

Chapter 6 - Presumptions

Section (i) - Legal presumptions

Article 502. - A legal (judicial) presumption relieves a person in whose favour it has been determined of any other way of establishing; this presumption may however be reversed by a counter (reverse) proof save where there is a provision otherwise.

Article 503. - (1) Judgments which have become final (res judicata) will be the proof of the rights decided thereby; the proof which reverses this context is inadmissible; but these judgments will not have this force except in a matter concerning a dispute among the litigants themselves without changing their capacities and where the dispute related to the same object and cause of the right.

(2) The court may not of its own accord take account of this presumption.

Article 504. - A judge hearing civil cases shall not be bound by the criminal judgment except to the extent of the matters (facts) which this judgment decided and where his decision in respect thereof is necessary.

Section (ii) - Judicial presumptions

Article 505. - (1) The establishing may be by judicial presumptions, i.e. the presumptions which have not been provided for in the law which the court was able to conclude from the circumstances of the case and to be convinced that they have a specific indication (meaning/ connotation); the discovery of these presumptions is left to the discretion of the court.

(2) Establishing by judicial presumptions may not take place except in the circumstances where it is permissible to prove (establish) by evidence.

BOOK 2 - NOMINATE CONTRACTS

Title 1 - Contracts as Regards Ownership

Chapter 1 - Sales

Section (i) - Sales in general

Article 506. - Sale is the exchange of one property for another property.

Article 507. - Sale as regards the object of the sale is the sale of a commodity against currency which is called general sale, sale of currency against currency which is called exchange, or sale of a commodity against another commodity which is called barter.

(1) The Elements of a Sale

Offer and Acceptance

Article 508. - The sale of an immovable will not be settled unless it is registered in the department having jurisdiction and has satisfied the form provided for in the law.

Article 509. - A sale which is conditional upon an option to be exercised within a specified period of time is valid; this condition does not prevent the transference of title to the purchaser regardless of whether the option is exercisable by the vendor or the purchaser or by both of them or by a foreigner (third party).

Article 510. - If the condition of option was for both the purchaser and the vendor the sale will be rescinded if either of them has rescinded it during the time limit fixed (for exercising the option); if either party has allowed

the sale his option lapses (is extinguished) and the option of the other party remains valid to the expiration of the time limit fixed.

Article 511. - If the time limit for exercising the option has lapsed (expired) the sale shall be binding if the person who has the option has failed to revoke the sale.

Article 512. - The condition of exercising an option is not hereditary: if the person having the option has died his option is extinguished.

Article 513. - In all cases where there is an option if the thing sold has perished while in the possession of the purchaser before the rescission it would perish from his assets and he shall be bound to pay the price named.

The Object of the Sale

Article 514. - (1) The object of the sale must be designated in a manner which negates excessive ignorance (indefiniteness).

(2) It would be valid to sell future things and rights if they have been described adequately in such manner which negates ignorance (indefiniteness) and fraud.

Article 515. - The sale of things that are measured by volume, weight, count, or length is valid if sold by volume, weight, number, or linear units and may also be sold in bulk (en masse); a sale is deemed to be in bulk (en masse) even where it is incumbent to designate the quantity of the thing sold in order to fix the price.

Article 516. - Everything which may be sold separately may be excluded from the thing sold.

Article 517. - (1) He who has purchased a thing which he

did not see will have discretion either to accept it or to revoke (rescind) the (contract of) sale when he sees it; the vendor shall not have any discretion regarding that which he has sold without seeing it.

(2) Seeing (viewing) is meant to be learning (comprehending) the attributes and characteristics of the thing as relates to looking at, touching, smelling, hearing, or tasting.

Article 518. - (1) It would be adequate to see a sample of a thing which is being sold on the strength of viewing the sample: if it is established that the thing sold does not conform to the sample on the strength of which the purchase was made the purchaser will have an option of accepting it at the price named or rejecting it by rescission of the sale (contract).

(2) Where the sample has suffered a defect or has perished in the hand of either contracting party, even without fault on his part, this contracting party-purchaser or vendor - shall have to prove that the things conform or do not conform to the sample.

Article 519. - (1) Where a number of different things have been sold in one lot (transaction) it will be imperative for the sale to be binding that each item is viewed separately.

(2) Where the purchaser had seen some of the things sold he may when he has seen the remaining items take all the things or reject them and may not take that which he had seen and leave out (reject) the remainder thereof.

Article 520. - (1) Where a thing has been described to a blind man who became aware of the description and purchased he shall not have the right of option (discretion).

(2) In any case the right of option of a blind man lapses by touching the things which are identified by smelling and by tasting tastable things.

Article 521. - Viewing of a thing by an agent assigned to purchase or to receive is like viewing them by the principal; viewing by a messenger does not extinguish the right of option of the purchaser.

Article 522. - A person who has viewed a thing with intent to purchase it and after a while purchased it knowing that it is the thing he had viewed will have no right of option (discretion) except if he found out that the thing has changed from the state in which it was at the time of viewing.

Article 523. - (1) The viewing option lapses with the death of the purchaser and by his disposal of the thing sold before viewing it, as well as by making an acknowledgement in the contract of sale that he had viewed the thing and accepted it in its then existing state and by describing the thing in the contract of sale in such manner which replaces viewing and when found to conform to said description; or where the thing became defective or has perished after being received and by a statement or action made by the purchaser before or after viewing which nullifies the option and by the lapse of sufficient time which would enable the purchaser to view the thing but he has failed to view it.

(2) The vendor may set a suitable time limit for the purchaser (to exercise his right of option) the expiration of which extinguishes the (right of) option if he does not reconstitute the thing during the said time limit.

Article 524. - (1) The purchaser may accept or reject the thing sold subject to trial (testing) where the vendor shall enable the purchaser to try the thing: if the purchaser has rejected the thing sold he shall declare the rejection within the time limit agreed and in the absence of an agreement as to the time limit within a reasonable

time limit as fixed by the vendor; if on the expiration of this time limit the purchaser has kept silent although he was able to try (test) the thing sold his silence shall be deemed to be an acceptance of the thing sold.

(2) A sale subject to trial (testing) is deemed to be made subject to a suspensive condition which is the acceptance of the thing sold unless it would be revealed from the agreement or the circumstances that the sale was made subject to a resolutive condition.

Article 525. - If the sale of a thing is made subject to tasting the purchaser may if he so wishes accept the sale but will have to declare this acceptance within a time limit which has been fixed in the agreement or which is customary; the sale will not be settled until the time when this declaration has been made.

The Price

Article 526. - (1) The price is that which is a consideration for the thing sold and relates to liability.

(2) The price must be definite in that it must be designated in such manner which negates excessive ignorance (indefiniteness).

Article 527. - (1) The price in absolute (general) sales must be evaluated in cash currency; the evaluation may be confined to stating the basis on the strength of which the price will be fixed thereafter.

(2) In case of an agreement that the price will be the market price and where a doubt has arisen the price must be that of the market in the place and at the time wherein the thing sold must be delivered to the purchaser; if there is no market at the place of delivery reference shall be made to the market price in the place the prices of which are customarily deemed to be applicable.

Article 528. - Where the contracting parties have not fixed a price for the thing sold the sale is not nullified thereby if it would be revealed from the circumstances that the contracting parties intended to adopt the price which is current in trading or the price adopted in their previous dealings.

Article 529. - (1) An increase to the price by the purchaser and a reduction of the price or addition thereof to the thing sold by the vendor after the contract will be valid and the increase or decrease will be appended in the original contract.

(2) An increase to the price made by the purchaser will be effective vis-a-vis the contracting parties and not against the pre-emptor; the reduction in the price made by the vendor will render the remaining price (after the deduction) to be the consideration for the entire object of the sale even vis-a-vis the pre-emptor; the increase to the thing sold by the vendor shall have a share of the price.

(3) The vendor may drop the entire price before receipt but this dropping will not be annexed to the original contract: if the vendor released the purchaser of the entire price and the pre-emptor took the thing sold he shall be obligated to pay the price named.

Article 530. - (1) Resale may be at a profit, at cost, part of the thing purchased at cost or at a loss.

(2) Resale at a profit is a sale which is made at a comparable price to that paid by the vendor plus a definite (certain) profit; (Tawliya) (sale at cost) is the resale by the vendor at the price of purchase without any increase or decrease to the price; (Ishrak) is resale of some of the thing sold for some of the price; and (Wadhi'a) is the resale of the thing at the price paid by the vendor with a reduction of a certain sum therefrom.

(3) The first price (the price paid by the vendor) must be known (definite) to act as a precaution against

cheating or suspicion.

(2) Obligations of the Vendor

Conveyance of Ownership

Article 531. - If the thing sold is a certain specified object or if the sale is in bulk (lots) the sale per se automatically conveys the ownership of the thing sold; but where the thing sold has not been identified except as to its kind conveyance of the ownership shall not take effect except by separation (setting apart).

Article 532. - A purchaser may dispose even before receipt of the thing sold - be it realty or movable - immediately upon transmission of the ownership to him.

Article 533. - If the vendor after having received the price was adjudged bankrupt before delivery of the thing sold to the purchaser the purchaser will take the thing sold from the vendor or from his heirs without being challenged (contested) by the other creditors.

Article 534. - (1) In case of a forward rate sale (i.e. the price payable on a future date) the vendor may retain ownership thereof until he has received the entire price even where the thing sold has been delivered.

(2) In case of a credit sale payable in instalments the parties may agree that the vendor will retain (keep) part of the thing sold as compensation for rescission of the sale in case all the instalments have not been paid; the court may however depending on the circumstances reduce the liquidated damages in accordance with the provisions of liquidated damages.

(3) Where all the instalments have been paid the ownership of the thing sold is transferred to the purchaser as of the time of the sale, save agreement otherwise.

(4) The provisions of the three preceding paragraphs shall apply even where the parties have named (described) the sale as hire.

Article 535. - The vendor will be under an obligation to provide all that which is necessary for transferring the ownership of the thing sold to the purchaser and to desist from any act which tends to render conveyance of the ownership difficult or impossible.

Delivery of the Thing Sold

Article 536. - The vendor shall deliver the thing sold and its accessories to the purchaser on payment of the price to him; and if the purchaser stipulated to take (delivery of) the thing sold at a certain specified time prior to payment of the price it would be permissible (allowable). (Alternative translation: "the purchaser may stipulate validly to take...")

Article 537. - The following shall be included in the sale without being mentioned (named):

- (a) That which is tantamount to a part of the thing sold which is inseparable from it considering the purpose of the purchase: if a milking cow is sold for its milk the suckling accessory is included in the sale.
- (b) The contiguous fixed accessories of the thing sold: if a house is sold the garden which lies within its perimeter as well as any private roads leading to the public road and the rights of servitude will be included in the sale; where a plot of land has been sold the trees planted therein will be included as being fixed.

- (c) All that which is customarily considered to be included in the sale.

Article 538. - (1) Delivery of the thing sold will be by surrendering the thing sold to the purchaser in a manner which enables the purchaser to take delivery thereof without any impediment (obstruction) or obstacle.

(2) Where the vendor has seen the purchaser taking delivery of the thing sold and kept silent this will be deemed to be a permission by the vendor to the purchaser to take delivery thereof.

Article 539. - If the purchaser who prior to the sale has custody of the thing sold has purchased it from the owner there is no need for a new delivery and take over regardless of whether the possession of the purchaser before the sale was as surety or in trust.

Article 540. - (1) If the purchaser has before receiving (taking delivery of) the thing sold, rented, resold, donated, pledged the thing sold, or disposed in any other way of the thing sold to the vendor thereof which necessitates taking delivery thereof the purchaser is deemed as having taken delivery of the thing sold.

(2) If before taking delivery of the thing sold the purchaser has rented, sold, donated, pledged, or disposed of it in any other way necessitating taking a delivery thereof to other than the vendor who took delivery thereof this receipt substitutes the taking delivery (receipt) by the purchaser.

Article 541. - (1) The mere issue (tenor/execution)* of the contract necessitates the delivery of the thing sold at the place where it lies at the time of the contracting; if

* "Mutlaq Al Aqd" probably means: "a contract with immediate effect." (Translator)

the thing sold is a movable object the location of which has not been designated it will be deemed as lying at the place of the vendor's residence.

(2) If the contract has stipulated that the vendor must deliver the thing sold at a specified place the delivery must be effected at that place.

Article 542. - The costs of delivery of the thing sold such as the measuring of the volume or weighing shall be borne by the vendor alone save where there is an agreement or custom (usage) providing otherwise.

Article 543. - If a lot of volume or measurable things or a lot of weighable or linear measurable things the separation of which is not prejudicial, or a lot of comparable countable (numerable) items - the quantities of which are indicated - have been sold and the price has been named (quoted) per lot or per unit, and if on delivery the thing sold was found deficient, the purchaser has a discretion of rescission of the sale or of taking the quantity available (at hand) and can pay the proportionate price thereof; if the thing sold is found to be in excess of the quantity sold the excess will be for the vendor.

Article 544. - (1) If a lot of weighable or linear measurable things, the separation of which is harmful, or a lot of countable things of different kinds the quantity and price of which have been named has been sold, and if on delivery the thing sold was found to be deficient, the purchaser shall have a discretion to rescind the sale or take the thing sold for the entire price (named) unless he had at the time of sale reached an agreement with the vendor to take the quantity available against the proportionate price.

(2) If the thing sold was found to contain a surplus it will be for the purchaser; it may however be agreed at the time of contracting that the purchaser will give the

vendor a consideration for the surplus.

Article 545. - If a lot of weighable or linear measurable items, the separation of which is harmful, or a lot of countable items of different kinds the quantity of which has been indicated and the price was quoted per unit has been sold and on delivery the thing sold was found either excessive or deficient the purchaser may rescind the sale or take the thing sold and pay the proportionate price thereof.

Article 546. - (1) In the cases provided for in the three preceding Articles the purchaser shall not be entitled to rescind (the contract) and the vendor shall not be entitled to take any excess which appears in the thing sold except where the deficiency or surplus has exceeded five per cent of the quantity fixed for the thing sold.

(2) In no case the suit brought by either the purchaser or the vendor in pursuance of the three preceding Articles may be heard after the lapse of three months from the time of the actual delivery of the thing sold to the purchaser.

Article 547. - (1) If the thing sold has perished in the hands (possession) of the vendor before being taken over by the purchaser the former shall suffer the perishing and nothing will be suffered by the purchaser save where the perishing has taken place after notice has been served on the purchaser to take delivery of the thing sold; if the value of the thing sold has depreciated prior to delivery due to damage suffered the purchaser will have the discretion of rescinding the sale or performing the contract and reducing the price.

(2) Where however the perishing or decrease in value of the thing sold prior to delivery was due to an act by the purchaser or by the vendor it shall be obligatory to pay the entire price in the former case and the vendor will

be under an obligation to pay damages in the latter case.

Article 548. - (1) For that which is received in respect of an offer of purchase quoting the price the recipient will be liable if it has perished or been lost while in his possession; but if no price has been quoted for the thing it will be in trust in his hand and he will not be liable if the thing has perished or been lost without any encroachment or negligence on his part.

(2) That which will be received on offer for viewing whether the price has or has not been quoted will be a trust in the hand of the recipient who will not be liable if the thing has perished without encroachment.

