

BOOK V. SPECIAL CONTRACTS
TITLE XV
CONTRACTS RELATING TO THE ASSIGNMENT OF RIGHTS
Chapter 1. Sale

Art. 2266. — *Definition.*

A contract of sale is a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him.

Art. 2267. — *Application of this Chapter. — 1. Corporeal chattels.*

- (1) The provisions of this Chapter shall apply to the sale of corporeal chattels.
- (2) Nothing in this Article shall affect the special provisions relating to the sale of certain kinds of corporeal chattels.

Art. 2268. — *2. Intrinsic parts of immovable.*

- (1) The sale of intrinsic parts of an immovable shall be deemed to be a sale of movables where such parts are, under the contract, to be separated from the immovable and transferred as corporeal chattels to the buyer.
- (2) The provisions of sub-art. (1) shall apply in particular where the sale relates to crops, materials of a building under demolition or products of a quarry.

Art. 2269. — *Sale on delivery.*

For the purpose of this Chapter, a contract for the delivery of corporeal chattels to be manufactured or produced shall be deemed to be a sale where the party who undertakes delivery is to provide the main materials necessary for the manufacture or production.

Section 1. Formation of contract

Art. 2270. — *Subject of sale.*

- (1) A sale may relate to an existing thing belonging to the seller.
- (2) A sale may also relate to a future thing which the seller undertakes to make for delivery to the buyer.
- (3) It may also relate to a thing belonging to a third party.

Art. 2271. — *Price estimated by third party.*

- (1) The price may be referred to the arbitration of a third party.

- (2) There shall be no sale where such third party refuses or is unable to make an estimate.

Art. 2272. — *Terms of the contract.*

- (1) A contract of sale may be pure and simple or contain special terms.
- (2) Unless otherwise expressly stipulated, the obligations it imposes on the parties shall not be deemed to be conditions affecting the existence of the contract.

Section 2. Performance of contract

Paragraph 1. — Obligations of seller

Art. 2273. — *General provisions.*

- (1) The seller shall deliver the thing to the buyer in accordance with the provisions of the contract and of this Code.
- (2) He shall transfer the ownership of the thing to the buyer and warrant him against certain defects in the thing.
- (3) He shall in addition be liable for any other obligation imposed upon him by the contract of sale.

A — *Obligation to deliver*

Art. 2274. — *Essence of obligation.*

Delivery consists in the handing over of a thing and its accessories in accordance with the contract.

Art. 2275. — *Quantity fixed approximately.*

- (1) Where the seller undertakes to deliver "about a certain quantity" of specified goods, it shall be for him to determine the exact quantity to be delivered, unless it appears from the circumstances that such stipulation has been included in the contract in the sole interest of the buyer.
- (2) The difference between the approximate quantity fixed in the contract and the quantity actually delivered may not be more than ten per cent, where the sale relates to the whole cargo of a ship, or five per cent in other cases.

Art. 2276. — *Time of delivery.*

Where the date of delivery cannot be inferred from the will of the parties, the seller shall deliver the thing as soon as the buyer requires him to do so.

Art. 2277. — *Delivery during a given period.*

Where the parties have agreed that delivery shall take place during a

given period, it shall be for the seller to fix the exact date of delivery unless it appears from the circumstances that it is for the buyer to do so.

Art. 2278. — *Simultaneity with payment.*

- (1) Unless otherwise provided in the contract, delivery of the thing shall be simultaneous with the payment of the price.
- (2) The seller may in such case retain the thing until payment is made.

Art. 2279. — *Place of delivery.* — 1. *Principle.*

Unless otherwise agreed, the seller shall deliver the thing at the place where, at the time of the contract, he had his place of business or, failing such, his normal residence.

Art. 2280. — 2. *Exception.*

- (1) Where the sale relates to a specific thing and the parties know the place where such thing is at the time of the contract, the seller shall deliver the thing at such place.
- (2) The provisions of sub-art. (1) shall apply where the contract relates to fungible things selected from a stock or a specified supply or to things which are to be made or produced in a place known to the parties at the time of the contract.

B — *Obligation to transfer ownership*

Art. 2281. — *Steps necessary for the transfer of ownership.*

The seller shall take the necessary steps for transferring to the buyer unassailable rights over the thing.

Art. 2282. — *Warranty against dispossession.* — 1. *Principle.*

The seller shall warrant the buyer against any total or partial dispossession which he might suffer in consequence of a third party exercising a right he enjoyed at the time of the contract.

Art. 2283. — 2. *Legal limits.*

- (1) Where, at the time of the contract, the buyer knows that he risks dispossession, the seller shall not warrant the thing unless he has expressly undertaken to do so.
- (2) Warranty shall however be due where dispossession is due to the falling in of a pledge made by the seller.

Art. 2284. — *Provisions excluding or restricting warranty.*

- (1) Provisions which exclude or restrict the warranty due from the seller against dispossession shall be construed strictly.

- (2) Unless otherwise expressly agreed, such provisions shall impose on the seller the obligation to return the price to the buyer, in whole or in part, in cases of dispossession.
- (3) A provision excluding or restricting the warranty shall be of no effect where the seller has intentionally concealed that a third party had a right on the thing or dispossession is due to the act of the seller.

Art. 2285. — *Joining seller as party to proceedings.*

- (1) Where the buyer is sued for dispossession, he shall join the seller as a party to the proceedings instituted against him.
- (2) Where the seller is joined in the proceedings in due time, he shall make good his warranty unless he can show that dispossession is due to the act of the buyer.
- (3) Where the seller is not joined in the proceedings without any fault on his part, he shall be released from his warranty where he can show that the proceedings might have had a more favourable issue, had he been joined in in due time.

Art. 2286. — *Compromise.*

Where the buyer acknowledges the right of a third party outside judicial proceedings or he has entered into a compromise with such third party, he may not avail himself of the warranty given by the seller unless he can show that the latter could not have prevented dispossession.

