil dispute; the oath may not be tendered in respect of an event which is prejudicial to the public order or to the public morality.

Article 473. - Substitution takes place in tendering the oath but not in taking the oath. (A substitute may tender the oath but may not take it himself.)

Article 474. - Where different claims are joined in one case one oath will be adequate and the need does not arise for tendering the oath in regard to each one of them.

Article 475. - A person to whom the oath has been tendered may tender back the oath to his opponent (adversary); the oath may not however be tendered back if the oath concerns an event (occurrence) in which both parties did not participate but is purely a personal matter affecting the person to whom the oath has been tendered.

Article 476. - He who has tendered or rejected the oath may not retract it when his adversary has accepted to take the oath.

Article 477. - The oath shall not be except before the court; refusal to take the oath outside the court shall not have effect.

Article 478. - The oath and refusing to take the oath by a dumb person shall be by his usual sign.

Article 479. - (1) A person who has taken the oath in regard to his action will swear on its affirmation (positiveness); if he has sworn regarding the act of another person he will be swearing about being uninformed (unawareness).

(2) The oath is either by causality the cause of which will not be eliminated or by the result the cause of which may be eliminated.

Article 480. - Every person who has been tendered but failed to take the oath and declined to redirect it to his opponent (adversary) as well as every person to whom the oath has been redirected but declined to take it will forfeit the matter in respect of which the oath has been demanded.

Article 481. - (1) The adversary may not prove the falsehood of the oath after it had been taken by the adversary to whom tendered or retendered.

(2) Where however the falsehood of an oath has been established by a summary judgment the adversary who has suffered harm resulting therefrom may claim damages without prejudice to his right of contesting the judgment entered against him because of the false oath.

Section (ii) - The complementary (suppletory) oath

Article 482. - (1) The court may of its own accord require either party (to a litigation) to take the oath in order that it may base its judgment thereon regarding the subject matter of the case or regarding the value of that which it adjudges.

(2) It is a condition for tendering this oath that the case lacks complete (full) proof or that it is devoid of any proof.

Article 483. - (1) The court may not tender the complementary oath to the plaintiff to determine the value of the thing claimed except where it was impossible to determine this value in any other way.

(2) In this case the court shall set down a maximum limit of the value which the plaintiff can assert by his oath.

Article 484. - The court shall of its own accord tender the oath in the following cases:

(a) if a person claimed and established a right in an estate (succession) the court will have him take the revelation (affirmation) oath that he has not received himself or through a third party this right from the deceased in any way, nor did the deceased release his liability, nor did he

assign him to receive from a third party and that he did not receive his debt from a third party, that the deceased had not mortgaged anything against this debt;

(b) if the property* is vindicated to a person who has proved his case the court will tender the oath to him to testify that he has not sold or donated this property to any person nor did he lose title thereto in any way;

(c) where the purchaser wishes to restitute the thing sold on grounds of a defect the court shall tender to him the oath to testify that he had not accepted expressly or impliedly the defect.

Article 485. - An adversary to whom the court has tendered the complementary (suppletory) oath may not tender it back to the other adversary.

Chapter 5 - Evidence

Article 486. - Evidence may be used to establish other than contractual obligations.

Article 487. - The permissibility or impermissibility of proving by evidence in matters of contractual obligations shall be subject to the following provisions.

Article 488. - (1) Save agreement or provision otherwise evidence may not be adduced to prove the existence or release of liability on a contractual obligation in other than commercial matters if the value thereof is in excess of 10 dinars or if it is of undetermined value.

* Property: is that which the nature of a person desires which is capable of being stored until needed, be it movable or immovable (Al Majalla, Article 126).

(2) The obligation shall be estimated on the basis of its value at the time of concluding the contract and not at the time of the discharge; evidence may be adduced to prove that the excess of the sum of the obligation over 10 dinars did not accrue except from addition of the interest and accessories to the capital (original sum).

(3) If the suit included several claims arising from several sources evidence may be adduced to prove every claim of a value not in excess of 10 dinars even where the total value of these claims is in excess of 10 dinars and even where they have originated from relations or contracts of the same nature between the same litigants; the same thing (rule) applies to every discharge the value of which is not more than 10 dinars.

Article 489. - Evidence may not be adduced to prove contractual obligations even where the amount claimed is not more than 10 dinars in the following cases:

(a) that which contradicts or is in excess of that which is contained in a written proof;

(b) if the claim is in respect of part of a right it may not be proved by evidence even where this part is the remainder of the right;

(c) if one of the litigants claimed in the suit that which exceeds in value 10 dinars and later abandoned this claim reducing the value to a sum not exceeding this value.

Article 490. - (1) Evidence may be adduced to prove matters of contractual obligations even where the value of the claim exceeds 10 dinars if there is a basis of proof in writing.

(2) A basis of proof in writing is every writing issued by the adversary which tends to render the existence

of the right claimed a near probability.

Article 491. - Evidence may be adduced to prove that which must have been established in writing:

(a) if there is a material impediment barring the obtention of a proof in writing; a material impediment is deemed to be the non-availability of someone who is capable of writing the note;

(b) if the contract has been executed between the spouses the ascendants and the descendants or between the collaterals to the fourth degree or between a spouse and the parents of the other spouse;

(c) if the creditor has lost his written document due to a reason beyond his control.

Article 492. - Evidence of proof will be conducted in accordance with the provisions laid down in the Civil Procedure Law.

Article 493. - The witness shall take the oath before he gives evidence; there is no specific form for giving or admitting the evidence; it would be adequate to designate the subject matter of the evidence in a manner negating ignorance (indefiniteness) and will be confined in all that to that which the court considers adequate to arrive at the truth.

Article 494. - A witness need not be vouched for.

Article 495. - The evidence of a dumb and blind person is admissible; a person may also give evidence on his action.

Article 496. - The evidence of an ascendant in support of

his descendant and the evidence of the descendant in support of his ascendant is not admissible; the evidence of either spouse in support of the other spouse is not admissible.

Article 497. - No person may be witness and plaintiff: the evidence of the natural guardian in support of the orphan is not valid nor is the evidence of an agent (attorney) in support of his principal.

Article 498. - If there is a friendship or enmity between the witness and a litigant or if there is between them a special relationship such as a relationship between wage-earner and employer, or between the two partners, or if the witness has an interest in giving evidence such as where a surety testifies that the debtor had paid the debt the court will take into consideration the circumstances and may admit or refuse to admit the evidence as it deems expedient.

Article 499. - Where a litigant has brought witnesses to prove his case his adversary may bring at the same time witnesses to rebut this case; every litigant may cross examine the witnesses of the other litigant.

Article 500. - (1) The court may cross examine the witnesses and weigh their evidence regarding the subject matter; it may rely on the evidence of one person with the oath of the plaintiff if it is satisfied that the evidence is correct (conforms to the truth); if the court is not satisfied that the evidence of a witness(es) is correct it may reject said evidence.

Article 501. - If the evidence is not consistent with the case or if the statements (evidence) of the witnesses are inconsistent with each other the court shall take from the evidence to the extent which satisfies it to be correct.