(3) Warranty of the Thing Sold

Warranty against Impediments and Revendication (Replevin)

Article 549. - (1) The vendor warrants against the impediment (obstruction) to enjoyment of all or some of the thing sold caused by him or by any person who claims a right on the thing sold at the time of the sale which he adduces against the purchaser.

(2) The warranty against obstruction is established even if there is no stipulation to that effect in the contract.

Article 550. - (1) If the thing sold is replevined by a third party and if the replevin was in respect of the vendor's property he shall be liable even where the warranty was not stipulated in the contract.

(2) If the replevin was due to something that occurred to the thing sold while in the purchaser's ownership such as where the person claiming the replevin (beneficiary of the warranty) proved that he owned the thing on a date subsequent to the purchase the purchaser shall not have a right to claim the warranty from the vendor.

Article 551. - (1) The purchaser will not claim the warranty if the revendication was not established except by his admission or refusal to take the oath.

(2) He will however claim the warranty even though the revendication was established only by his acknowledgement or refusal to take the oath if he was of good faith and had served on the vendor notice of the revendication suit in due time and called upon him to join the suit but failed; all this if the vendor has failed to establish that the beneficiary of the warranty had no right to bring a suit of revendication.

Article 552. - If the beneficiary has given proof and a judgment was rendered in his favour in the revendication suit and then agreed with the purchaser to abandon the thing sold against a consideration such action will be deemed to be a purchase of the thing sold by the beneficiary and the purchaser may claim from his vendor the warranty.

Article 553. - If the thing sold was revendicated while it was in possession of the last purchaser and was awarded to the beneficiary such will be a judgment against all the vendors and each one of them may claim the warranty from his respective vendor but will not claim before the person who purchased from him has claimed from him.

Article 554. - (1) If the thing sold is revendicated from the purchaser and if the vendor at the time of the sale was not aware of the revendication of the thing sold the purchaser may recover the entire price regardless of whether the value of the thing sold has appreciated or depreciated; he may also recover the value of the fruits which he had to restore to the beneficiary as well as the useful expenses he had incurred and all costs of the revendication action and the warranty action except that

which thereof the purchaser could have avoided spending had he served notice of the action on the vendor.

(2) But if the vendor was at the time of the sale aware of revendication of the thing sold the purchaser may in addition to the foregoing recover the appreciation in value of the thing sold and the complementary expenses incurred on the thing sold and may claim damages for any loss suffered or lost gain by reason of revendication of the things sold.

Article 555. - (1) In case of partial dispossession of the thing sold or if it is encumbered with a charge which was not known to the purchaser at the time of the contract the purchaser may rescind the contract.

(2) If the purchaser has elected to take the remainder of the thing sold he may claim damages for the loss he has suffered on account of the dispossession.

Article 556. - (1) The contracting parties may by special agreement increase or decrease the warranty against dispossession or stipulate that the sale is without warranty.

(2) The vendor is presumed to have stipulated that he does not warrant a purchaser against a servitude if it was apparent or disclosed by him to the purchaser.

(3) A clause which rescinds or decreases the warranty against dispossession is null and void if the vendor has intentionally concealed the right of a third party (beneficiary of the warranty).

Article 557. - (1) Notwithstanding an agreement to exclude warranty the vendor shall remain liable for any dispossession which will result from his act; every agreement otherwise shall be null and void.

(2) But where the dispossession of the thing sold has resulted from the act of a third party the vendor shall be liable on refunding the price only.

Warranty of Hidden (Concealed) Defects

Article 558. - (1) If an old defect is revealed in the thing sold the purchaser has an option either to restitute it (to the vendor) or to accept it (as is) for the price quoted.

(2) A defect according to traders and experts is that which depreciates the thing sold or which causes the loss of a valid object if its non-existence is the prevalent practice in regard to comparable things; the defect will be old if it has existed in the thing sold before the time of the contract or has occurred thereafter while it was still in possession of the vendor prior to delivery.

Article 559. - The vendor shall not warrant an old defect of which the purchaser was aware or could have discovered himself had he examined the thing sold with the necessary care unless the purchaser has proved that the vendor had affirmed to him the absence (inexistence) of the defect or fraudulently concealed it from him.

Article 560. - (1) If the purchaser has taken delivery of the thing sold he must ascertain its condition as soon as he is able to do so in accordance with common usage in dealings; if he discovers a defect for which the vendor is answerable he shall immediately inform him about it and if he has failed to do so he will be deemed to have accepted the thing sold.

(2) But if the defect cannot be discovered by normal inspection and if the purchaser discovered it later on he shall inform the vendor accordingly immediately upon discovery thereof as otherwise he shall be deemed as having accepted the sale.

Article 561. - If some of that which has been sold in one transaction (lot) appeared to be defective and if the separation thereof is not detrimental the purchaser may

restitute that which is defective and claim from the vendor the equivalent price thereof and may not without the consent of the vendor restitute the entire (transaction); but if the separation thereof is detrimental he may restitute the whole or accept the entire transaction for the entire price.

Article 562. - (1) If an old defect is revealed in the thing sold and if thereafter a new defect is sustained while in the custody of the purchaser he may not restitute the thing on account of the old defect so long as the new defect exists therein but may claim from the vendor the depreciation in the price save where the vendor has agreed to take it in its existing state (with the new defect) if there is nothing to bar restitution.

(2) If the new defect has disappeared the purchaser shall regain his right to restitute the thing sold to the vendor on account of the old defect.

Article 563. - (1) Adding anything of the purchaser's property to the thing sold bars restitution such as dyeing the garment sold, or erection of a construction on the land sold, or the appearance of fruits in the trees sold.

(2) If in addition preventing restitution is made to the thing sold and if later on the purchaser discovered an old defect therein he shall have recourse against the vendor for the depreciation occurring to the price; the restitution is prevented even if accepted by the vendor with the occurring new defect.

Article 564. - The purchaser shall bear the perishing of the defective thing sold while it was in his possession and shall claim from the vendor the price depreciation.

Article 565. - Depreciation of the price shall be assessed by experts by evaluation of the thing sold undefective and when it is defective and the difference (disparity) between

the two values will be calculated as a percentage of the price quoted and the purchaser shall claim the depreciation on the basis of said percentage.

Article 566. - A purchaser who has discovered an old defect in the thing sold and nevertheless disposed of it as owner shall forfeit his right of option.

Article 567. - (1) If the vendor has disclosed a defect in the thing and the purchaser has purchased it being aware of the defect his option to restitute on account of the defect disclosed is extinguished but may restitute it on account of another defect.

(2) If the vendor has stipulated that he is relieved of every defect or of every defect existing in the thing sold the sale as well as the stipulation are valid even when he has not disclosed (named) the defects; in the first case the vendor is relieved of the defect which existed at the time of the contract and of the subsequent defect which occurred before receipt; in the second case he shall be relieved of the existing and not of the occurring defect.

Article 568. - (1) The contracting parties may also pursuant to a specific agreement determine (fix) the amount of the warranty.

(2) Every stipulation however which extinguishes or reduces the warranty shall be null and void if the vendor had intentionally concealed the defect.

Article 569. - An action on warranty of a defect shall not be heard regarding that which has been sold by the court or the other government authorities by public auction.

Article 570. - (1) An action on a warranty shall not be heard if six months have elapsed from the time of delivery of the thing sold even if the purchaser has not discovered

the defect until after the expiration of said time limitation unless the vendor agrees to be bound by the warranty for a longer period.

(2) The vendor cannot however invoke this time limitation if it is proved that he has fraudulently concealed the defect from the purchaser.

(4) Obligations of the Purchaser

Payment of the Price

Article 571. - (1) The purchaser will be bound to pay the price agreed in accordance with the stipulations of the contract; he shall bear the expenses of discharge.

(2) The vendor may dispose of the price of the sale before receipt (by purchaser), (of the thing sold).

Article 572. - (1) The vendor has no right to legal interest on the price payable unless he has served notice on or delivered the thing sold to the purchaser which is capable of producing fruits or other revenues save where there is an agreement or custom to the contrary.

(2) An increase which occurs to the thing sold after the contract and before receipt (by the purchaser) such as the fruits and produce belong rightfully to the purchaser who shall bear the costs of the thing sold save where there is an agreement or custom otherwise.

Article 573. - The price shall be paid in the place which is designated in the contract (if any) and in the absence of a stipulation to that effect it shall be payable at the place wherein the thing sold is being delivered; if the price is not payable on delivery of the thing sold it shall be paid at the domicile of the purchaser at the time of maturity save where there is custom or a law which provides otherwise.

Article 574. (1) A sale for a price which is payable immediately or at a later specified date is valid; it may be stipulated that the price is payable in certain instalments on certain specified dates and it may also be stipulated that if an instalment is not paid at the time of maturity the entire price becomes payable immediately.

(2) Save agreement otherwise the running of the term and the instalments set down in the contract of sale shall take effect as of the time of delivery of the thing sold.

Article 575. (1) A general sales contract which does not stipulate delaying or immediate payment of the price entails immediate payment of the price.

(2) Where a commodity is being sold for cash (payment) the purchaser shall pay the price first if the vendor has brought the commodity (to the session of the contract); but where the sale involves barter of a commodity for another similar commodity or currency for currency the thing sold and the price shall be paid simultaneously.

Article 576. - (1) If anyone challenges (impedes enjoyment of) the purchaser basing himself on a right which existed prior to the sale which passed from the vendor or if it is feared on serious grounds that the thing sold will be reclaimed (replevined) the purchaser may if not prevented by a stipulation in the contract withhold payment of the price until the challenge (impediment) has ceased or until the danger of replevin is eliminated; in such case however the vendor may claim payment of the price upon providing an accommodation party (surety).

(2) The provision of the preceding paragraph will apply in the case where the purchaser has discovered a defect in the thing sold and claimed rescission or reduction of the price.

Article 577. - (1) The vendor is entitled to withhold (delivery of) the thing sold until he receives that which

of the price has matured; if the thing sold consists of many things which have been sold in one transaction the vendor may withhold the thing sold until he receives the price thereof which has matured regardless of whether or not a price was quoted for each one of the items.

(2) The right of withholding is not extinguished if the purchaser has given a mortgage or a surety for the maturing price.

Article 578. - (1) If the vendor has delivered the thing sold before receiving the price he would have extinguished his right of withholding in which case the vendor may not have the thing sold restituted from the possession of the purchaser and withholding it until he has received the price.

(2) Where the purchaser has without the permission of the vendor taken possession of the thing sold before paying the price his possession shall not be effective and the vendor is entitled to have the thing sold restituted to him: if the thing sold has perished or suffered a defect while in the possession of the purchaser his possession becomes effective and will be bound to pay that which of the price he owes.

Article 579. - (1) If the contract of sale stipulates that the price of the thing sold is payable on a future date (delayed) or if the vendor has after the sale accepted to delay the price he shall not be entitled to withhold the thing sold and must deliver it to the purchase and shall not claim payment of the price before the date of maturity.

(2) The vendor may however withhold the thing sold even where the time limit stipulated for payment of the price has not fallen due if the purchaser has weakened the securities he had offered for payment of the price or if he is in a state of insolvency and it is feared that the vendor will lose the price unless the purchaser has provided a surety.

Article 580. - If the purchaser has died while in a state of bankruptcy before having received (taken possession of) and having paid the price of the thing sold the vendor is entitled to withhold the thing sold until he has received the price or until the court has sold it and paid to the vendor his right out of the price; if the price is in excess of the vendor's right the surplus will be paid to the other creditors and if it is less and insufficient to pay the entire right of the vendor he shall be treated *pari passu* the other creditors in regard to the balance remaining to him.

Article 581. - (1) If the purchaser has failed to pay the price on maturity (when it is due) or if he has breached the other obligations which resulted from the contract of sale the vendor has the option of either claiming that the purchaser is obligated to perform or claiming rescission of the sale.

(2) A judgment of immediate rescission must be rendered if the vendor has claimed rescission and was threatened of losing both the thing sold and the price; but if this threat does not exist the court may grant a delay period and fix the duration thereof according to the circumstances and the purchaser shall pay the legal interest if no other interest has been agreed; if the time limit has expired and the purchaser has failed to pay the price the court must render judgment rescinding the sale without granting the purchaser a further time limit.

Article 582. - If the vendor has stipulated that the sale is automatically (tacitly) rescinded where the purchaser has failed to pay the price on the date fixed the purchaser may nevertheless pay the price after the lapse (expiration) of the time limit if no notice had been served on him (to pay) except where the contract (of sale) has stipulated that the rescission takes place without the need for

notice; in no case may the court grant the purchaser any time limit.

Payment of Costs

Article 583. - Save agreement or custom otherwise the purchaser shall bear the costs of the contract of sale of the registration and other dues the fee of writing documents and instruments and the other costs requisite for the sale.

Article 584. - The provision for and the costs of the things sold in bulk (en masse) will be borne by the purchaser: if the fruit of a vineyard is sold in bulk the cost of pruning the trees and cutting the fruit will be borne by the purchaser save agreement otherwise.

Article 585. - If a thing is sold to be borne and delivered to the house of the purchaser the costs of the same shall be according to the agreement or custom.

(Alternative translation: "A C and F sale includes the cost of moving and delivering the thing sold at the purchaser's house and shall be defrayed in accordance with agreement or custom)."

Delivery of the Thing Sold

Article 586. - (1) The purchaser is bound to take delivery of the thing sold at the time and in the place fixed in the contract when it has been offered to him in accordance with the conditions agreed.

(2) In the absence of an agreement or custom regarding the time and place of receiving the thing sold the purchaser is bound to take delivery thereof in the place wherein the vendor must deliver it to him and must move it without delay excluding the time needed for moving

it.

Article 587. - Save custom or agreement otherwise the purchaser shall bear the costs of taking over the thing sold.

Section (ii) - Certain kinds of sales

(1) Sale by Guardians and Agents and Purchasing for Themselves

Article 588. - (1) A father who has guardianship over his son may sell his property to his son and may purchase the property of his son himself in consideration of the comparable value thereof and with insignificant and not excessive difference (lesion).

(2) If he has sold his own property to his son or has purchased his son's property for himself the price and the thing sold will be deemed as having been received immediately upon concluding the contract.

(3) A grandfather will be governed by the same rule as the father.

Article 589. - The guardian who is appointed and the curator who has been named by the court may not sell his own property to an interdicted person and may not at all buy for himself anything of the interdicted person's property regardless of whether or not he same is for the good (benefit) of the interdicted person.

Article 590. - (1) A guardian who is selected by the father or the grandfather may not sell his own property to an orphan nor may he buy for himself anything of the orphan's property except where the same is beneficial to the orphan and is carried out on the strength of leave from the court.

(2) Beneficence is where the sale to an orphan is for a lesser price than that of the comparable price or where

a purchase is made from him for a higher than the comparable price in a manner which shows an apparent interest for the orphan.

Article 591. - The judge may not sell his own property to an interdicted person nor may he buy the property of an interdicted person for himself.