C — *Warranty against defects in the thing*

Art. 2287. — *Principle.*

The seller shall guarantee to the buyer that the thing sold conforms to the contract and is not affected by defects.

Art. 2288. — *Conformity with contract.*

The thing shall not be deemed to conform to the contract where:

- (a) the seller delivered to the buyer part only of the thing sold or a greater or lesser quantity than he had undertaken in the contract to deliver; or
- (b) the seller delivered to the buyer a thing different to that provided in the contract or a thing of a different species.

Art. 2289. — *Warranty against defects.*

The warranty shall become effective where the thing:

- (a) does not possess the quality required for its normal use or commercial exploitation; or
- (b) does not possess the quality required for its particular use as provided expressly or impliedly in the contract; or

- (c) does not possess the quality or specifications provided expressly or impliedly in the contract.

Art. 2290. — *Time when defects are to be considered.*

- (1) The conformity with the contract and the absence of defects shall be ascertained having regard to the condition of the thing at the time of the transfer of risks.
- (2) Where no transfer of risks occurs as a result of the cancellation of the contract having been declared or the replacement of the thing having been required, regard shall be had to the time when the risks would have been transferred, had the thing been in conformity with the contract.
- (3) The seller shall be held to his warranty where non-conformity or defects occur at a date later than that specified in this Article and are caused by the seller or a person for whom he is liable.

Art. 2291. — *Examination of thing by buyer.*

- (1) As soon as the buyer has the opportunity, he shall without delay examine the thing.
- (2) Unless otherwise agreed, such examination shall be made as provided by the usages of the place of examination.
- (3) Where the buyer intends to avail himself of the results of the examination, he shall in due time invite the seller or his representative to attend such examination, unless the thing is likely to perish.

Art. 2292. — *Notification of defects.*

- (1) Where examination discloses non-conformity with the contract or a defect in the thing, the buyer shall without delay give notice thereof to the seller.
- (2) In notifying the defect, the buyer shall indicate its nature in accordance with custom and good faith.

Art. 2293. — *Absence of notification.*

- (1) Where the buyer has not notified the seller as provided in Art. 2292, he may no longer avail himself of the non-conformity or defects unless the seller admitted their existence.
- (2) Where a defect is subsequently discovered which could not be discovered by the normal process of examination, the buyer may avail himself of such defect where he notifies the seller as soon as he discovers it.
- (3) The seller who has intentionally misled the buyer may not avail himself of the fact that the notification of defects has not been sufficiently precise or made in due time.

Art. 2294. — *Warranty limited by agreement.*

Where the seller has warranted during a specified period certain qualities or the good working condition of the thing, it shall be sufficient for the buyer to inform the seller of the defect before the expiry of such period.

Art. 2295. — *Buyer knowing of defects.*

- (1) Where the seller can prove that the buyer knew of the defects at the time of the contract, he shall not be liable on his warranty against defects.
- (2) In such a case, an express warranty given by the seller shall itself be void.

Art. 2296. — *Gross negligence of buyer.*

- (1) The seller shall not be liable on a warranty against defects which are so obvious that the buyer could overlook them only as a result of gross negligence.
- (2) The warranty shall however hold where the seller has expressly declared that the thing was free from defects or he has expressly warranted certain qualities.

Art. 2297. — *Provisions excluding or restricting warranty.*

Any provision excluding or restricting the warranty shall be of no effect were the seller has fraudulently concealed from the buyer the defects in the thing.

Art. 2298. — *Period for suing on a warranty.*

- (1) The buyer shall, under pain of losing his right, bring proceedings on a warranty against defects within one year from his having given notice to the seller, unless the seller intentionally misled him.
- (2) The parties may not shorten this period.
- (3) Where specified qualities or the good working condition of the thing have been warranted by the seller for a specified period, the time within which the buyer may bring proceedings shall be reckoned from the day when this period has expired.

Art. 2299. — *Position of buyer upon expiry of period.*

- (1) After the expiry of the period fixed in Art. 2298, the buyer may no longer avail himself of the defect or non-conformity.
- (2) The buyer may, however, where he has not paid the price and he notified the defect or non-conformity in due time, set off against the demand for payment a claim for reduction in price or damages.

Art. 2300. — *Seller may put right defects.*

- (1) In a sale of fungible things, the seller may replace defective things by new ones within the period provided for in the contract.
- (2) In a sale of goods to be manufactured or produced by the seller on the specifications of the buyer, the seller may put right the defects within a reasonable time, even after the expiry of the period fixed for delivery, provided that the delay causes the buyer no substantial inconvenience or expense.
- (3) Nothing shall affect the right of the buyer to claim damages.

D — *Other obligations of seller*

Art. 2301. — *Handing over documents.*

- (1) Where it is customary for the seller to hand over to the buyer documents concerning the thing sold, the seller shall, in addition to delivery, hand such documents over.
- (2) The documents shall be handed over as carefully and quickly as possible at the place fixed in the contract or provided by custom.
- (3) The buyer shall not be bound to accept the documents unless they conform to the contract.

Art. 2302. — *Insurance.*

Where the seller must know from the circumstances that a carriage insurance is the custom and where the seller is not bound to contract such insurance himself, he shall provide the buyer with the necessary information to enable him to contract an insurance, where the buyer requires such information from him.

Paragraph 2. — *Obligations of buyer*

Art. 2303. — *General provision.*

- (1) The buyer shall pay the price and take delivery of the thing.
- (2) He shall be bound by any other obligation imposed upon him by the contract of sale.

Art. 2304. — *Obligation to pay the price.*

- (1) The obligation to pay the price shall include the obligation to take any step provided by the contract or by custom to arrange for or guarantee the payment of the price.
- (2) The buyer may thus be compelled, according to the circumstances, to accept a bill of exchange, to open a credit account, to provide bank security or otherwise.

Art. 2305. — *Price determined by weight.*

Where the price is determined by the weight of the thing, the net weight shall be taken into account in cases of doubt.