Article 592. - (1) Agents may not buy the property for the sale of which they have been constituted; the managers of companies and their equivalents as well as employees may not buy the property which they have been appointed to sell or the sale of which will be through them; receivers in bankruptcy and liquidator custodians may not buy the assets of the bankruptcy nor the assets of the insolvent debtor; the liquidators of companies and estates may not buy the assets entrusted to them for sale or for evaluation; none of the foregoing persons may purchase even by way of a public auction in person or under a pseudonym that which he is forbidden to purchase.

(2) A purchase in the cases provided for in the preceding paragraph will however be valid if allowed by the person for whose account the sale was made provided that at the time of the allowance he had the incumbent (legal) capacity; but if the sale is not allowed and the property is resold once more the first purchaser shall bear the expenses of the second sale and the depreciation which might have occurred in the value of the thing sold.

(2) Sale of Litigious Rights

Article 593. - (1) Where the owner of a litigious right has assigned it to a third party for valuable consideration the person (debtor) against whom the right has been assigned may relieve himself of any claim (extinguish the right assigned) by paying (refunding) to the purchaser the actual price paid by him together with expenses and

interest on the price computed at the legal rate from the time of payment.

(2) A right is deemed to be litigious if a case in respect thereof has been initiated or where a serious dispute had arisen in respect thereof.

Article 594. - There is no room for restitution of the disputed (litigious) right in the following cases:

- (a) if the right forms part of a combination of properties sold in bulk for one single price;
- (b) if the right is jointly owned by heirs or other owners and one of them has sold his part to another co-owner;
- (c) if a debtor has assigned it to his creditor in settlement of a debt due from him;
- (d) if it includes an immovable which was sold to the alienee (person to whom ownership of the immovable was conveyed).

Article 595. - Governors, judges, public prosecutors and advocates, and court clerks and their assistants may not purchase in their own names or under a pseudonym all or part of a litigious right if the hearing of the dispute falls within the jurisdiction of a court in the area of which they carry on their duties.

Article 596. - Lawyers may not make deals (enter into agreement) in their names or under a pseudonym with their clients with regard to a litigious right when they had undertaken to defend this right.

(3) Barter

Article 597. - (1) The rules governing the thing sold shall apply to the considerations of a barter sale and thus its stipulations are effectual; if a dispute arises regarding the delivery the barterers must deliver and take delivery simultaneously.

(2) Each of the barterers will be deemed as vendor of the thing which he gave in exchange and purchaser of the thing which he has taken in exchange.

Article 598. - If the thing received by the barterer is dispossessed or restituted on account of a defect this barterer may either have the thing which he gave in exchange restituted to him or claim the value of the other thing as at the time of dispossession, or alternatively claim its value at the time of the exchange free of the defect; in both cases he may claim damages if there is cause therefor.

Article 599. - If the things exchanged have different values in the estimation of the contracting parties the difference may be compensated by the payment of an equivalent sum of money.

Article 600. - In the absence of an agreement otherwise the costs of the barter contract as well as the other costs will be borne equally by the barterers.

Chapter 2 - Gifts (Hiba)

Section (i) - Gifts and almsgiving (charities)

Article 601. - (1) Gift is the assignment of the ownership of a property to another person without any consideration.

(2) Almsgiving (charity) is the property granted (to a third party) for credit (merit) arising from a pious deed;

the rules governing gifts apply to charity except where there is a relevant specific provision.

Article 602. - In order to settle a gift of an immovable it must be registered in the department having jurisdiction.

Article 603. - (1) The gift of a movable thing is not completed except by taking delivery thereof; taking delivery of the gift must be pursuant to the implied or express permission of the donor (grantor).

(2) An express allowance (of the gift) by the grantor (donor) validates receipt in or after the session of the gift; but his implied permission to receive is restricted to the gift session and the gift contract is an implied permission to receive.

Article 604. - An infant (minor) will appropriate the property which is granted to him by his guardian or the person supervising his interdiction immediately upon an offer being made by the grantor (donor) as long as the property is in his possession or is a deposit (trust) or loaned in the possession of a third party where the need does not arise for taking delivery.

Article 605. - If a thing is given as a gift to an imprudent minor his guardian or the person supervising his interdiction will act for him (replace him).

Article 606. - Where a person has granted his property to a person who had possession of the property the gift is deemed as having been received and there will be no need for a new (fresh) receipt.

Article 607. - (1) If a creditor granted to or released the liability of the debtor on the debt the grant if not rejected by the debtor is completed and the debt is extinguished immediately.

(2) A gift of a debt granted by the creditor to other than the debtor will not be completed unless such third party has received the gift by permission of the grantor (donor).

Article 608. - The grantor must be of sound mind, of major age, and have the capacity to donate; if he satisfies these conditions he may while in good health grant all or some of his property to whomever he wishes regardless of whether the grantee is an ascendant, descendant, a relative, or a third party (stranger) even if his religious belief is different from his.

Article 609. - (1) The thing granted must be present at the time of the grant and must be designated and owned by the grantor (donor).

(2) The grant of a joint ownership is allowable.

Article 610. - A grant which is detrimental to the creditors is not allowable.

Article 611. - A grant which stipulates a consideration is valid and the stipulation is effectual: a person who has made a grant to another person stipulating that he must pay his debt the amount of which is known or to sustain him until his death then the gift is binding; if the grantee has failed to perform the stipulation the grantor may either claim performance of the stipulation or rescind the grant.

Article 612. - The grants and presents which are offered in betrothal by either fiance to the other or by a third party to either or jointly to both of them shall have to be restituted by the grantee to the grantor if the betrothal is annulled and if the grantor has claimed restitution if the thing granted or presented still existed and the restitution thereof itself is possible.

Section (ii) - The rules governing a grant

(1) The Obligations of the Grantor

Article 613. - The ownership of the thing granted is conveyed by the grant to the grantee.

Article 614. - (1) The grantor shall not warrant the thing granted against revendication unless he has intentionally concealed the cause of dispossession or unless the grant is against a consideration except to the extent of the consideration paid to him by the grantee save in all cases agreement otherwise.

In the case of dispossession the donee (grantee) is subrogated into the rights and actions of the grantor (donor).

Article 615. - If the thing ('an) granted has perished and was replevined by the beneficiary of the warranty who gave a warranty to the grantee the latter cannot claim from the grantor that which he had warranted except to the extent of the warranty given by the grantor against revendication in accordance with the provisions of the preceding provisions.

Article 616. - The grantor shall not be liable except on his intentional act or his gross (excessive) fault.

(2) The Obligations of the Grantee

Article 617. - The expenses of the grant shall be borne by the grantee which will include the costs of the contract, the dues, and the costs of delivery taking over and moving the thing granted save agreement otherwise.

Article 618. - The grantee is bound to perform the consideration imposed upon him whether such consideration was stipulated in favour of the grantor a third party or in

the public interest.

Article 619. - (1) If the grantor has stipulated that the grantee shall in consideration of the grant discharge his debts the grantee shall not be bound to discharge except the debts which existed at the time of the grant save where otherwise agreed.

(2) Save agreement otherwise if the thing granted is burdened with a real right securing a debt due by the grantor or by a third party the grantee shall be bound to discharge the said debt.

Section (iii) - Revocation of a gift

Article 620. - The grantor may revoke the gift with the consent of the grantee; if the grantee does not consent the grantor has a right of revocation when a reasonable cause has been realised save where there is an obstacle against revocation.

Article 621. - A reasonable cause of revocation of a gift is deemed in particular to be:

- (a) if a grantee has committed a serious breach of his duties towards the grantor where such failure constitutes serious ingratitude on his part;
- (b) if the grantor has become unable to maintain himself in accordance with his social standing or meet an obligation to pay alimony which he is legally bound to pay to another person;
- (c) in the event of a child being born to the grantor after the donation and still being alive at the time of the revocation or if the grantor had a child which he believed dead at the time of the grant which child is discovered to be still

alive;

- (d) where the donee (grantee) has without reasonable excuse failed to perform his obligations under the contract.

Article 622. - Where the grantee has unlawfully and with premeditation killed the grantor his heirs are entitled to revoke the grant.

Article 623. - Revocation of the grant is forbidden where:

- (a) there is an inherent increase of the thing granted involving an increase in the value thereof; but if this impediment has ceased the right of revocation is revived;
- (b) either party to the gift dies;
- (c) the grantee has disposed of the thing granted in such manner which alienates the ownership definitely; but if the disposal was confined to part of the thing granted the grantor may revoke the grant in respect of the remaining part;
- (d) the grant was made by one spouse to the other even where the spouses have dissolved the marriage after the grant;
- (e) the grant was to an unmarried person (being in a degree of consanguinity precluding marriage) a relative on the maternal side;
- (f) the thing granted has perished while in possession of the grantee by the act of the donee (grantee), by a cause beyond his control (not attributable to him) or by use; if however the

loss is partial the revocation may be in respect of the remaining part; the same thing applies where the grantee has changed the thing granted to such as will change its nomenclature such as wheat when it is ground into flour;

- (g) the grant was against a consideration which has been received by the grantor provided that the consideration is not some of the thing granted and if the consideration was something granted the grantor may revoke the grant in respect of the part remaining and if the consideration is disposed the right of the revocation is revived;

- (h) the creditor has donated the debt to the debtor;

- (i) the gift was a charity.

Article 624. - (1) A grant which is revoked by mutual consent or by a judgment is a nullification of the effect of the contract as of the time of the revocation and restitutes the ownership to the grantor.

(2) The grantee shall not retribute the fruits except from the time of the agreement of the revocation or from the time of commencement of the proceedings; he may claim all the necessary expenses incurred by him but the claim in respect of the usefully spent costs may not exceed the sum of the increase that occurred to the value of the thing granted.

Article 625. - If without the consent of the grantee or without a judgment of the court the grantor has taken back the thing granted he will be a usurper and if it has perished or was consumed the grantor shall be liable on its value towards the grantee; but where the grantor claimed the thing granted after a judgment by the court and the

grantee after being served with notice to deliver it has declined to do so and the thing perished while still in his possession he shall be liable thereon.

Chapter 3 - Companies

Articles 626 - 683 have been repealed by Law No.36 of 1983 Company Law

Chapter 4 - Loans and Annuities

Section (i) - Loans

Article 684. - A loan is where a person gives to another person a designated definite fungible thing which is consumed by enjoyment the comparable thing of which he will return (restitute).

Article 685. - A guardian may not borrow the property of someone who is under his guardianship.

Article 686. - (1) The borrower will own the thing borrowed by taking delivery thereof and his liability on a comparable thing is established.

(2) If the thing borrowed has perished after the contract and before taking delivery thereof the borrower shall not be liable.

Article 687. - (1) If a hidden defect appeared in the thing loaned which was interest free and the borrower preferred to accept it and informed the lender accordingly he shall not be obligated to retribute except its value as defective.

(2) But when the loan bears interest or does not bear interest and the lender has deliberately hidden the defect the borrower may demand either that the defect be repaired or that the defective thing be replaced with a thing which

is free of defects.

Article 688. - If the thing is dispossessed the provision governing sales shall apply if the loan was interest free; otherwise the provisions governing loans for use will apply.

Article 689. - (1) The borrower shall give back things which are comparable to those borrowed as to quantity and description (attributes) at the time and place agreed upon.

(2) In the absence of an agreement as to the time the lender may take back the thing lent at any time.

(3) In the absence of an agreement as to the place of returning (the thing) the returning must be at the place of the contract.

Article 690. - If the subject matter of the loan was a thing which is measured by volume or weight or was coins or banknotes the values of which have depreciated or appreciated the borrower shall return (give back) comparable things without taking into consideration (regardless of) the depreciation or appreciation thereof.

Article 691. - If the borrower is unable to return things which are comparable to the things borrowed because he has consumed them and they disappeared from circulation among the public the lender may either wait until similar things are available or claim the value thereof as on the day of taking delivery thereof.

Article 692. - (1) Interest will not be obligatory on the loan unless it has been stipulated in the contract.

(2) If the borrower has paid interest in excess of the legally permissible rate he may recover the excess irrespective of whether he had paid it knowing it to be excessive or by mistake.

Article 693. - Where an interdicted person has borrowed a thing which he has consumed he shall be liable to the extent of the gain he has obtained; if the thing has perished without encroachment he shall not be liable; and if the thing itself is still in existence the lender may have it restituted to him.

Section (ii) - Permanent incomes (annuities)

Article 694. - (1) A permanent income (annuity) is where a person undertakes to give permanently to another person and to his successors after him a periodic income the subject matter of which will be a sum of money or a certain specified quantity of other fungible things; this undertaking will be pursuant to a commutative contract.

(2) The rules pertaining to the rate of interest applicable to an interest bearing loan shall apply to a permanent income (annuity).

Article 695. - (1) An annuity debtor is vested with a right to discharge the consideration on which the income had been based after the lapse of 15 years on the contract.

(2) It may be agreed that the discharge will not take place as long as the beneficiary is still alive or for a lesser or greater period than 15 years.

(3) The right of discharge will not be exercised except after the intention to do so has been declared and after the lapse of one year from the date of such declaration.

Article 696. - The creditor may not demand repayment of the consideration he had paid for establishing the income except in the following cases:

- (a) if the debtor in spite of being served with notice to pay has failed to pay the income for

two consecutive years;

(b) if the debtor has failed to provide the securities he had promised the creditor to pay or if the securities have perished totally or partly and he had failed to provide substitutes therefor;

(c) if the debtor has become insolvent or has been adjudged bankrupt.

Article 697. - (1) If the annuity has been founded (arranged) in consideration of a sum certain of money discharge is completed by payment of the consideration or by repayment of a lesser sum if agreed upon.

(2) In the other cases discharge will be completed by payment of a sum of money the interest of which when calculated at the legal rate equals the amount of the annuity.

Chapter 5 - Composition

Section (i) - The elements of composition

Article 698. - Composition is a contract which eliminates the dispute and interrupts the litigation by mutual consent.

Article 699. - He who concludes a composition must have the capacity to dispose against consideration of the rights covered by the deed of the composition.

Article 700. - (1) If a minor who is permitted to deal in trading has a debt owing to him which has not been adjudged (decided legally) and has not been acknowledged by the debtor against whom the minor does not have evidence (to support his claim) the minor may if the debtor is insolvent

conclude a composition with his debtor on some of the debt sum or a thing having a lesser value than the sum of the debt; but if the debt has been decided legally (in favour of the minor) or if the debtor has acknowledged it or if the minor has proof against the debtor who is solvent the minor may not do so (conclude a composition).

(2) In every case the minor having permission to trade may conclude a composition with his debtor for delaying (payment of) the debt to a certain specified term.

Article 701. - (1) If an interdicted person who has a debt owing from a debtor against whom he has proof or if the debtor has acknowledged or was condemned on the debt the guardian may not conclude a composition in respect of some of the debt except where the debt has fallen due under its contract; his composition is permissible in his regard and he will warrant the sum of the debtor for the interdicted person; if the composition was made in consideration of another property the composition is allowable subject to leave from the court if the value of the consideration is allowable subject to leave from the court if the value of the consideration is equal to or insignificantly less than the sum of the debt but the composition is not permissible if the value of the consideration is significantly less than the sum of the debt.

(2) If the guardian fears that the entire sum of the debt cannot be established because he does not have proof (to support it) and the debtor has denied it and is prepared to take the oath, or if the insolvency of the debtor has been established he may subject to leave from the court conclude a composition on the debt even if it involves significant difference (lesion).

Article 702. - If action for a debt is brought against an interdicted person and if the plaintiff has proof to support his action the guardian may subject to leave being given by the court conclude a composition on a thing

(something) and pay the remainder; if the plaintiff does not have proof (to support his claim) the guardian may not conclude a composition on anything at all.

Article 703. - A mandate for litigation does not presuppose a mandate to conclude a composition: if an attorney for litigation has concluded a composition in respect of the case without having obtained the permission of his constituent the composition shall not be valid.

Article 704. - (1) The subject matter of the composition must be something against which a consideration may be taken and must be defined if it is something which needs to be received and delivered.

(2) No composition may be concluded in respect of matters related to the public order or morality; but composition is allowable in respect of financial interests which result from the personal status or which arise from the commission of an offence.

Article 705. - The consideration of the composition must be property owned by the person making the composition and must be defined if it needs to be received and delivered.

Article 706. - A composition will be valid in respect of rights which have been acknowledged or denied by the defendant or in respect of which he has not made any acknowledgement or denial.

Article 707. - If the thing claimed is a specifically defined thing ('ayn) which the defendant has admitted to the plaintiff and concluded a composition in respect thereof against a definite property the composition is valid and the provisions governing to sales shall apply thereto.

Article 708. - If a person has claimed a thing - definite

or indefinite - which is in possession of another person and that other person claimed a thing which is also in possession of the former a composition will be valid if they have agreed that the thing in possession of one of them is a consideration of the thing in the other person's possession; such composition will have the meaning of barter and therefore the provisions concerning barter will apply to it; the validity of this composition shall not be contingent upon the validity of knowledge of the two considerations.

Article 709. - A composition concluded by a plaintiff with his adversary regarding some of his right would be tantamount to taking some of his right and extinguishing the remaining part.

Article 710. - Where in all cases the composition involved a grant, sale, or any other contract the provisions of this contract shall apply to the agreement as to its validity and the effects resulting therefrom.

Article 711. - The composition is not established except when it is in writing or in formal minutes.

Section (ii) - The effects of a composition

Article 712. - Where a composition has been concluded the parties may not revoke it; the plaintiff in composition owns the consideration of the composition and his case is extinguished.

Article 713. - Where the consideration of the composition is something that can be designated and described which has been dispossessed or perished in whole or in part before being delivered to the plaintiff or if all or some of the consideration has been dispossessed after delivery to the plaintiff, if the composition was based on an admission the

plaintiff will claim from the defendant all or part of the thing claimed; if the composition was based on denial or silence the plaintiff will revive his case to that extent.

Article 714. - If the composition was based on an admission of a certain specified property in respect of a case concerning a definite designated thing and if the thing the subject matter of the composition has been dispossessed in whole or in part on the strength of evidence the quantity (amount) that has been recovered from the defendant by replevin will be recouped from the consideration of the composition received by the plaintiff.

Article 715. - (1) In case of denial if the subject matter of the composition concluded was a certain specified property in respect of a case concerning a definite designated thing and if the thing the subject matter of the composition was dispossessed in whole or in part on the strength of evidence the defendant will have recourse against the plaintiff for equivalent of the substitute offered by him and the plaintiff will have recourse concerning litigation in respect thereof and the case against the successful party (beneficiary of the warranty).

(2) If a person has claimed a right to a designated thing which he did not declare and if a composition has been concluded in respect thereof and later some of the thing was dispossessed the defendant shall not be entitled to anything of the substitute; if the thing was dispossessed on the strength of evidence he will recover the whole of the substitute.

Article 716. - (1) In case of denial or silence the composition is as regards the plaintiff a commutative contract and a waiver of the oath and a resolution of the dispute (litigation) as regards the defendant.

(2) Pre-emption may take place in respect of the substitute immovable but not in respect of the immovable

claimed (the subject matter of the claim).

Section (iii) - Nullity and rescission of a composition

Article 717. - (1) In case of a compromise which is tantamount to a commutative contract the parties thereto may revoke it by mutual consent: the plaintiff will regain the thing claimed and the defendant will regain the consideration of the composition.

(2) Where however the composition involved extinction of some rights revocation by mutual consent will not be valid.

Article 718. - A composition is suspended if:

- (a) it was based on papers the forgery of which was established thereafter;
- (b) it has resolved a dispute in respect of which a final judgment had already been rendered where both parties or either of them were/was not aware of the rendering of said judgment.

Article 719. - (1) If the composition involved all the disputes existing between the parties in general and if thereafter written documents were revealed which were not known at the time of the composition and which establish that either party to the dispute had no right to his claim the contract will not be suspensive unless these documents had been hidden by the act of either contracting party.

(2) But where the composition did not involve except a certain specified dispute and written documents appeared thereafter establishing that either party did not have a right to that which he had claimed the composition will be suspensive.

(3) The composition will be effectual if three months have elapsed on the appearance of the documents provided

for in the preceding two paragraphs but the interested contracting parties have not raised any objection thereto.

Article 720. - (1) A composition is indivisible; the nullity of a part thereof nullifies the contract.

(2) This rule does not apply however if it is revealed from the wording of the contract or from the circumstances that the parties had agreed that the various parts of the contract are independent the one from the other.

Article 721. - If either contracting party has failed to perform the obligation undertaken by him in the contract of composition the other party may demand performance of the contract where this is possible and failing which he may demand rescission of the contract without prejudice to his right to claim compensation in both cases.

Title 2 - Contracts Relating to the Use of a Thing

Chapter 1 - Lease Contract

Section (i) - Leases in general

Article 722. - A lease is the alienation of a definite advantage (benefit) in return for a defined consideration for a certain specified period by (pursuant to) which the lessor will be bound to enable the lessee to enjoy the leased premises.

(1) The Elements of a Lease

Offer and Acceptance

Article 723. - In order for a lease to be concluded the parties must have the legal capacity at the time of the contract and each one of them must be of sound mind and prudent; in order for the contract of lease to be effectual the parties must be of sound mind and not interdicted and the lessor must be the owner of that which he rents or an agent or guardian of the owner.

Article 724. - He who is not vested with a right except to manage may not conclude a lease for a period exceeding three years; where a lease has been concluded for a longer period the period will be reduced to three years, unless there is a provision otherwise.

Article 725. - A lease by an uncommissioned agent will be concluded subject to being allowed by the owner: if the owner is a minor or interdicted person and the rent did not contain excessive lesion an uncommissioned agent's lease will be concluded contingent upon being allowed by the guardian.

Article 726. - A contract of lease may be coupled (contain) with an option stipulation: renting and leasing may be concluded if either or both parties has/have an option to rescind the lease within a certain period of time.

Article 727. - If the option stipulation was for both the lessor and the lessee the lease will be rescinded if either party has within the time limit fixed rescinds the contract; if either of them has allowed (approved) the lease he shall forfeit his option and the stipulation of the option remains to the end of the time limit open to the other party.

Article 728. - The lease will be binding if the person having a right of option has failed within the time limit fixed (for exercising the option) to rescind the lease.

Article 729. - A stipulation of an option is not hereditary: the option is extinguished if the contracting party who had the option has died.

Article 730. - (1) The option time limit begins from the time of the contract.

(2) The term of the lease begins from the time of lapse (extinction) of the option unless the contracting parties had agreed otherwise.

The Leased Property

Article 731. - A jointly owned share may be leased to a co-owner or to someone else.

Article 732. - A lease granted by a usufructuary unless ratified by the bare owner ends when the usufruct is extinguished subject to the time limits provided for giving notice of evacuation and the time limits needed to move the

agricultural crop of the land.

Article 733. - He who has leased a thing which he did not view will have an option when he views it either to accept or rescind the lease; the lessor who has leased a thing which he did not see does not have an option.

Article 734. - There is no option of viewing for he who has leased (taken on lease) a defined thing which he had already viewed adequately save where its first appearance has changed.

Article 735. - (1) The option of viewing is extinguished by the death of the lessee, by his admission in the contract of lease that he has seen and accepted the thing in its (existing) state, by describing the thing in the contract of lease in such manner which replaces viewing if its appearance corresponds to the description, by an act or statement by the lessee which annuls the lease, and by the lapse of adequate time during which the lessee was able but failed to view the thing.

(2) The lessor may fix for the lessee a suitable time limit to the expiration of which the option will be extinguished if he does not come to the leased premises within the said time limit.

The Rent

Article 736. - It would be valid if the rent is money and it would be valid if it is any other property. (Alternative translation: "The rent may be payable in money or any other property".)

Article 737. - (1) It would be valid to quote various rents for more than one form of user (enjoyment); the rent must be paid in respect of the form for which the leased property appears to be actually used.

(2) If a shop has been rented against a certain specified rent if it is used as a grocery shop and against a different rent if it is used for a blacksmiths the rent is payable at the rate quoted for the relevant actual use.

Article 738. - Where the contracting parties have not agreed on the amount of the rent or on the method of assessing it or if it was impossible to establish the rent claimed the comparable rent is payable.

The Term

Article 739. - The term of the lease begins from the time stated in the contract and if it is not stated from the date of the contract.

Article 740. - (1) A lease contract which has been concluded for a period exceeding 30 years or if it was made perpetual may be terminated after the lapse of 30 years upon application being made by either party subject to the legal time limits provided for in the following Article; every agreement providing otherwise shall be null and void.

(2) Neither party may however terminate the lease if it had been concluded for the duration of the lessor's or lessee's lifetime even when it has continued for a period exceeding 30 years; if the lease contract has stipulated that the lease will continue in force as long as the lessee continues to pay the rent such contract will be deemed as having been concluded for the duration of the lessee's lifetime.

Article 741. - A lease which has been concluded without agreeing on a term, or where it was for an indefinite term, or if the term of the lease claimed cannot be established, it will be deemed as having been concluded for the term fixed for payment of the rent and will expire with the (at the same time as the) expiration of the said term upon

notice of evacuation being served by a contracting party on the other party within the following time limits:

- (a) Concerning land: if the period fixed for payment of the rent is six or more months the notice shall be served three months before the expiration thereof; if the term is less than that the notice will be served before the last half thereof subject in all these cases to the right of the lessee regarding the produce which will be in accordance with usage.
- (b) Concerning houses, shops, offices, trading premises, factories, stores, etc.: if the term fixed for payment of the rent is four or more months the notice will be served two months before the expiration thereof and if the term is less than that the notice will be served before (expiration) of its last half.
- (c) Concerning furnished houses and rooms (lettings) as well as anything other than the aforementioned: if the term fixed for payment of the rent is two or more months the notice must be served before the expiry thereof by one month and if the term is less than that the notice will be served before the last half thereof.

(2) Provisions Concerning Leases

(a) Obligations of the lessor

Delivery of the Leased Property

Article 742. - The lessor after having received the rent stipulated in the contract to be paid in advance shall deliver the leased property to the lessee in the same state

which existed at the time of the contract; if this state has been changed by an act of the lessor or of a third party in such manner which is detrimental to the enjoyment intended for it the lessee has an option either to accept or rescind the lease.

Article 743. - Delivery of the leased property will be the responsibility of the lessor who will permit and authorise the lessee to enjoy the leased property without any obstruction; the leased property shall remain in the possession of the lessee uninterruptedly and consecutively until the lease has expired.

Article 744. - If the lessor has delivered the house but failed to deliver one room thereof the lessee will have an option to force the lessor to deliver it or to rescind the contract of lease or to keep it in force (allow it); in the latter case the pro rata rent of the room will be deducted from the total rent until the room has been delivered.

Article 745. - A lessee who has leased a house which must include a certain number of rooms and utilities but which turned out to be incomplete has an option to rescind the lease or accept it at the rent named in the contract and may not reduce the rent.

Article 746. - If a (plot of) land has been taken on lease as being of a certain specified area but turned out to be less or more than that area the lease will be valid and the rent stipulated must be paid if it is more than a specified area; but in the case of a lesser area than that stipulated the lessee has an option to rescind the lease.

Article 747. - Where a (plot of) land has been taken on lease as being of a certain specified area and the rent was fixed on the basis of the unit of measurement of its

area if the area turns out to be less or more than that area the lessee will have an option of rescinding the lease or of accepting it where the rent of the actual area shall be computed at the rate of the rent stipulated for a unit.

Article 748. - The provisions governing the obligation of delivery of the thing sold shall apply to the obligation of delivery of the leased property and particularly that which relates to the time and place of the delivery and to defining the ancillaries of the leased property save in all cases where there is a provision to the contrary.

Article 749. - If the leased property has become in such state which tends to threaten the health of the lessee, those living with him, his employees or workers, with grave danger the lessee may demand rescission of the contract even where he had previously waived (abandoned) this right.

Maintenance of the Leased Property

Article 750. - (1) The lessor is bound to repair and restore any defect in the leased property which has disrupted the use for which it is intended.

(2) If the lessor has refrained from carrying out the restoration the lessee may rescind the lease or carry out the restoration subject to obtaining leave from the court and claim from the lessor the beneficial sum which he has incurred.

Article 751. - (1) If the leased property has perished in its entirety during the term of the lease the contract is rescinded tacitly.

(2) If as a result of a cause not imputable to the lessee the leased property has become in such condition which is unfit for the use for which it was leased or if such use is appreciably diminished the lessee may if the lessor does not restore the leased property to its original

condition within a reasonable time limit demand reduction of the rent or rescission of the lease.

(3) The lessee may not in the preceding two cases claim damages if the perishing or the deterioration was due to a cause beyond the control of the lessor.

Article 752. - (1) The lessee may not prevent the lessor from carrying out any repairs needed for the maintenance of the leased property; but if such repairs are detrimental to the dwelling (residence) or the use (enjoyment) the lessee may claim rescission of the lease or the reduction of the rent.

(2) Where however the lessee remained in the leased property during the repairs until they have been completed his right to claim rescission is extinguished.

Article 753. - (1) The lessor may not impede the lessee from enjoyment of the use during the term of the lease nor may he cause any change to the leased property which prevents the enjoyment thereof or is detrimental to the benefit the subject matter of the contract (of lease).

(2) The warranty of the lessor is not confined to the works performed by him or by his followers but it extends to every impediment based on a legal cause done by another lessee or from any successor in title to the lessor.

Article 754. - (1) Where a third party has claimed a right which conflicts with the rights of the lessee under the contract of lease the lessee must report the same to the lessor immediately and he may demand to be dismissed from the case in which case the proceedings will be against the lessor only.

(2) If this impediment has resulted in depriving the lessee actually of the benefit stipulated in the contract of lease he may according to the circumstances claim rescission or reduction of the rent and damages if necessary.

Article 755. - (1) If the leased property has been usurped and the lessee was unable to dispossess the usurper he may claim rescission of the contract or the reduction of the rent.

(2) If he has failed and it was possible for him to dispossess the usurper and to serve notice of the usurpation on the lessor the lessee shall not be exonerated from payment of the rent; he may commence proceedings against the usurper claiming damages.

Article 756. - (1) The lessor warrants the lessee against all defects which prevent or appreciably diminish the enjoyment of the property but not against those defects that are customarily tolerated.

(2) The lessor is responsible also for the lack (inexistence) of attributes which he had expressly warranted to exist or which are essential to the intended use of the property save in all cases stipulation in the agreement otherwise.