Art. 2306. — *Thing at current price.*

Where the thing sold is quoted on the market or has a current price, the parties shall be deemed to have concluded the sale at this price, having regard to the time when and place where delivery is to take place.

Art. 2307. — *Thing usually sold by seller.*

- (1) Where the sale relates to a thing which the seller normally sells, the parties shall be deemed to have concluded the sale at the price normally charged by the seller, having regard to the time when and place where delivery is to take place.
- (2) The amount shown in the invoice presented by the seller shall be deemed to conform to such price.

Art. 2308. — *Quantity greater than agreed.*

- (1) Where the seller delivers a quantity greater than that provided in the contract, the buyer may accept or refuse such quantity as exceeds the agreed quantity.
- (2) Where he accepts the whole quantity, he shall pay a price increased in proportion to the quantity delivered to him.

Art. 2309. — *Place of payment.*

- (1) The buyer shall pay the price at the place fixed in the contract.
- (2) Where no place is fixed, he shall pay the price at the address of the seller.
- (3) Where the contract provides that the price shall be paid when the thing or documents are handed over, the price shall be paid at the place where, under the contract, such thing or documents are to be handed over.

Art. 2310. — *Date of payment.* — 1. *Sale for cash on delivery.*

Where payment is due on delivery, the buyer shall not be bound to pay the price until he has had an opportunity to examine the thing.

Art. 2311. — *Credit sale.*

Where the contract relates to a sale on credit and no date of payment is fixed, the buyer shall pay the price as soon as the seller demands it after the date when delivery is to be made.

Art. 2312. — *Co-operation in delivery.*

The buyer shall, where appropriate, take such steps as may be required of him to enable the seller to carry out his obligation to deliver the thing.

Art. 2313. — *Taking delivery.*

The buyer shall, after delivery, take such steps as may be necessary for completing the delivery of the thing.

Paragraph 3. — Common obligations of seller and buyer

A — *Expenses*

Art. 2314. — *Expenses of contract.*

The expenses of a contract of sale shall be borne by the buyer.

Art. 2315. — *Expenses of payment.*

- (1) The expenses of the payment shall be borne by the buyer.
- (2) Where the seller has changed the address of his place of business or residence after the making of the contract, he shall bear any additional expenses arising therefrom.

Art. 2316. — *Expenses of delivery.*

- (1) The expenses of delivery shall be borne by the seller.
- (2) Such expenses shall include the cost of counting, measuring and weighing the thing.

Art. 2317. — *Expenses after delivery.*

Any expense arising after delivery shall be borne by the buyer.

Art. 2318. — *Expenses of transport.*

- (1) The expenses of transport shall be borne by the buyer where the thing sold has to be sent to another place than the place of delivery.
- (2) Such expenses shall however be borne by the seller where delivery is to be carriage-free.
- (3) Where the transport of the thing is interrupted by an event beyond the control of either party, the additional transport expenses shall be borne by the party who bears the risks.

Art. 2319. — *Customs duties.*

- (1) Where import customs duties or other duties charging the imported thing are to be paid by the seller and such duties increase after the contract is made, such increase shall be added to the price.

- (2) Where, however, a delivery bearing such duties has been delayed by the act of the seller or of a person for whom the seller is liable, the additional duties shall be paid by the seller whenever the buyer can show that the increase would not have been due, had the delivery been made at the time fixed in the contract or provided by law.
- (3) Whenever there is a decrease in customs duties, the price shall be reduced accordingly.

B — Preservation of the thing

Art. 2320. — Obligation of the seller.

- (1) Where the buyer is late in taking delivery of the thing or in paying the price, the seller shall ensure the preservation of the thing at the buyer's expense.
- (2) He may retain the thing until he has been indemnified by the buyer for the expenses he incurred in preserving the thing.

Art. 2321. — Obligation of the buyer.

- (1) Where the thing sold has been received by the buyer, he shall, where he intends to refuse it, ensure its preservation at the seller's expense.
- (2) He may not return the thing to the seller without further formality.
- (3) He may retain the thing until he has been indemnified by the seller for the expenses he incurred in preserving the thing.

Art. 2322. — Consignment or sale of the thing.

The seller and the buyer may relieve themselves of the obligation to preserve the thing by consigning or selling it in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1779-1783).

C — Transfer of risks

Art. 2323. — Principle.

Where the risks are transferred to the buyer, he shall pay the price notwithstanding that the thing is lost or its value altered.

Art. 2324. — Delivery of thing.

- (1) The risks shall be transferred to the buyer from the day when the thing has been delivered to him in accordance with the provisions of the contract or of this Code.
- (2) The provisions of sub-art. (1) shall apply notwithstanding that the thing delivered does not conform to the contract, where the buyer has neither cancelled or required the cancellation of the contract nor required that the thing be replaced.

Art. 2325. — *Delay of buyer.*

- (1) The risks shall also be transferred to the buyer from the day he is late in paying the price.
- (2) Where the sale relates to fungible things, the delay of the buyer shall not transfer the risks to him unless the thing, clearly designated for the performance of the contract, has been especially allocated to the buyer and the seller has sent notice to the buyer to that effect.
- (3) Where fungible things are of such a nature that the seller cannot set aside part of them until the buyer takes delivery, it shall be sufficient for the seller to have performed all the acts necessary to enable the buyer to take immediate delivery.

Art. 2326. — *Thing under voyage.*

- (1) Where the sale relates to a thing under voyage, the risks shall be transferred to the buyer from the day when delivery has taken place by the thing having been handed over to the carrier.
- (2) The provisions of sub-art. (1) shall not apply where, at the time of the making of the contract, the seller knew or should have known that the thing had perished or was damaged.

Art. 2327. — *Provision relating to expenses.*

Any provision relating to expenses stipulated by the parties, in particular a provision whereby expenses are to be borne by the seller, shall not in itself transfer the risks.