Article 757. - The lessor however does not warrant the lessee against defects of which the lessee was informed or of which he was aware at the time of the conclusion of the contract; the lessor also does not warrant the lessee against the defect if it was easy for the latter to detect it himself unless where the lessor has declared that the leased property was free of any defect.

Article 758. - (1) If the leased property is found to have a defect against which the lessee has been warranted the lessee may claim rescission of the contract or reduction of the rent.

(2) If the lessee has suffered an injury as a result of the defect the lessor is under an obligation to compensate him unless he can prove that he was not aware of the existence of the defect.

Article 759. - Every agreement excluding or limiting the warranty against impediment or defects is void if the lessor has fraudulently hidden the cause of such warranty.

(b) Obligations of the lessee

Maintenance of the Leased Property

Article 760. - He who under the lease contract is entitled to a benefit may receive the benefit in kind, something similar to it or of inferior quality, but he may not receive that which is of a higher quality.

Article 761. - (1) A restriction stipulated in the contract is valid regardless of whether or not the advantage differs according to different users.

(2) Prohibition of the lessee from subleasing to a third party entails a prohibition on him not to assign the lease to a third party and vice versa; if however the leased property is an immovable whereon has been established a factory or a trading premises and if the lessee wished to sell the thing erected (established) the court may notwithstanding the existence of the prohibitive stipulation decide to maintain the lease if the purchaser has provided an adequate warranty provided that no real damage has been caused to the lessor as a result thereof.

Article 762. - The lessee must whatever the leased property may be use it within the manner stipulated in the contract of lease; if the contract is silent he must use the leased property in accordance with the purpose for which it is designed or according to usage.

Article 763. - (1) The lessee will, even in the absence of a stipulation of recourse, claim from the lessor (the cost) of restorations carried out by him with the latter's

permission if they relate to repairing and maintaining the leased property; if the restorations are for the lessee's benefit he will not claim from the lessor unless there is a stipulation to that effect.

(2) The lessee shall carry out minor repairs which are incumbent according to usage.

Article 764. - (1) The leased property is a trust in the hand (possession) of the lessee.

(2) Use by the lessee of the leased property other than in accordance with the ordinary use is deemed to be an encroachment and he will be held liable on the damage resulting therefrom.

Payment of the Rent

Article 765. - It would be valid to stipulate immediate payment of the rent make it delayed or payable in instalments at certain fixed times.

Article 766. - In case of a stipulation for payment of the rent immediately the lessee is under an obligation to pay it at the time of concluding the contract and the lessor may refrain from delivering the leased property to the lessee until he has received the rent; he may claim rescission of the contract where the lessee has failed to pay.

Article 767. - In case of a stipulation delaying payment or providing for payment of the rent in instalments neither the rent nor the instalments will fall due until the maturity date thereof; the lessor is bound to deliver the leased property so long as he has received the rent that has fallen due (matured).

Article 768. - In the absence of a stipulation as to the payment of the rent immediately or at a later date the rent

falls due by enjoyment or by being enabled to enjoy it even where it has not been enjoyed actually.

Article 769. - The payment of one instalment is an indication (proof) of payment of the preceding instalments until evidence to the contrary has been established.

Article 770. - Delivery of the leased property is a condition for the falling due of the rent in any case: the lessor may not claim payment of the rent in respect of a term that had elapsed prior to delivery of the leased property; if the term of the lease has expired before the delivery has been effected the lessor is not entitled to anything of the rent.

Restitution of the Leased Property

Article 771. - (1) Where the contract of lease has expired (lapsed) the lessee must evacuate the leased property in the place wherein he had taken delivery thereof if the agreement or usage has not fixed another place (for the delivery).

(2) If the lessee has retained possession of the leased property unlawfully he shall be bound to pay to the lessor a compensation which will be estimated taking into consideration the comparable rent as well as any other injuries that have been suffered by the lessor.

(2) But where the lessee has kept possession of the leased property of necessity or because of a reason beyond his control he shall be bound to pay the comparable rent to the lessor.

Article 772. - (1) The lessee is bound to reconstitute the leased property in the same condition as that in which it was at the time he took delivery thereof subject to loss or deterioration due to a cause not imputable to him.

(2) Where no statement setting out the particulars of

the property was drawn up at the time of delivery the lessee is presumed subject to proof to the contrary to have received the leased property in good condition.

Article 773. - On expiry of the (term) of the lease the leased property remains a trust in the hand of the lessee as it was during the term of the lease; if the lessee has used the leased property after expiry of the term thereof and it perished he will warrant (be liable); the same thing applies where the lessor has asked the lessee on the expiry of the (term) of the lease to reconstitute it to him, but if he failed to do so without any lawful cause the lessee shall be liable (warrant) if the property perished.

Article 774. (1) If the lease has expired and the lessee had erected buildings, or planted trees, or made other improvements which increased the value of the leased property in spite of the objection of the lessor or without his knowledge the lessee shall be bound to demolish the buildings, uproot the trees, and remove the improvements; if such is detrimental to the leased property the lessor may acquire that which has been carried out (the works) by the lessee and pay the value thereof due for uprooting.

(2) If the lessee has carried out any of the things (mentioned in the preceding paragraph) and the lessor was aware of or did not object to such things the latter shall be bound save specific agreement stipulating otherwise to reimburse him at least the expenses the lessee has incurred or the appraisal (to the value as a result of these things the lessee has carried out).

(3) If the lessee has carried out any of these things on the orders of the lessor the latter shall be bound to reimburse the lessee up to the extent known save where there is an agreement otherwise.

(c) Assignment of the lease and sublease

Article 775. - (1) Save agreement or usage to the contrary the lessee may sublet the entire or part of the leased property - movable or immovable - after or before having taken delivery thereof and may also assign the lease to other than the lessor.

(2) If there is a stipulation that the subletting or assignment by the lessee cannot be without the approval of the lessor the latter may abstain from granting such approval without lawful cause.

Article 776. - (1) Where the lessee has sublet the leased property the relationship between the original lessee and the lessor remains subject to the original lease contract; but the relationship between the lessee and the sublessee shall be governed by the stipulations of the sublease contract and the lessee shall be bound to pay the rent to the lessor who may not receive it from the sublessee unless the lessee has assigned or appointed him to receive the rent from the sublessee.

(2) The sublessee shall nevertheless be bound to pay directly to the lessor any sum due from the lessee at the time when the lessor serves notice on him; the sublessee may not invoke against the lessor any rent paid to the lessee in advance unless the advance payment of the rent conforms to usage and has been entered in a document with a certified date (date certaine).

Article 777. - Where the lease has been assigned the assignee shall subrogate the lessee in all the rights and obligations arising from the contract of lease; the assignor shall nevertheless remain guarantor of the assignee that he will perform his obligations (under the contract).

Article 778. - The original (head) lessee's liability vis-

a-vis the lessor shall be released as regards the obligations of the original (head) lease contract in the case of a sublease or as regards his warranty of the assignee in case of assignment of the lease:

(a) If an express acceptance has been manifested by the lessor regarding the sublease or the assignment of the lease without expressing any reservations concerning his rights vis-a-vis the original lessee;

(b) If the lessor has received the rent directly from the sublessee or from the assignee without expressing any reservation concerning his rights vis-a-vis the original lessee.

(3) Termination of a Contract of Lease

Expiration of the Term

Article 779. - (1) The lease ends by expiration of the term fixed in the lease contract without the need to serve notice of evacuation unless the contract contained a stipulation that the lease will extend for a definite or indefinite term if no notice of evacuation has been served within a certain specified time limit before expiration of the term of the lease.

(2) The provisions of Article 741 shall be applied if the term of the lease has not been fixed or where the lease is for an indefinite term.

Article 780. - (1) Where the lease term has expired and the lessee has continued to enjoy the leased property with the knowledge of and without an objection being made by the lessor the lease is deemed to have been renewed according to its original conditions but for an indefinite term; the lease which has been renewed in this manner shall be

subject to the provisions of Article 741.

(2) This tacit renewal is deemed to be a new lease and not a mere extension of the original lease; the securities in rem that had been provided for the original lease shall nevertheless be transferred to the new lease; the security - be it in rem or in personam - shall not be transferred to the new lease unless the surety has so accepted.

Article 781. - (1) Where either party has served notice of evacuation on the other party and the lessee nevertheless continued enjoying the leased property after expiration of the lease term it will not be presumed that the lease has been renewed unless there is proof to the contrary; the lessee will be compelled to evacuate the leased property and will have to pay the comparable rent in respect of the period during which he had remained enjoying the leased property and pay damages if any.

(2) If after the expiration of the lease term the lessor has asked the lessee to pay an increase over the rent named and fixed said increase and asked him to accept that increase or else evacuate the leased property, if the lessee has kept silent his silence will be deemed as a consent and acceptance of the increase as of the beginning of the term which followed the expiration of the original term.

Rescission of the Lease

Article 782. - Where either party has failed to perform any of the obligations stipulated in the lease contract the other party may demand rescission of the contract and damages if any after having served notice requiring him to perform his obligation.

Death or Insolvency of the Lessee

Article 783. - (1) The lease shall not terminate by the death of the lessor or of the lessee.

(2) In the case of the death of the lessee however his heirs may claim the termination of the lease if they establish that as a result of the death of their de cujus the burden of the lease has become too heavy for their resources or that the lease exceeds their needs; in such case the time limits of notice of termination laid down in Article 741 shall be observed and the demand for termination of the lease must be made within a maximum of six months from the date of the death of the lessee.

Article 784. - If the lease has been concluded solely on account of the trade of the lessee or of other considerations relating to his person, his heirs or the lessor may on his death claim (demand) termination of the lease.

Article 785. - (1) The insolvency of the lessee does not entail the maturity of the rent which has not fallen due.

(2) The lessor may however claim rescission of the lease contract if during a reasonable time limit no securities have been provided to him which will secure payment of the unmatured rent; similarly the lessee who has not been permitted to sublet or to assign the lease may claim rescission provided he pays a fair compensation.

Conveyance of the Ownership

Article 786. - (1) If the ownership of the leased property has been conveyed to another person the new owner shall not be bound by the lease if it has not been given an established date prior to the disposal which entailed the conveyance of the ownership.

(2) The new owner may however avail himself of the contract of lease even if he is not bound by such contract.

Article 787. - (1) The person who acquired the leased property may not, even if the contract of lease is not effectual against him, evict the lessee from the leased property except after having served on him notice of eviction within the time limits set in Article 741.

(2) If the new owner has served notice of eviction on the lessee before the expiration of the term of the lease the lessor will be under an obligation to pay compensation to the lessee save where there is an agreement otherwise; the lessee shall not be forced to evacuate the leased property except after having received the compensation from the lessor or from the new owner on behalf of the lessor or alternatively after having obtained adequate security for payment of this compensation.

Article 788. - (1) If the lease was effectual or not against the transferee of the title and he availed himself of it he shall subrogate the lessor in all obligations and rights that may result from the contract of lease.

(2) The lessee however may not set up rent paid in advance against the new owner (transferee of title) if the latter has established that the lessee at the time of the payment was or was capable of being aware of the transfer of title; if the transferee was unable to prove as aforesaid his only alternative is to have recourse against the lessor.

Rescission Due to an Excuse

Article 789. - (1) The lessor may not demand the rescission of the lease before the expiry of its term even where he has declared that he needs the leased property to be used as his residence or for his personal use save agreement providing otherwise.

(2) Where it was stipulated that the lessor may rescind the contract (of lease) if a personal need has

arisen for the leased property he shall in exercising this right serve notice of evacuation on the lessee within the time limits set down in Article 741 unless there is an agreement stipulating otherwise.

Article 790. - He who has leased a shop which was later offered for sale at a time when saleability was at an ebb may not rescind the contract nor may he abstain from paying the rent.

Article 791. - (1) If the lessee has failed to commence enjoyment of the leased property or has enjoyed it partly which thing was due to his own fault or to a thing which relates to his own person he shall remain bound to pay the rent and to perform the obligations of the contract as long as the lessor had placed the leased property at his disposal in a good condition which is suitable for the enjoyment agreed.

(2) In this case the lessor must deduct from the rent the value of that which he has saved as a result of failure of the lessee to enjoy the leased property as well as the value of the benefit he had realised from using the leased property for other purposes.

Article 792. (1) Where the lease was for a fixed term either party may demand rescission thereof before the expiration of its term if circumstances have occurred which tend to make performance of the lease ab initio or during its validity onerous provided the party who demands the rescission will observe the time limits of notice of evacuation set down in Article 741 and provided he pays to the other party a fair compensation.

(2) Where the lessor has claimed the rescission the lessee shall not be forced to restitute the leased property until he has received the compensation or until he has obtained an adequate security.

Article 793. - If the lessee is an employee or an official who due to the change of his work is obligated to change his place of residence he may claim rescission of the lease of his dwelling place if such lease was for a definite term provided he observes the time limits set down in Article 741.

Section (ii) - Provisions specific to various kinds of leases

(1) Leases of Agricultural Lands

Article 794. - The lease of an agricultural land is valid if the things to be planted therein have been indicated or if the discretion was left to the lessee to plant whatever he wishes.

Article 795. - (1) No immediate effect lease may be concluded in respect of a land which is still occupied by crops of a herbaceous nature belonging to other than the lessee before the crop has ripened or is due for harvesting provided that said crop was planted therein lawfully; where the crops existing on the land belong to the lessee the lease of the land to him is permissible.

(2) If the crop has ripened (was due for harvesting) the land may be leased to other than the owner of the crop and he will be ordered to harvest the crop and hand over the land empty (unoccupied) to the lessee.

Article 796. - If the crops existing on the land have been planted unlawfully the validity of the lease to other than the owner of the plants is not prevented if they have not ripened where the owner will be forced to uproot them even though they are herbaceous.

Article 797. - The lease is valid of the land which is occupied by a crop belonging to other than the lessee

stipulating that it will extend to the time when the crop ripens and is ready for harvesting and when the land becomes vacant capable or being delivered to the lessee at the time stipulated regardless of whether the crop was planted lawfully or unlawfully or whether it has ripened or not.

Article 798. - The lessee of the land is entitled to watering and access even when they have not been stipulated in the contract; but he is not entitled to the cattle and the agricultural implements unless they have been included in the lease; the usage prevailing in the area must in all cases be taken into consideration (observed).

Article 799. - He who has rented land for one year wherein to plant whatever he wishes may have it cultivated one annual cycle - winter and summer; if he has leased it for several years he may cultivate it as many agricultural cycles as the number of the years leased.

Article 800. - (1) If the leased land is flooded to over capacity such as it has become a lake and its cultivation has become impossible or if the water was cut off therefrom as it would be impossible without any fault on the part of the tenant to irrigate it the rent shall not be due ab initio and the lessee may rescind the lease contract.

(2) The same thing applies if the lessee has been prohibited from preparing for cultivation or sowing the land.

Article 801. (1) If the crop planted in the leased land was destroyed by a pest prior to being harvested the lessee shall be bound to pay that part of the rent which is commensurate with the period that has lapsed prior to the perishing of the crop and the share of the remaining period of the rent after the perishing will be extinguished unless he has (possesses) a crop which has suffered damage

comparable to or lesser than the first the share of the remaining period of rent will have to be paid.