Art. 2328. — *Goods shipped in common.*

Where goods are shipped in common with others, the risks shall be allocated to each of the buyer in proportion to his share from the day when delivery has taken place by the goods having been handed over to the carrier, where the seller has sent to the buyer the bill of lading or other document showing that the shipment has taken place.

Section 3. Non-performance of contract

Paragraph 1. — Forced performance of the contract

Art. 2329. — *Non-performance of obligation to deliver. — 1. Principle.*

Where the thing has not been regularly delivered, the buyer may demand the forced performance of the contract where it is of particular interest to him.

Art. 2330. — 2. *Possibility of purchase in replacement.*

The buyer may not demand the forced performance of the contract where the sale relates to a thing in respect of which a purchase in replacement conforms to commercial practice or such purchase can be effected by him without inconvenience or considerable expense.

Art. 2331. — 3. *Delay.*

- (1) The buyer shall lose the right to demand the forced performance of the contract where he fails to inform the seller, within a short period after he has ascertained the delay, of his intention to demand such performance.
- (2) Such period shall be estimated with particular strictness where the date fixed for the performance of the contract is a compulsory date.

Art. 2332. — *Non-conformity or defects.*

- (1) The buyer who has regularly given notice of the defects may require the seller to deliver new things or the missing part or quality of the thing where the forced performance of the contract may be demanded.
- (2) He may require that the defects be made good by the seller within a reasonable time where the sale relates to a thing which the seller has to make or produce on the specifications of the buyer and where such defects can be made good.

Art. 2333. — *Non-payment of price.*

Where the buyer fails to pay the price, the seller may demand payment unless the sale relates to a thing in respect of which a compensatory sale is imposed by custom.

Art. 2334. — *Sale according to specifications.* — 1. *Right of seller.*

Where the buyer's right to decide later as to the form, measurements or other details of the thing is reserved in the contract and he has failed to give such specifications within the time fixed in the contract or on the expiry of a reasonable period of time notified to him, the seller may himself make the specification according to the requirements of the buyer as he knows them.

Art. 2335. — 2. *Method and penalties.*

- (1) The seller shall inform the buyer of the specifications of the thing where he has determined them and fix him a reasonable period of time for giving different specifications.
- (2) Where the buyer fails to give his specifications within such time, the specifications made by the seller shall be binding.

Paragraph 2. — Cancellation of contract

A — Reasons for cancellation by the buyer

Art. 2336. — *Principle.*

- (1) The buyer may require the court to order the cancellation of the contract or may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1784-1789).
- (2) Nothing shall affect the provisions of the following Articles.

Art. 2337. — *Compulsory date for delivery.*

- (1) The date fixed for delivery shall be deemed to be a compulsory date where the thing has a market price on markets to which the seller can apply to obtain it.
- (2) The date fixed by the seller or the buyer, where it is for either of them to fix such date within a period of time provided in the contract, shall also be deemed to be a compulsory date.

Art. 2338. — *Additional time. — 1. Possibility.*

- (1) Where the date fixed for delivery is not a compulsory date, the court may grant the seller a period of grace within which he shall perform his obligations.
- (2) The buyer may, in the same circumstances, grant the seller an additional period of time fixed in a reasonable manner and inform him that he shall refuse the thing upon the expiry of this period.
- (3) The contract shall be cancelled as of right where the seller fails to deliver the thing within such additional period.

Art. 2339. — *2. Inadequate time.*

- (1) Where the period fixed by the buyer is not reasonable, the seller may, within a short time, inform the buyer that he shall only deliver the thing upon the expiry of a reasonable period.
- (2) Failing such declaration, the seller shall be deemed to accept the period of time fixed by the buyer.

Art. 2340. — *Place of delivery.*

- (1) Where the seller delivers the thing at another place than that where he is bound to make delivery, the court shall not cancel the contract on the application of the buyer unless the manner in which the contract was enforced constitutes a fundamental breach of contract.
- (2) The contract may not be cancelled where the breach can be made good by the seller within such period of time as is fixed by the contract or by law.

Art. 2341. — *Whole ownership not transferred to buyer.*

- (1) The contract may be cancelled where, as a result of a defect affecting his title, the seller has not procured for the buyer the thing free from all the rights belonging to third parties.
- (2) The contract may however not be cancelled where the buyer, on buying the thing, knew of the encumbrance.
- (3) The contract may not be cancelled where the right with which the thing is encumbered is of small importance and it appears that the buyer would have bought the thing, had he known of the encumbrance.

Art. 2342. — *Dispossession.*

- (1) The contract shall be cancelled as of right where the buyer is totally ousted from the thing and the seller is bound to warrant the buyer against dispossession.
- (2) The contract may be cancelled where the buyer is partially ousted from the thing.
- (3) The contract may however not be cancelled where dispossession only affects a part of the thing of minor importance and it appears that the buyer would have bought the thing, had he known that he would be dispossessed of such part.

Art. 2343. — *Partial delivery.*

- (1) Where part of the thing only has been delivered or does not conform to the contract, the buyer may not cancel the contract for the whole unless it appears that he would not have entered into the contract, had he known how it would be executed.
- (2) In case of delay in the delivery of part of the thing, the buyer may cancel the contract for the whole notwithstanding that the remaining part of the thing is delivered subsequently, where the date of delivery constituted a compulsory date for the whole.
- (3) Where the buyer is not entitled to cancel or require the cancellation of the contract, he may cancel it partially or require that it be partially cancelled and confine himself to paying a price proportionate to the value of such part as has been duly delivered to him.

Art. 2344. — *Defects.*

- (1) The contract may be cancelled where the thing is affected by a defect against which the seller warranted the buyer.
- (2) The contract may however not be cancelled where the defect is of small importance and it appears that the buyer would have bought the thing, had he known of the defect.

Art. 2345. — *Defect of part of the thing. — 1. Principle.*

- (1) Where the sale is of several things at a time or of a collection of articles and only some of them are defective, the contract may be cancelled with regard to such defective things or articles only.
- (2) The buyer shall in such case pay to the seller a price proportionate to the value of the things or articles which have been delivered to him free from defects.