(2) The entire or part of the rent may not be waived if the lessee has obtained damages from an insurance company or other source.

Article 802. - (1) The lessee may not claim waiving or reducing the rent if the crop has perished after having been harvested unless it has been agreed that the lessor will have a definite share of the crop in which case the lessor shall bear his part of that which has perished provided that the perishing was not due to a fault of the lessee nor did it take place after notice has been served on him to deliver.

(2) The lessee may not also claim waiving of the rent if the cause of the damage was anticipated at the time of establishing the contract.

Article 803. - If on the expiration of the (term of) the lease the land still had a green crop which has not ripened or the harvest of which was not possible due to any cause not attributable to the lessee the land will be left for him against the comparable rent until the crop has ripened and has been harvested.

Article 804. - (1) The exploitation of the agricultural land by the lessee must be in accordance with the expediciencies of the customary exploitation; he may not without the consent of the lessor introduce any essential change to the method used in its exploitation the effect of which will extend beyond the date of expiry of the lease.

(2) Before evacuating the land the lessee must allow the incoming lessee to prepare and sow the land provided the same does not result in any harm to him.

(2) Sharecropping (Al Muzara'a)

Article 805. - Al Muzara'a (sharecropping) is a contract for sowing concluded by the owner of the land and the farmer and for sharing the resultant crop according to the shares agreed at the time of the contract.

Article 806. - On concluding the contract the farmer's share must be designated as a common part of the crop; it may be agreed to deduct the cost of the seeds and the taxes from the basic crop and share the remainder thereof.

Article 807. - (1) If the term of the sharecropping contract has not been fixed the term will be one annual agricultural cycle.

(2) Leases of sharecropping shall include the agricultural implements and the cattle which are used in the cultivation and exist on the land at the time of the contracting if they are owned by the owner of the land save agreement otherwise.

Article 808. - The owner of the land has authority to orientate the exploitation thereof as well as the supervision of the agricultural works; his authority will be determined in the law or agreement or usage.

Article 809. - (1) The farmer shall bear the expenses of the agricultural work, maintenance of the crop, gleaning and preserving the produce and the repair of the tools and minor repairs to the agricultural buildings.

(2) The owner of the land shall bear the cost of the major repairs of the agricultural buildings and of improvements to the land.

(3) The owner of the land as well as the farmer shall each bear according to his share of the crop the expenses needed for the seeds, the fertilizers and of the insecticides.

(4) All the foregoing shall apply in the absence of a law or agreement or usage otherwise.

Article 810. - The farmer who is bound by a sharecropping contract may not sublet the land to a third party nor may he assign the lease to a third party except with the consent of the owner of the land; if the farmer has violated this provision the owner of the land may rescind the contract or may claim damages from the farmer.

Article 811. - If due to his illness or to any other cause the farmer was unable to cultivate the land and if no member of his family was able to replace him or if his family has become in such a state as would be impossible for it to exploit the land satisfactorily the owner of the land or the farmer may claim rescission of the contract.

Article 812. - (1) A sharecropping contract shall not be rescinded by the death of the owner of the land or of the farmer.

(2) Where however the farmer has died his heirs may claim rescission of the contract if they establish that due to the death of their de cujus the charges of the contract have become onerous beyond their capabilities.

Article 813. - If the contract is rescinded while the crop is still green the owner of the land may either divide the crop in kind in accordance with the stipulation agreed, or he may give the heirs the value of their de cujus' share of the crop, or alternatively he may incur expenses on the crop until it has ripened in which case he may have recourse for the expenses incurred against the share of the farmer.

Article 814. - If the term has expired before the crop has ripened it will be left until it has ripened and the farmer shall bear the pro rata rent of the area of the land

occupied by his share of the crop.

Article 815. - Where the sharecropping contract has been rescinded or voided the entire crop will fall to the owner of the seeds and the other party will deserve the comparable wage.

(3) Al Musaqat (Tending)

Article 816. - Al Musaqat is a contract whereby trees are given to someone who would tend them in return for a certain specified share of the fruits thereof.

Article 817. - If the term of Al Musaqat has not been fixed it shall cover the fruit which is produced during that year.

Article 818. - (1) Al Musaqat contract shall be null and void if the contracting parties have fixed a long term for which they would not most likely live or for a short term during which the fruit will not come out.

(2) But where the contracting parties have fixed a term during which the fruit may or may not come out within the time fixed the similar of which is desired in dealings the contract is valid and the fruit will be divided between them in accordance with the stipulations thereof; but if the fruit did not come out within the time fixed the Musaqat contract is void and the farmer shall take the comparable wages of his work; but if no fruits come out at all neither of the parties shall be entitled to anything.

Article 819. - The work needed for the fruit before it ripens such as watering, pollination, and preservation shall be the responsibility of the farmer (tending party) and the work that will be needed after the fruits have ripened such as clipping (pruning), etc. shall be the responsibility of both parties save in all cases where

there is an agreement or usage otherwise.

Article 820. - A farmer (tenderer) may not sublet to a third party the Musaqat except with the permission of the owner of the trees and if he did without having obtained the landowner's permission the fruits will be for the owner who will pay to the sublessee his comparable wage and nothing to the main contractor.

Article 821. - (1) Al Musaqat contract may be rescinded if the farmer (musaqi) has failed to do the work or if he cannot be trusted on the fruits.

(2) The provisions of the following Article shall apply where the Musaqat contract has been rescinded.

Article 822. - The contract (of Musaqat) is terminated by the expiration of the term thereof: if the trees have borne fruits the usefulness of which has not appeared the farmer shall have the option either to continue the work until the end of the harvest without owing any rent to the share of the owner of the trees or he may reject the work; the owner of the trees shall have an option either to divide the unripened dates in kind in accordance with the stipulation agreed, or to give the farmer (tender) his share of the unripened dates, or alternatively to spend on the unripened dates until they ripen and claim said expenses from the share of the farmer (musaqi) of the fruits.

Article 823. - (1) The tendering contract (Musaqat) will not be rescinded either by the death of the owner of the trees nor by the death of the farmer (Musaqi).

(2) Where however the farmer has died his heirs may claim rescission of the contract if they establish that by reason of the death of their de cujus the charges thereof have become onerous beyond their capacities.

(3) Where the contract has been rescinded when the fruits are tender the owner of the trees has the three

options provided for in the preceding Article; if no fruits appear on the trees the heirs shall be entitled to a comparable wage for their de cujus.

(4) Grower's Contract and Horticultural Contracts

(a) Grower's contract (Mugharassa)

Article 824. - Mugharassa is a contract whereby one person gives his land to another person to plant it with certain specified trees and undertakes to tend them for a certain period of time provided the trees as well as the land, or the trees only, will be their common property in a certain specified manner after the expiration of the term.

Article 825. - Reference shall be made to usage where the term of the grower's contract (mugharassa) has not been fixed; the term may not in all cases be less than 15 years.

Article 826. - The owner of the land is under an obligation to deliver it to the farmer free of any occupancy and clear.

Article 827. - The farmer (al mughariss) shall complete the planting within five years from the commencement of the running of the contract save where it has been agreed otherwise; if the farmer has failed to perform this obligation the owner of the land may rescind the contract and claim damages, if any.

Article 828. - Unless there is agreement otherwise the farmer (al mughariss) bears all the expenses and carries out the work needed for and the maintenance of the plantations during the whole term.

Article 829. - The farmer (al mughariss) may subject to leave from the owner of the land assign his rights to

another person either against or without any consideration before the expiry of the term of the contract; if the owner of the land has refused to give said permission he shall accept those rights in consideration of a comparable price if the farmer has so demanded.

Article 830. - The farmer (al mugariss) may after the expiration of the term of "al mugarassa" demand partition if he has become a partner in the land and the trees; but if he has become a partner in the trees only the owner of the land may demand appropriation of the farmer's share of the trees as existing unless there is an agreement or usage otherwise.

Article 831. - A grower's contract (mugarassa) is not rescinded by the death of either party as the heirs of each party shall subrogate him; if however the heirs of the farmer (al mugariss) are unable to continue (performance of the contract) the owner of the land is vested with a right to rescind the contract provided he compensates the heirs for the share of their de cujus of the trees as existing and pay the other damages if any.

Article 832. - If the farmer (al mugariss) has failed to perform his obligations (under the contract) the owner of the land may after having served notice on him claim rescission and the damages he has sustained from the farmer; the latter may on the rescission claim the comparable consideration of the work of plantation he had performed.

Article 833. - The conditions agreed by both parties as well as the current usage shall be applied in respect of al mugarassa (grower's contract).

(b) Horticultural contracts

Article 834. - A horticultural contract (orchard) is a contract which stipulates that a party gives a certain specified orchard to the other party for acquiring the fruits thereof for a certain period of time against a certain specified consideration.

Article 835. - Save usage otherwise the contractor of an absolute (general) contract may sow the vacant land lying in between the trees as well as the land which is deemed to be an integral part of the orchard.

Article 836. - The owner of the orchard shall enable the contractor to have access to the orchard to preserve the fruits and harvest them when they have ripened and to enable him to obtain the benefit to which he is entitled.

Article 837. - The consideration of the obligation is extinguished if the orchard has not borne fruit or where the fruits have perished before being harvested due to a force majeure.

Article 838. - (1) The contractor may not erect any building in the orchard nor may he plant any trees or do anything else therein without the permission of the owner.

(2) He may not also subcontract it to a third party without the permission of the owner.

Article 839. - The obligation contract is not rescinded by the death of either party; the heirs of the contractor may however after the death of their de cujus before the appearance of the first fruits of every year claim rescission when they have established that the performance of the contract has become onerous beyond their capacity after the death of their de cujus.

Article 840. - (1) In the absence of an agreement or of a provision otherwise the current usage shall be applied in respect of a horticultural contract.

(2) In the absence of any usage the provisions governing sales shall be applied in respect of the fruits and the provisions governing leases shall be applied regarding the cultivation of the land.

(5) Charter of Means of Transportation

Article 841. - (1) No means of transport may be chartered without being designated; a charter party may however be concluded if the means of transportation have been designated after the contract has been concluded if the lessee has accepted it.

(2) It is permissible to charter an ordinary means of transportation where the means of transportation will be that which is customary.

Article 842. (1) Upon chartering a means of transportation the benefit (to be derived therefrom) must be designated as being, for instance, for riding, carrying (freightage), or for both purposes and the distance or the place of destination or the term of the charter must be stated.

(2) A person who has hired a means of transportation for freight may ride it; if it was hired for riding he may not use it for carrying cargo and if it is used for carrying cargo and perished he shall warrant (be liable).

Article 843. - (1) A person who has hired a means of transportation to proceed to a certain specified place may not go beyond said place nor may he go to another place and if he does he shall warrant (be liable).

(2) If there are several roads leading to the place designated in the contract the lessee may proceed on any one of the roads which is used by the people and where he has used other than the road designated by the owner of the

means of transportation and the means of transportation perished he shall warrant (be liable) if the road he used was more difficult than the road designated by the owner; but if this road was of equal condition as, or easier than that designated the lessee shall not warrant (be liable).

Article 844. - (1) Where the means of transportation was hired to ride to a certain specified place for a specific fare and en route (on the way) it failed the lessee may either wait until the failure has been made good (repaired) or he may rescind the charter-party and pay the rent as stipulated commensurately with the distance covered.

(2) In case of a stipulation to carry a passenger or a certain load to a certain specified place if the means of transport failed en route the lessor is under an obligation to carry the passenger or the load to that place by another means of transport.

Article 845. - A person who has hired a means of transport and specified the kind and weight of the load to be carried may load on it a load of the same or a lesser weight and not a heavier one.

Article 846. - (1) Where the lessee has loaded on the means of transport a quantity in excess of that which he had specified, to which he is entitled under the contract (charter-party) which load was beyond its capacity thus causing damage thereto, he shall be liable on the entire value thereof regardless of whether the excessive load was of the same kind as that named in the charter-party or otherwise; if the means of transport has the capacity for the excess which was of the same kind as that indicated in the charter-party and was loaded together with the load stipulated the lessee shall be liable to the extent of the surplus quantity and not on the entire value thereof.

(2) The lessee shall be liable if he had himself loaded the load on the means of transport but where the

lessor has loaded it the lessee shall not be liable.

Chapter 2 - Loan for Use

Article 847. - A loan for use is a contract whereby a person delivers to another person a non-consumable thing for using it without any consideration and to restitute it after use; a loan for use is not completed (concluded) except by taking delivery of the thing.

Section (i) - Obligations of the lender

Article 848. - The lender is under an obligation to let the borrower take advantage of the thing lent during the period of borrowing and may not claim a consideration after the use.

Article 849. - If during the period of the loan the borrower is obliged to incur expenses necessary for the preservation of the thing the lender must reimburse him his expenses.

Article 850. - (1) The lender does not warrant against dispossession of the thing loaned unless there has been an agreement for such warranty or where the lender has deliberately concealed the cause of dispossession.

(2) Similarly the lender does not warrant against hidden defects; if however he has deliberately concealed such defects or has warranted that the thing is free from defects he is bound to compensate the borrower for any loss the borrower has suffered as a result thereof.

Section (ii) - Obligations of the borrower

Article 851. - Where the lender has restricted the kind, time, or place of use (of the thing loaned) the borrower may not use the thing loaned at other than the time and

place which have been designated and may not violate the kind of use allowed and exceed it as to cause damage to it; he may however use the thing in a manner comparable to that which has been designated or one which is of a lesser harm.

Article 852. - If the lender has made no restrictions as to the use, the time, place, and kind of use the borrower may use the thing loaned at any time, any place, and for any use he wishes provided that he does not exceed the acknowledged limits and if he did and the thing loaned perished he shall be liable.

Article 853. - (1) Where the lender has given to the borrower an unrestricted (general) permission to use the thing loaned and did not name a beneficiary the borrower may himself take advantage of the thing loaned and may also lend it to whomever he wishes regardless of whether or not the loaned thing differs with different users unless he had used it himself and it was a thing that differs through use in which case he may not lend it to another person.

(2) Where the lender has made restrictions (as to the thing borrowed) and designated a user such designation is effectual; if the borrower has violated the restriction and the thing loaned perished he shall be liable.

(3) Where the lender forbade the borrower from lending the thing lent to a third party but he did lend it to a third party and it perished he shall be liable.

Article 854. - The borrower may deposit the thing borrowed in every place wherein he can own the thing borrowed; if the thing deposited has perished while in custody of the depositary without encroachment on his part there is no liability; he may not make a deposit in places where he does not own the thing borrowed and if he did and the thing borrowed perished he shall be liable (warrant).

Article 855. - (1) The borrower shall not rent out nor

pledge the thing borrowed without having obtained the consent of the lender.

(2) Where the borrower has leased the thing borrowed without the permission of the lender and it perished or suffered a defect while in the possession of the lessee the lender has an option either to claim from the borrower or from the lessee; if he claimed from the borrower the lender cannot have any recourse against any one for that which he has claimed; if he has claimed from the lessee he may have recourse against the borrower if at the time of the lease the lessee was not aware that the thing was in the borrower's possession on loan only; if he has pledged it without the permission of the lender and it perished while in the possession of the mortgagee if the lender claimed from the borrower the mortgage is concluded between the borrower (mortgager) and the mortgagee.

Article 856. - The borrower shall bear the provision for the costs of keeping delivery and restitution of the thing loaned.

Article 857. - The thing loaned is a trust (deposit) in the hand of the borrower and if it has perished, been lost, or depreciated in value without any encroachment or default (negligence) on his part he shall not be liable.

Article 858. - (1) The borrower shall be liable if he was able but failed to prevent the perishing of the thing borrowed in any way even by sacrificing his property; the borrower shall not be liable if the thing borrowed was taken by a usurper and the borrower was unable to prevent him (from usurping the thing borrowed).

(2) The borrower shall be liable if it was possible for him but he failed to regain the thing from the usurper.

Article 859. - The borrower shall not be liable if as a result of using the thing borrowed in the normal way it

sustained a defect necessitating the depreciation of its value.

Article 860. - (1) When the term of the loan has expired the borrower is under an obligation to restitute it in person or by means of a trusted hand (person) to the lender; if it is a precious thing he shall have to deliver it in person to the lender and failing which he shall deliver it to whomever is designated (named) in the agreement or by usage to take delivery thereof.

(2) The borrower shall be liable if he has violated the aforementioned obligation and the thing borrowed has perished or depreciated.

Section (iii) - Termination of the loan for use

Article 861. - (1) The loan comes to an end upon expiration of the term agreed and if no such term has been fixed it will end by using the thing for the purpose for which it was lent. If the term of the loan for use has not been fixed in any way the lender may demand at any time that it be terminated.

(2) The borrower may in all cases restitute the thing borrowed before the end of the (term of) the loan; if however such restitution is prejudicial to the lender the latter shall not be compelled to accept it.

Article 862. - The lender may demand termination of the loan for use in the following cases:

- (a) if a sudden and urgent need for the thing by the lender has arisen;
- (b) if the borrower has misused the thing or failed to take the necessary precautions for its preservation;

- (c) if the borrower has become insolvent after the conclusion of the loan or if he was insolvent before concluding the loan and the lender did not become aware of this insolvency until after having concluded the loan (contract).

Article 863. - (1) The loan shall terminate by the death of the borrower and does not pass to his heirs unless there was an agreement in that respect.

- (2) Where the borrower has died without unveiling the thing borrowed which did not exist in his estate it will be a debt payable out of the estate.

Title 3 - Contracts for the Hire of Services

Chapter 1 - Craftsmanship and Manufacture Contracts and Public Utilities Concessions (Franchises)

Section (i) - Craftsman and manufacture contracts

Article 864. - "Al Mugawala" is a contract pursuant to which one party undertakes to manufacture a thing or render work (offer labour) (craftsmanship) in consideration of a wage/remuneration undertaken to be paid by the other party.

Article 865. - (1) The contractor (Al Mugawel) may confine himself to undertaking to provide his labour (craftsmanship) and the master (employer) will supply the material which is to be used by the contractor (in the manufacture) to assist him in doing his work where the contractor will be a public wage-earner.

- (2) The contractor may also undertake to provide the labour (work) and the material in which case the contract will be a manufacturing contract.

(1) The Obligations of the Contractor

Article 866. - Where the contractor has undertaken to provide the entire or part of the materials of the work he shall be held responsible for its good quality and must warrant it vis-a-vis the employer.

Article 867. - (1) Where the employer has provided the materials the contractor shall safekeep (preserve) it and in using it up abide by the rules of the art and render an account to the employer regarding the part which he has used up thereof (in the work) and retribute to him the remaining part thereof; if any of the materials has become unserviceable due to his negligence or to his lack of skill in the art he shall be bound to pay the value thereof to the employer.

- (2) He shall obtain at his cost such tools and additional materials which he needs for completion of the work unless there is an agreement or usage in the craft otherwise.

Article 868. - If the contractor is late in commencing the work or is late in completing it such as it would be highly improbable that he will be able to do it in the proper way and within the time limit fixed the employer may rescind the contract without having to wait until the time limit for delivery has fallen due.

Article 869. - (1) If during the progress of the work it is revealed to the employer that the contractor is performing it in a defective (faulty) manner or in violation of the contract he may serve notice requiring him to rectify the method of performance within a reasonable time limit which is set by the employer; if on the expiry of said time limit the contractor has failed to adopt the correct method of performance the employer may claim either rescission of the contract or hire another contractor to perform the work at

the cost of the main contractor provided that the nature of the work allows for such measure to be taken; the contract may be rescinded immediately if the correction of the defective (faulty) method of performance is impossible.

(2) The contract may not however be rescinded if the defective (faulty) method of performance does not tend to significantly reduce the value of the work or its suitability for the use for its intended purpose.

Article 870. - (1) (As amended by Law No.48 of 1973)* The architect as well as the contractors shall warrant for a period of 10 years against any complete or partial collapse that may occur to the buildings or the fixed installations they had built even where the collapse was due to a defect inherent in the land or where the employer had allowed erection of the defective constructions unless the contracting parties had intended that these constructions were meant to last for less than 10 years; the time limit of 10 years begins from the date of completion and delivery of the work; every stipulation which is meant to waive or limit this warranty shall be null and void.

(2) The provisions of the preceding paragraph shall not apply to any right of recourse which the contractor may have against the subcontractors who had accepted the work from him.

(3) (Added by Law No.42 of 1974) The warranty provided for in paragraph (1) of this Article includes the defects existing in the buildings and installations which may threaten the strength and safety of the building.

(4) The case of the warranty provided for in this Article will lapse by the expiration of one year from the date of the occurrence of the collapse or of the discovery of the defect.

* This paragraph (1) was amended by Law No.48 of 1973; paragraphs (3) and (4) were added by Law No.42 of 1974.

Article 871. - (1) Where the architect has prepared the designs only and was not assigned to supervise the execution he will be responsible for the defects that resulted from the design but not for the defects which were due to the method of executing the design; the contractor who worked under the supervision of an architect or under the supervision of the employer who has appointed himself in lieu of the architect shall not be responsible except for the defects which occur in the execution but not for the defects which resulted from a fault in or lack of insight (perspicaciousness) in preparation of the designs.

(2) Both the architect and the contractor shall be jointly responsible if each one of them was responsible for any defects that took place in the work.

Article 872 - The warranty (responsibility) of the architect and of the contractor provided for in the two preceding Articles shall be extinguished if it has been revealed from the circumstances which revealed the defects of the construction that such defects resulted from causes which could not have been foreseen at the time of the construction.

(2) The Obligations of the Employer

Article 873. - (1) When the contractor has completed the work and placed it at the disposal of the employer the latter shall as soon as possible inspect the work in the usual manner and take delivery thereof within a short period if possible; if the employer has abstained without lawful cause from carrying out the inspection or of taking delivery in spite of the fact that a final notice of delivery has been served on him the work will be deemed as having been delivered to the employer.

(2) The employer may abstain from taking delivery of the work if the contractor has violated the stipulations of the contract or the proper procedure of the art in this

kind of the work to such an extent as it would be impossible for him to use the work or it would not be fair and proper to force him to accept the work; if the violation did not attain this degree (extent) of gravity the employer has no alternative but to claim reduction of the price commensurately with the gravity of the violation.

(3) If it is possible to repair the work without incurring exorbitant expenses the employer may force the contractor to carry out the repairs within a suitable time limit if this is not prejudicial to nor will it involve onerous expenses on the employer.

Article 874. - (1) If the work consists of several different parts or where the price has been fixed on the basis of the unit either contracting party may require the carrying out of the inspection after the completion of every such part or after the completion of such part which has an adequate significance as compared with the totality of the work; in this case the contractor may receive a pro rata of the price to the extent of the part of the work which has been completed.

(2) It would be assumed that the inspection of the part the price of which has been paid has been carried out unless it is revealed that the payment was only on account (of the work).

Article 875. - (1) When the works have been taken over de jure or de facto the contractor's responsibility is waived in respect of the defects which are apparent therein and in respect of violation of that which had been agreed.

(2) If the defects were hidden or if the violation was not apparent and was not spotted by the employer at the time of the delivery but it was discovered thereafter he shall have to report the same to the contractor immediately upon discovering it otherwise he will be deemed as having accepted the work.

Article 876. - Subject to the provisions of Article 874 and to any agreement or usage otherwise the price is payable on the taking over of the work.

Article 877. - If the contract which has been executed included a price fixed as a lump sum based on a design agreed with the employer the contractor may not claim any increase to the price even where an addition or change has been made to the design except where the same is due to a fault on the part of the employer or where the latter has authorised it and agreed with the contractor for the price thereof; this agreement must be in writing except where the original contract was made orally.

Article 878. - The contractor has no claim to an increase of the price on the grounds of an increase in the prices of raw materials or the wages of workers where such increase was so great as to render the performance of the contract difficult; when however as a result of exceptional events of a general nature which could not have been foreseen at the time of concluding the contract the equilibrium between the respective obligations of the employer and of the contractor has collapsed and the basis on which the financial estimates of the contract have been computed has consequently disappeared the court may grant an increase of the price or order the rescission of the contract.

Article 879. - (1) Where a contract has been executed on the basis of a preliminary estimate based on the price of a unit and it was revealed during the progress of the work that in order to complete the works according to the agreed design it would be necessary to exceed considerably the expenses quoted in the (preliminary) estimate the contractor is bound to notify forthwith the employer accordingly giving (quoting) the anticipated increase of the expenses; if he does not do so he shall forfeit his right to recover the expenses incurred in excess of the

estimates.

(2) Where an immense excess is needed for execution of the design the employer may disengage himself from the contract; if the employer wishes to disengage himself from the contract he must do so without delay and compensate the contractor for all the expenses incurred by the latter in respect of the part of the works he has executed but not in respect of the gain which the contractor would have realised had he completed the works.

Article 880. - (1) Where the price has not been fixed in advance or was fixed approximately the rate is fixed on the strength of the value of the work and the expenses of the contractor.

(2) It must be assumed that there is an implied agreement on the incumbency of the price if it is revealed from the circumstances that the thing or the work ordered would not have been performed without a (price) being paid therefor.

Article 881. - (1) The architect is entitled to a separate fee for the preparation of the designs and the preliminary estimates and another fee for the management (supervision) of the work; if these fees have not been fixed in the contract they shall be fixed in accordance with the current custom and usage.

(2) If however the works have not been carried out in conformity with the designs prepared by the architect his fees shall be assessed on the basis of the time spent on their preparation with due consideration of the nature of the works.

(3) Subcontractors

Article 882. - (1) The contractor may subcontract the execution of the whole or part of the works to a subcontractor save where he is precluded from doing so by a

stipulation in the contract or if the nature of the work does not presuppose an intention of reliance on his personal skill.

(2) In this case the contractor remains responsible vis-a-vis the employer for his subcontractor.

Article 883. - (1) The subcontractors and the workers who have worked for the head contractor in the execution of the work have a direct right of action against the employer for sums due to them from the contractor provided that the amount does not exceed the sums which are due by the employer to the head contractor at the time of commencement of the proceedings; the workers of the subcontractor have a similar right of action against the contractor and the employer.

(2) Where an attachment has been levied by one of them upon sums accruing from the employer or the contractor the workers have a right of privilege on the sums due to the contractor or to the subcontractor at the time of levying the attachment in proportion to the amount due to each one of them; these sums may be paid to them directly.

(3) The rights of the subcontractors and of the workers provided for in this Article have priority over those of a person to whom the contractor has assigned sums due to him from the employer.

(4) The End of a Craftsman Contract

Article 884. - A craftsman contract ends by completion of the work the subject matter of the agreement and delivery thereof in accordance with the provisions of Articles 873 and 875.

Article 885. - (1) The employer may revoke the contract and stop the work at any time before completion of the work provided that he compensates the contractor for all the expenses he has incurred and for that part of the work he

has executed and for the profit that he would have realised had he completed the work.

(2) The court may however reduce the compensation due to the contractor for the lost profit if the circumstances justify the fairness of such reduction; the court shall in particular deduct from such compensation any savings realised by the contractor as a result of the rescission of the contract (by the employer) and any profit which the contractor would have gained by using his time in another matter.

Article 886. - (1) A craftsman's contract comes to an end by the impossibility of execution of the work the subject matter of the contract.

(2) Where the impossibility of the execution was due to a force majeure the contractor will not be compensated except to the extent of the benefit obtained by the employer as provided for in Article 889; but where the impossibility of execution of the work was due to a fault on the part of the contractor he shall claim the aforementioned compensation but will be responsible for his fault; but where the impossibility was due to a fault on the part of the employer the provisions of the preceding Article shall be applied.

Article 887. - (1) Where the thing has been destroyed (perished) or became defective due to a fortuitous event before delivery (thereof) to the employer the contractor may not claim from the employer remuneration for his work nor reimbursement of the expenses incurred except where the employer had been served with notice to take delivery of the thing.

(2) In this case the perishing of the materials of the work shall be borne by the person who supplied them.

(3) Where however the contractor has failed to comply with a formal summons to deliver the thing or where the perishing or the defect sustained by the thing prior to

delivery was due to the contractor's fault he is under an obligation to indemnify the employer for the materials which the latter had supplied for carrying out the work.

(4) Where the perishing of or the defect sustained by the thing was due to a fault by the employer or to a defect in the materials supplied by him the contractor is entitled to remuneration and damages, where necessary.

Article 888. - (1) A craftsman's contract ends with the death of the contractor if his personal qualifications (skills) were taken into account when the contract was concluded; but where the personal qualifications were not taken into account the contract will not be automatically (tacitly) rescinded and the employer may not rescind it in other than the case provided for in Article 885 (hereof) except where the heirs of the contractor do not satisfy the adequate securities needed for the good performance of the contract.

(2) The personality of the contractor will always be taken into consideration at the time of contracting if the contract is concluded with an artist, engineer and architect or such other persons who carry on other liberal professions; this quality will be assumed in contracts which are executed with workers and tradesmen (craftsmen) except where there is proof or usage otherwise; in all the other cases particularly in cases of major contract work the standing (fame) attained by the name of the contractor in the market and not his personal qualities will be assumed to have been taken into prime consideration when concluding the contract.

Article 889. - (1) If the contract has lapsed by the death of the contractor the employer is under an obligation to pay to the estate (of the contractor) the value of the work already completed and the expenses which had been incurred for the execution of the work which have not been completed to the extent of the benefit which he will derive from this

work and expenses; the work and expenses in their totality are deemed to be of benefit to him if the subject matter of the craftsman's contract was the construction of buildings or the installation of other major work.

(2) In consideration of the foregoing the employer may demand delivery against payment of a fair price of the materials prepared and the plans the execution of which has been commenced.

(3) These provisions will also apply where the contractor has commenced execution of the work and then became unable to complete it owing to a cause beyond his control.

Article 890. - Where the employer has been adjudged bankrupt the contractor or the receiver may rescind the contract but neither of them will be entitled to claim damages in respect of said rescission.

Section (ii) - Concessions of public utility services

(1) The General Rules Applicable to the Relationship between the Concessionaires of the Public Utilities and Their Clients

Article 891. - (1) A concession of a public utility service is a contract the object of which is the management of a public utility service of an economic nature; this contract will be concluded between the Government and a private person or company to which the exploitation of the service is entrusted for a fixed period of time pursuant to a law.