Art. 2346. — *Exception.*

- (1) The contract may however be cancelled for the whole where the defective thing or article cannot be separated, without considerable inconvenience to the buyer or seller, from those which are free from defects.
- (2) The cancellation which relates to the principal thing shall extend to accessories notwithstanding that they have been sold for a separate price.

B — *Reasons for cancellation by the seller*

Art. 2347. — *Principle.*

- (1) The seller may apply to the court to order the cancellation of the contract or may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1784-1789).
- (2) Nothing shall affect the provisions of the following Articles.

Art. 2348. — *Non-payment of the price.*

- (1) The seller may forthwith declare the cancellation of the contract in case of non-payment of the price where this right has been expressly given to him by the contract of sale.
- (2) Failing an express stipulation, the seller may cancel the contract on the expiry of a reasonable period fixed by him in the notice placing the buyer in default, where the sale relates to things which are quoted on the stock market or have a current price or where this right has been expressly given to the seller by the contract.
- (3) The seller may also declare the cancellation of the contract upon the expiry of the period of grace, where such period has been granted by the court to the buyer.

Art. 2349. — *Default in taking delivery.*

Where the buyer fails to take delivery of the thing on the conditions laid down in the contract, the seller may require the cancellation of the contract where the failure of the buyer justifies the fear that he will not

pay the price or it appears from the circumstances that taking delivery was an essential stipulation of the contract.

Art. 2350. — *Failure to make specifications.*

Where the buyer has reserved in the contract the right to decide later on the form, measurements or other details of the thing and he fails to give such specifications at the date agreed as being compulsory or upon the expiry of a reasonable period granted to him by the seller, the seller may declare the cancellation of the contract.

C — Reasons for cancellation by both parties

Art. 2351. — *Contracts for successive deliveries.*

- (1) Where, in contracts for successive deliveries, by reason of the non-performance or the defect of one of the performances due by a party, the other party is justified in fearing that the future performance will not be made or will be affected by defects, such party may require that the contract be cancelled for the future.
- (2) The buyer may also require the cancellation of future deliveries or deliveries already made, or both, where he proves that, by reason of their connection, these deliveries are of no use to him without those which have not been made or were affected by defects.

Art. 2352. — *Impossibility of performance.*

A party may declare the cancellation of the contract where, even before the date fixed for performance, the performance of his obligations by his contracting party becomes impossible or is delayed in such a way that the very basis of the contract is affected.

Art. 2353. — *Anticipatory breach of contract.*

Where, before the date fixed for performance, a party has informed the other party that he will not carry out the contract, the latter party may declare the cancellation of the contract in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1789).

D — Conditions and effect of cancellation

Art. 2354. — *Cancellation in case of delay.*

Where a party, being late in the performance of an obligation which constitutes an essential stipulation of the contract, asks the other party whether he still consents to the execution of the contract, the contract shall be cancelled as of right where the other party does not answer within a short time.

Art. 2355. — *Effect of cancellation.*

- (1) Where a contract is cancelled, the parties shall be released from their obligations under the contract, without prejudice to such damages as may be due.
- (2) Where a party has performed his obligations in whole or in part, he may claim the restitution of what he has supplied including the expenses incurred.
- (3) Where both parties have performed their obligations, each of them may refuse the restitution due by him until the other party has effected his.

Art. 2356. — *Interest on price and profit.*

- (1) Whenever the seller is required to refund the price, he shall in addition pay interest on such price calculated from the day of payment.
- (2) The buyer shall restore, in addition to the thing, the profits he has derived therefrom.

Art. 2357. — *Where thing cannot be returned in its previous condition.*

- (1) The buyer shall retain the right to require or declare the cancellation of the contract or to avail himself of cancellation already declared where the thing or part thereof has perished or been damaged without this being due to his own act or that of a person for whom he is liable.
- (2) He shall in particular retain this right where the thing has been damaged as a result of an examination made by him in accordance with custom.
- (3) The contract may not be cancelled where the buyer is unable to restore the thing because he has assigned or transformed it or it has perished or been damaged by his act.

Art. 2358. — *Transformation of thing.*

Where the thing is transformed, the buyer shall retain the right to require or declare the cancellation of the contract where:

- (a) the thing or part thereof has been transformed by him before he was able to discover the defect of which he avails himself to require or declare the cancellation of the contract; or
- (b) the alteration of the thing is of no importance.

Art. 2359. — *Expenses.*

- (1) As regards outlays made by the buyer on the thing, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" shall apply (Art. 2168-2178).

- (2) The buyer may only claim from the seller the payment of these outlays in the case of dispossession where he is unable himself to be indemnified by the third party by whom he is dispossessed.

Paragraph 3. — Damages

Art. 2360. — *General provisions.*

- (1) Where the non-performance of one of his obligations by his contracting party is detrimental to him, the seller or the buyer may claim that the damage thus caused be made good by way of damages.
- (2) Damages may be claimed whether the contract is cancelled or upheld, where the contract has not been regularly and exactly performed.

A — *Case where the contract is not cancelled*

Art. 2361. — *Amount of damages.*

- (1) Where the contract is not cancelled, the amount of damages shall be fixed in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1790-1805).
- (2) In case of delay in the payment of the price, the buyer shall pay interest at the legal rate (Art. 1803).
- (3) Compound interest shall not be included unless there is a current account between the buyer and the seller.

B — *Case where the contract is cancelled*

Art. 2362. — *Thing having a current price. — 1. Principle.*

- (1) Where the contract is cancelled and the thing has a current price, damages shall be equal to the difference between the price fixed in the contract and the current price as on the day when the right to declare the cancellation of the contract could be exercised or on the day following that when the contract was cancelled by the court or as of right.
- (2) Regard shall in addition be had to the normal expenses of a purchase in replacement or compensatory sale.
- (3) The price to be taken into account shall be that on the market where the buyer or seller would, in the normal course of business, buy or sell the thing to which the contract relates.