(2) The contractual relationships between the concessionaire and its clients does not differ regardless of whether the concessionaire is a government authority or a contractor.

Article 892. - The concessionaire of a public utility

service undertakes by the contract concluded by him and the consumer to provide the latter in a normal manner with the services corresponding to the rates which it collects in accordance with the conditions stipulated in (the contract of) the concession and its annexes and also with the conditions which the nature of the work and the laws applicable thereto demand.

Article 893. - (1) The concessionaire of the public utility service is under an obligation to observe strict equality between consumers both as regards the services rendered and the rates charged.

(2) The principle of equality does not exclude special treatment involving the reduction of or exemption from the rates provided such treatment is granted to all persons who apply therefor and who fulfil the general conditions laid down by the concessionaire; but the equality forbids the concessionaire from according a client (consumer) advantages which he refuses to grant to others.

(3) Any discrimination granted to a consumer renders the concessionaire liable to compensation for the loss which may be caused to a third party as a result of such discrimination by the disturbance of the natural balance of fair competition.

Article 894. - The tariffs of the prices which must be paid by the consumers of the public utility derive their force and effectiveness when they have been enacted or approved by the public authority.

Article 895. - (1) The tariffs of the prices shall in regard to the contracts executed by the contractor with his clients have the force of law where the contracting parties may not agree on other than that which is provided for in the law.

(2) These tariffs may be revised and amended; if the prices in force for the time being have been amended and

the amendment has been approved the new prices shall come into force without retroactive effect from the time fixed in the decision approving their enforcement; the subscriptions to the public utility which would be current at the time of the amendment will be governed by such amendment be it a decrease or increase in regard to the period which remains after the date fixed for the operation of the new prices.

Article 896. - (1) Any irregularity or mistake in the application of the tariff of prices to individual contracts is subject to rectification.

(2) If the irregularity or the mistake operated against the interest of either party it shall be entitled to have recourse against the other party to the extent of the benefit obtained otherwise than in accordance with the tariff of the prices; any agreement otherwise shall be null and void; the action of recourse shall not be heard after the lapse of six months from the date of receiving the fee (price).

(2) Public Utilities Concerning the Distribution of Water, Gas, Electricity, Motive Forces and Similar Services

Article 897. - The concessionaire of a utility for distribution of water, gas, electricity, motive force, or similar service is under an obligation to continue rendering the services entrusted to it vis-a-vis the Government and every person with whom it has executed an individual contract.

Article 898. - If the services being rendered by a utility is disrupted or has failed the consumer who has concluded a contract with the concessionaire of the utility may take action against the concessionaire in that which concerns his personal interest and may not commence the proceedings in the name of the general public consumers.

Article 899. - (1) A disruption which lasts a short period due to the necessity of maintenance of the machines and the tools which run the utility shall not entail any responsibility on the concessionaires vis-a-vis his customers.

(2) The concessionaire may repudiate responsibility in respect of disruptions or failings of abnormal length or gravity by proving that they have been caused by a force majeure not imputable to the operation of the service or by a fortuitous event which could not have been foreseen or the consequences of which could not have been avoided by any vigilant management acting without undue regard to economy; a strike constitutes a fortuitous event if the concessionaire is able to prove that it took place without any fault on his part and that it was not possible for him to replace the strikers by other workers or to avoid the consequences of their strike by any other means.

Chapter 2 - Work Contract

Article 900. - (1) A work contract is a contract by which one party undertakes to devote his work for the service of the other party and under his supervision and management in consideration of remuneration which such other party undertakes to pay; the worker will be a private wage-earner.

(2) The contract of work is distinguished from a craftsman's contract in that pursuant to the former and not the latter the employer is vested with a right to guide and orientate the efforts of the worker when performing the work or at least in having supervision over him.

Article 901. - (1) The rules which regulate the contract of work shall not apply to the relationship between the farmers and the agricultural workers as such relationship will be subject to the rules of custom and usage unless

there is a provision in the law otherwise.

(2) Save where the law provides otherwise the aforementioned relationship shall not apply in respect of domestic servants and their masters as this relationship will be subject to the rules which are prevalent in the social environment wherein comparable services are being rendered.

Section (i) - The elements of the contract of work

Article 902. - (1) A contract of work may be executed for a certain specified service or a definite or indefinite term.

(2) Where the contract is for the duration of the lifetime of the worker or of the employer or for more than five years the worker may after five years rescind the contract without getting any indemnity provided he serves six months notice on the employer (of his intention to rescind).

Article 903. - (1) The rendering of a service is presumed to be made for a remuneration if the basis of said service is work which is not habitually given gratuitously or work included in the profession of the person who has performed it.

(2) In the absence of a stipulation in the contract fixing the remuneration it will be assessed at the comparable remuneration.

Article 904. - (1) In the absence of a stipulation in the contract concerning the dates and the rules which must be observed in paying wages (remunerations) reference shall be made to the provisions of the specific laws or custom and usage.

(2) In all cases the wages (remunerations) shall become due on the expiration of the contract of work.

Article 905. - Minors may in person receive their wages

which receipt will be valid.

Article 906. - (1) When the contract contains a stipulation that the worker will in addition to the wages agreed or in lieu thereof be entitled to a part of the employer's profits, or to a certain percentage of the sales prices, or of the value of the production, or of the value of any savings realised, or other similar things the employer is bound to render to the worker after each inventory a statement showing that which thereof is due to him.

(2) The employer shall furthermore provide the worker or a trustworthy person appointed by the parties interested or by the court with the information which is needed for verification of the accuracy of such statement and give him access to the books.

Article 907. - (1) Tips shall not be added to the wages (remunerations) except in the industry or trade wherein it is customary to pay tips (ex gratia); this will have certain specified rules to regulate it.

(2) Tips will be deemed to be part of the wages if the tips paid by customers to the employees of a trading premises is collected in a joint fund so that the employer will later on distribute to the employees in person or under his supervision.

(3) It is allowed in certain industries such as hotels, restaurants, coffee houses, and beverage places that the worker will not receive any wages other than the tips he gets and the food he eats.

Article 908. - If the employer has established a joint fund or other scheme pursuant to which a certain percentage will be added of the accounts of customers it will be debited to this account (and credited to said fund) in consideration of the services rendered to them he shall not distribute the sums so collected as well as the sums which are paid by the customers voluntarily for this purpose except to the

workers who have a direct connection with the customers who previously used to pay them such sums directly.

Section (ii) - The stipulations of the contract of work

(1) The Obligations of the Worker

Article 909. - (1) The worker must:

- (a) perform the work himself in person and shall in doing so exercise such care as is exercised by an ordinary person;
- (b) observe the requisites of decency and morality;
- (c) comply with the orders of the employer concerning execution of the work the subject matter of the agreement provided such orders do not violate the stipulations of the contract or the provisions of the law or of morality and provided compliance therewith does not subject him to danger;
- (d) preserve the things handed over to him for performing his duties; he is trustee therefor and shall not be liable thereon save through his encroachment;
- (e) keep the industrial and commercial secrets of the employer even after the contract has expired.

(2) The worker is responsible for every violation of the provisions of this Article.

Article 910. - (1) If the work assigned to the worker enables him to know the clients or to have access to the secrets of the business of the employer both parties may agree that the worker after expiration of the contract may

not compete or participate in a project which competes with the employer.

(2) In order however for this agreement to be valid:

- (a) the worker must have attained majority age at the time of execution of the contract;
- (b) the restriction must be confined as to the time, place, and kind of work to the extent which is necessary for the protection of the lawful interests of the employer;
- (c) that said agreement shall not have any unfair effect on the economic aspect of the worker's future;
- (d) the contract shall determine a compensation to the worker for the restriction made on his freedom of work which must be proportionate to the scope of said restriction.

(3) The employer may not avail himself of such agreement if he has rescinded or has refused to renew the contract without the worker giving him adequate grounds for such action; nor may the employer avail himself of such agreement if he himself has given the worker adequate grounds to rescind the contract.

Article 911. - (1) When the contract contains a penalty clause applicable in the event of the breach of a condition in restraint of competition the worker may rid himself of (extinguish) this undertaking by paying the amount stipulated in the penalty clause unless it will be revealed from the general tenor of the contract that the parties did not intend that the penalty clause will be described as a random (lump sum) estimate; where this has been revealed the employer may claim a complementary compensation for any

damage he has suffered exceeding the amount of the penalty stated in the penalty clause; he may also in this case demand the removal (elimination) of the violation (breach) if his interests which sustained harm and the activities of the worker justify such action.

(2) But where the penalty clause contained an exaggeration as to render it a means to pressure the worker to stay in the service of the employer for a longer period than the agreed such clause shall be null and void and its nullity shall apply also to the stipulation of abstaining from competition.

Article 912. - (1) Where the worker was able to discover an invention while in the service of the employer the latter shall have no right to that invention even where the worker had invented it on the occasion of the activities he had done while in the service of the employer.

(2) Where however the inventions were discovered by the worker in the course of his work they will belong to the employer if the nature of the work undertaken by the worker necessitates that he must devote all his efforts for discovering inventions or if the employer had stipulated expressly in the contract that he shall have a right to any invention which the worker may discover.

(3) If the invention is of serious economic significance the worker may in the two cases provided for in the preceding paragraph demand a special remuneration to be fixed in accordance with the principles of equity, taking into consideration in the assessment of such remuneration the extent of the help provided by the employer and the use which the worker has made of the employer's installations for the purpose of the invention.

(2) The Obligations of the Employer

Article 913. - (1) Subject to the specific laws the employer shall:

- (a) provide all the conditions needed for safety and hygiene in the factories, rooms and all the other places designed for the workers and the employees in order to enable them to perform their obligations;
- (b) ensure the safety and soundness of the tools and machinery provided for the performance of the work so that no harm will result therefrom;
- (c) observe the norms of decency and morality;
- (d) bear the expenses of repatriation of workers whom he had imported from another place, when such workers have requested the same, within 15 days from the expiration or rescission of the contract by the employer without any lawful cause;
- (e) on expiration of the contract issue to the worker a certificate giving the dates of his joining and of leaving the service the kind of work performed and the release of his liability on the obligations of his contract; the certificate shall also contain upon the request of the worker the amount of his wages and the other remunerations he was receiving;
- (f) restitute to the worker the certificates issued by the other employers and such other papers which have been kept by him.

(2) The employer is responsible for every violation of the provisions of this Article.

Article 914. - If the worker is present and ready to commence work at the appointed time he shall be entitled to his wages.

Section (iii) - Termination of the contract of work

Article 915. - (1) A contract of work having a fixed term will terminate tacitly by the expiration of its term.

(2) If both parties have continued to perform the object of the contract after the expiry of its term this will be deemed to be a renewal of the contract for an indefinite term.

Article 916. - (1) If the contract is for the performance of a specified work it shall terminate by completion of the work agreed.

(2) If the work is by its nature capable of being renewed and the performance of the contract continued after completion of the work agreed the contract is deemed as having been renewed implicitly for the term needed for performing the same work another time.

Article 917. - (1) If the term of the contract has not been fixed by agreement or by the nature of the work either contracting party may put an end to its relationship with the other party by notice served within a period which is provided for in the specific laws or the agreement or usage.

(2) Every stipulation contained in an indefinite term work contract which changes the time limits provided for in the specific laws or in usage shall be null and void unless it is in the interest of the worker.

Article 918. - (1) A contract for an indefinite term which is terminated by either party without having observed or before the expiration of the time limits of the notice shall be bound to compensate the other party for the entire or the remaining part of the period of the notice; the compensation shall in addition to the fixed wage which would have accrued within said time limit include all the annexes of the wage which are fixed and defined.

(2) Where the contract has been terminated vexatiously by one of the contracting parties the other party shall in addition to the compensation due owing to the failure to observe the time limits required for the notice to terminate the contract, have a right to claim damages for the harm he has suffered.

(3) Every agreement to change the effect or penalty resulting from termination of the contract without service of notice or from terminating it vexatiously shall be null and void unless this change is in the interest of the worker exception being made of the case provided for in Article 920.

Article 919. - When estimating the damages in respect of a vexatious rescission the court shall observe the prevailing usage and the nature of the work the subject matter of the contract and the period of service of the worker in proportion to his age as well as such sums which have been deducted or had been paid for the account of the pension and in general all the cases which may establish the occurrence and the extent of the damage.

Article 920. - (1) The parties may fix in the contract the amount of damages which would be payable when the contract is vexatiously rescinded and may also agree on damages in respect of the rescission of an indefinite term contract of work without service of notice which will be more than the damages provided for in Article 918(1).

(2) These agreements will be null and void if they tend due to the extraordinary figures quoted therein to bar practically the economically weaker party from using his freedom to get rid of (disengage from) the contract.

Article 921. - (1) Compensation may be granted in respect of the vexatious rescission even where this rescission was not by the employer if the latter had by his own actions and especially by his vexatious treatment or by a breach of

the stipulations of the contract obliged the worker to appear as though he were the one who terminated the contract.

(2) Transferring the worker without having committed a fault to a less privileged (profitable) or less suitable position than that which he is occupying is not deemed to be an indirect vexatious act if such transfer is dictated by the interest of the work; the transfer will however be deemed to be a vexatious act if it is made with the object of offending the worker.

Article 922. - (1) A contracting party may rescind the contract of work prematurely (before the expiration of the term agreed) and without service of notice and will not be ordered to pay any damages if there are grounds to justify such rescission.

(2) The circumstances where a contracting party cannot be forced to remain tied to the other party due to a cause related to morality or to the rules of good faith which is incumbent in business shall be deemed to be among the justifications for premature rescission of the contract.

Article 923. - The contract of work shall not be rescinded by the death of the employer unless his personality was considered (taken into account) in the contract but it will be rescinded by the death of the worker.

Article 924. - (1) If a trading premises or other economic firm has been sold all the contracts of work which are current at the time of sale will remain effectual between the new employer and the workers.

(2) The worker as well as the new employer may get rid (relieve himself) of the contract of work even if it has been executed for a definite term provided he serves notice of his said wish within one month from the date of his becoming aware of the sale but he must observe the time

limits of notice provided for to be served in case of indefinite term contracts.

Article 925. - Actions resulting from a contract of work may not be heard after one year from the time of existence of the cause of the action except as regards that which relates to commission participation in the profits and percentages of the price of the things sold where the one year time limit shall not begin to run except from the time when the employer delivers to the worker a statement showing that which has accrued to him as per the last inventory.

Section (iv) - Trade training contracts

Article 926. - (1) A trade instruction contract is where the owner of an industrial, commercial, or agricultural firm or a craftsman (tradesman) undertakes to instruct or endeavour to instruct a person in a trade in consideration of an obligation by such person or his guardian to work for the employer in accordance with such conditions and for a term as agreed upon.

(2) The conditions of validity and stipulations of the contract are subject to the customs prevailing and the current usage in the trade; the legal provisions governing a contract of work shall also apply to the instruction of a trade contract to the extent which is not in conflict with the purpose (object) of the trade (craft).

Chapter 3 - Agency (Commission/Mandate)

Section (i) - Constitution of an agency

Article 927. - Agency (commission/mandate) is a contract by which a person constitutes another person in his stead to carry out a definite legal disposition.