Art. 2363. — *2. Purchase in replacement or compensatory sale.*

- (1) Where the buyer has effected a purchase in replacement or the seller has effected a compensatory sale, the price paid for such purchase or obtained for such sale shall be taken into consideration in calculating the amount of damages.

- (2) Such amount may be reduced where the other party proves that the purchase in replacement or compensatory sale has been effected in bad faith or in abnormal business conditions.

Art. 2364. — 3. *Greater damage.*

- (1) Damages shall be equal to the prejudice actually caused where the party who suffered such prejudice shows that, at the time of the making of the contract, he had informed the other party of the special circumstances by reason of which the prejudice caused is greater.
- (2) The provisions of sub-art. (1) shall also apply where the party shows that non-performance is due to the other party's intention to harm, gross negligence or grave fault.

Art. 2365. — *Thing having no current price.*

- (1) Where the thing has no current price, damages shall be equal to the prejudice which non-performance would normally cause to the creditor in the eyes of a reasonable person.
- (2) Damages shall be equal to the prejudice actually caused where the circumstances mentioned in Art. 2364 have obtained.

Art. 2366. — *Anticipatory breach of contract.*

- (1) In cases of anticipatory breach of contract, damages shall, where the thing has a current price, be calculated having regard to the market price of the thing on the last day of the period fixed in the contract for the performance of the obligation.
- (2) Where no period has been fixed in the contract, damages shall be calculated having regard to the market price of the thing on the day when the right to declare the cancellation of the contract could be exercised.
- (3) Damages may however not exceed the price actually paid for a previous purchase in replacement nor the difference between the price fixed in the contract and the price actually received for a previous compensatory sale.

Art. 2367. — *Dispossession.*

Where the buyer is dispossessed of the thing, the seller shall, without prejudice to other damages, reimburse him the judicial and extra-judicial expenses of the proceedings he had to institute, with the exception of the expenses he could have avoided by informing the seller of the proceedings.

Section 4. Various forms of sale

Paragraph 1. — Sale of cattle and other living animals

Art. 2368. — *Principle.*

Without prejudice to the provisions of the following Articles, the sale of cattle and other living animals shall be subject to the provisions of the preceding Articles.

Art. 2369. — *Contagious diseases.* — 1. *Legal warranty.*

On making delivery, the seller shall guarantee that the animal sold by him does not suffer from any of the following diseases:

Rabies in all species of animals, Rinderpest in all ruminants, Pleuropneumonia of cattle (Contagious Bovine Pleuro-Pneumonia), Glanders, Farcy, Dourine and Epizootic Lymphangitis of horses and their crosses (Mules), Anthrax and Piroplasmiasis of horses, cattle, sheep and goats.

Foot-and-Mouth Disease of cattle, sheep, goats, pigs and camels.

Blackquarter or Malignant Oedema and Tuberculosis of cattle.

Sheep Pox, and Scabies of sheep and pigs, Swine Fever, Pneumo-enteritis and pox of pigs, Tuberculosis of pigs.

Trypanosomiasis of equines, donkeys and their crosses and in camels.

Spirillosis of horses, donkeys and their crosses.

Oesophagostomiasis of sheep.

Brucellosis of cattle, sheep and goats.

Rickettsiosis, infectious anaemia of equines.

Psittacosis, contagious diseases of bees.

Isle of White Disease, Nosema.

Art. 2370. — *Contrary stipulation.*

Any stipulation contrary to the provisions of Art. 2369 shall be of no effect.

Art. 2371. — *Defects.* — 1. *Legal warranty.*

Warranty shall be due by the seller where the animal sold is affected by a defect such that it is not fitted for the purpose to which it is destined by its nature or under the contract.

Art. 2372. — 2. *Contractual provisions.*

- (1) The parties may by an express provision in the contract exclude with regard to a given defect the warranty due in accordance with Art. 2371.
- (2) The parties may extend the warranty and provide that the seller shall warrant that the animal possesses a given quality.

Art. 2373. — *Cancellation of contract.*

Where the animal suffers from a contagious disease or is affected by a defect for which warranty is due under the law or the contract, the buyer may require that the sale be cancelled.

Art. 2374. — *Loss of animal.*

Where the animal sold dies in consequence of a disease or defect for which warranty is due or of a fortuitous event caused by such defect, the loss shall be borne by the seller who shall refund the price he received.

Art. 2375. — *Damages.*

The seller shall make good the damage caused to the buyer where:

- (a) the seller has expressly guaranteed that the animal was not affected by the disease or defect by reason of which the sale is cancelled; or
- (b) the seller is shown to have known, at the time of delivery, of the disease or defect by reason of which the sale is cancelled.

Art. 2376. — *Contract maintained.*

- (1) The buyer shall lose his rights against the seller where he fails to cause the disease or defect to be ascertained by experts and to inform the seller of such disease or defect within the time fixed in writing by the parties.
- (2) Where no time has been fixed, the buyer shall lose his rights where he fails to cause the disease or defect to be ascertained by experts and to inform the seller of such disease or defect within thirty days from the animal having been delivered.

Paragraph 2. — *Sale by sample*

Art. 2377. — *Qualities guaranteed by the seller.*

- (1) In a sale by sample or pattern, the qualities of the thing shall conform to those of the sample or pattern.
- (2) Where there is a discrepancy between the sample and the manner in which the thing is described in the contract, the sample shall prevail.
- (3) Where there are differences but no discrepancy, the thing shall combine the qualities of the sample and those of the description.

Art. 2378. — *Exhibiting of sample.*

The party to whom the sample was entrusted shall have to prove that the sample exhibited is identical to the sample received.

Art. 2379. — *Application of this Paragraph.*

There shall not be a sale by sample or pattern where the seller proves that the sample or pattern was only presented to the buyer by way of information without any undertaking as to conformity.

Paragraph 3. — Sale on trial

Art. 2380. — *Time for acceptance.*

- (1) Where the sale has been made upon trial, the buyer shall, within the period fixed in the contract, declare whether he accepts or refuses the thing.
- (2) Where no period is fixed in the contract, the seller may give the buyer a reasonable period of time to decide.

Art. 2381. — *Silence of buyer.*

- (1) Where the buyer fails to inform the seller of his decision within the period provided in Art. 2380, the sale shall be deemed to be concluded where the thing has been delivered to the buyer so that he may try it.
- (2) The thing shall be deemed to be refused in the contrary case.

Art. 2382. — *Implied acceptance.*

The sale shall be deemed to be concluded where the buyer pays without reservation all or part of the price or disposes of the thing otherwise than is necessary to try it.

Art. 2383. — *Risks.*

The risks shall be borne by the seller notwithstanding that the thing has been delivered to the buyer, as long as the buyer has not accepted it.

Paragraph 4. — Sale by instalments

Art. 2384. — *Right of option of the seller.*

Where the thing has been sold and delivered on the condition that the price will be paid by instalments and the buyer is in arrears with one of the part payments, the seller may proceed to recover the unpaid instalment or, where such right has been expressly reserved to him, declare the cancellation of the contract.

Art. 2385. — *Cancellation of contract.*

- (1) Where the contract is cancelled, the seller and the buyer shall return the payments which they have made to each other.
- (2) The seller may however claim a fair rent and an indemnity for the wear and tear of the thing.
- (3) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Art. 2386. — *Exigibility of balance.*

- (1) Where the exigibility of the balance of the claim has been stipulated in the case of default of payment of an instalment, the seller

may not avail himself of this stipulation unless the buyer is in arrears for two consecutive payments representing together not less than one tenth of the price of the sale.

- (2) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Paragraph 5. — Sale with ownership reserved

Art. 2387. — *Effect on third parties.*

- (1) A provision whereby the seller reserves to himself, until payment of the price, the ownership of a thing the possession of which has been transferred to the buyer shall not affect third parties unless it has been entered in a public register kept for this purpose at the place where the buyer resides.
- (2) Where the third party who acquired the thing is bankrupt, such provision shall not affect his creditors except on the conditions laid down in the Commercial Code.

Art. 2388. — *Risks.*

The risks shall be borne by the buyer from the time when the thing is delivered to him.

Art. 2389. — *Cancellation of sale.*

- (1) Where the sale is cancelled, the seller shall return to the buyer all partial payments which he received.
- (2) He may however claim a fair rent and an indemnity for the wear and tear of the thing.
- (3) Any stipulation imposing more onerous obligations on the buyer shall be of no effect.

Paragraph 6. — Sale with right of redemption

Art. 2390. — *Sale with right of redemption.*

The seller may reserve to himself the right to redeem within a given period of time the thing which he sold to the buyer.

Art. 2391. — *Time for redemption.*

- (1) The period for exercising the right of redemption may not exceed two years.
- (2) It shall be of two years where a shorter period has not been fixed.

Art. 2392. — *Penalty.*

- (1) The buyer may not assign the thing to which the right of redemption extends.

- (2) The prohibition laid down in sub-art. (1) shall not affect third parties unless the clause providing for redemption has been entered in a public register kept for this purpose at the place where the buyer resides.

Art. 2393. — *Obligations of seller.*

- (1) The seller who exercises his right of redemption shall refund to the buyer the price which he has received and the expenses of the contract of sale.
- (2) Unless otherwise agreed, the provisions of the Chapter of this Code relating to "Unlawful Enrichment" (Art. 2168-2178) shall apply as regards the expenses incurred by the buyer on the thing.

Paragraph 7. — Sale with obligation to forward the thing

Art. 2394. — *Care of transport.*

Where the seller is bound by the contract to forward the thing, he shall make, on the usual conditions and by the usual means, the contracts of carriage necessary for the thing to be actually forwarded to the place fixed in the contract of sale.

Art. 2395. — *Delivery. — 1. Principle.*

- (1) Where the contract of sale implies the carrying of the thing, delivery shall, unless otherwise agreed, be effected by the handing over of the thing to the carrier.
- (2) Where the seller uses his own means of transport or means of transport hired by him for the purpose of effecting part of the carrying, delivery shall be effected by the handing over of the thing to the carrier with whom the contract of carriage is made on behalf of the seller.
- (3) Where the thing is to be carried by successive carriers and the seller is bound by the contract of sale to enter into one or more contracts of carriage covering the whole transport, delivery shall be effected by the handing over of the thing to the first carrier.

Art. 2396. — *2. Thing not intended for the execution of the contract.*

Where the thing handed over to the carrier is manifestly not intended for the execution of the contract, by reason of an address written thereon or otherwise, the duty to make delivery shall not be deemed to have been carried out unless the seller gave notice of the transport to the buyer and sent him, where appropriate, a document describing the thing,

Art. 2397. — 3. *Carriage by water.*

- (1) Where the carrier to whom the thing is handed over in accordance with the provisions of the preceding Articles is required to carry the thing by water, delivery shall be effected by the thing being put on board or by the ship according to the terms of the contract.
- (2) Nothing shall affect the case where the seller may under the contract present to the buyer a bill of lading "received for loading" or any other document of a similar nature.

Art. 2398. — *Right of retention of seller.*

- (1) The seller may postpone the forwarding of the thing until he is paid, where the contract of carriage does not give him the right to dispose of the thing under voyage.
- (2) The provisions of sub-art. (1) shall not apply where it has been agreed that delivery would take place at the place of arrival or the price is to be paid after delivery.
- (3) Where the seller has forwarded the thing because he had the right to dispose thereof after the beginning of the voyage, he may, until the price is paid, object to the thing being handed over to the buyer at the place of destination.

Art. 2399. — *Payment against documents.*

- (1) Where a bill of lading or other document has been issued which permits to obtain the delivery of the thing or the possession of which is necessary to be able to dispose of the thing, the payment of the price may only be demanded against transfer of the document provided by the contract or by custom.
- (2) In such case, the buyer may not refuse to pay the price on the ground that he was not able to examine the thing.
- (3) The obligation to transfer the documents shall be deemed to be an essential provision of the contract where the document is a bill of lading or any other document which permits to obtain the delivery of the thing or the possession of which is necessary to be able to dispose of the thing.

Art. 2400. — *Stoppage in transit.*

- (1) Where, after having forwarded the thing, the seller comes to know that the buyer has been declared insolvent, he may object to the thing being delivered to the buyer notwithstanding that the buyer is already in possession of the bill of lading or any other document which permits to obtain the delivery of the thing.

- (2) The seller may not object to the delivery where it is required by a third party regularly in possession of the bill of lading or above-mentioned document.
- (3) In such case, the seller may not object to the delivery unless the bill of lading or other document contains reservations regarding the effect of its transmission or he can show that the holder, in acquiring the bill of lading or other document, knowingly acted to the detriment of the seller.

Art. 2401. — *Obligation to take delivery.*

- (1) Where the thing has been forwarded to the buyer and placed at his disposal at the place of destination, the buyer shall, if he intends to refuse the thing, take possession thereof on behalf of the seller where he can do so without payment of the price and without inconvenience or considerable expenses.
- (2) The provisions of sub-art. (1) shall not apply where the seller is present at the place of destination or there exists at such place a person qualified to receive the thing.

Art. 2402. — *Examination of thing.*

- (1) Where a thing is forwarded, the buyer shall examine it at the place of destination.
- (2) Where the thing is re-dispatched by the buyer without transshipment and where the seller, at the time of the making of the contract, knew or should have known of the possibility of re-despatching, the examination shall be postponed until the thing arrives at its new destination.

Paragraph 8. — *Sale by auction*

Art. 2403. — *Formation of contract.*

- (1) In the case of sale by auction, the contract of sale shall be concluded by the auction which the seller or the auctioneer makes of the thing.
- (2) The person who conducts the auction shall be deemed to be entitled to knock down the thing to the highest bidder, where the seller has expressed no contrary intention.

Art. 2404. — *Obligations of bidder.*

- (1) The bidder shall be bound by his offer on the terms of the conditions of sale.
- (2) Unless otherwise provided, he shall be released where a higher bid is made or his offer is not accepted immediately after the usual calls.

Art. 2405. — *Payment in cash.*

- (1) Unless otherwise provided in the conditions of sale, the bidder shall be bound to pay cash.
- (2) The seller who is not paid cash or according to the conditions of sale may forthwith cancel the contract.

Art. 2406. — *Warranty due by seller.*

- (1) In a public and voluntary sale by auction, the seller shall give the same warranty as in ordinary sales.
- (2) In compulsory auctions, the seller shall not give warranty except in the case of fraud on his part.

Art. 2407. — *Warranty due by distrainer.*

- (1) He at whose request the auction takes place shall warrant the conformity of the thing with the description given of it in the conditions of sale.
- (2) He shall also be liable for any fraud he may commit.

Chapter 2. Contracts allied to sale

Section 1. Barter contract

Art. 2408. — *Differences from sale.*

- (1) Each of the exchangers shall, as regards the things subject to the exchange, have the same rights and obligations as a seller.
- (2) The exchanger who is bound by the barter contract to pay a balance shall, as regards the payment of such balance, have the same obligations as a buyer.
- (3) Unless otherwise agreed, the exchangers shall share equally in the expenses of the barter contract.

Art. 2409. — *Reference to provisions regarding sale.*

The provisions applicable to contracts of sale shall for the remainder apply to barter contracts.

Section 2. Transfer of rights other than ownership

Art. 2410. — *Transfer of usufruct.*

- (1) The provisions applicable to contracts of sale shall apply where a person transfers for consideration the usufruct of a thing.
- (2) The obligation of the seller to transfer the ownership of the thing shall in such case be replaced by the obligation to transfer the usufruct of such thing.

Art. 2411. — *Transfer of incorporeal rights.*

- (1) The provisions applicable to contracts of sale shall, as far as possible and without prejudice to the provisions of special laws, apply where a person transfers for consideration an incorporeal right.
- (2) The transfer of choses in action shall be subject to the provisions of the Title of this Code relating to "Contracts in general" (Art. 1962-1975).

Section 3. Hiring sale

Art. 2412. — *Assimilation to sale.*

Without prejudice to the provisions of the following Articles, the provisions applicable to contracts of sale shall apply where the parties have described their contract as one of hiring a thing, if it has been provided that the tenant of the thing will become the owner thereof upon payment of a given number of instalments.

Art. 2413. — *Risks.*

The risks shall be borne by the tenant from the time when the thing has been delivered to him.

Art. 2414. — *Termination of contract.*

The tenant may at any time terminate the contract by returning the thing to the lessor.

Art. 2415. — *Cancellation of contract.*

- (1) Where the contract is cancelled, the lessor shall return to the tenant the rents which he has collected.
- (2) He may only claim a fair rent and an indemnity for the wear and tear of the thing.
- (3) Any provision imposing more onerous obligations on the tenant shall be of no effect.

Section 4. Contract of supplies

Art. 2416. — *Definition.*

A contract of supplies is a contract whereby a party undertakes for a price to make in favour of the other party periodical or continuous deliveries of things.

Art. 2417. — *Object of contract.*

- (1) Where the quantity to be supplied has not been fixed, the supplier shall supply such quantity as corresponds to the normal needs of his

contracting party, having regard to the time when the contract was made.

- (2) Where the parties have only fixed a maximum and a minimum limit for the whole of the supplies or for each delivery, the person with whom the supplier contracted may fix, within these limits, the quantity to be supplied to him.
- (3) Where the quantity is to be fixed according to his needs, the person with whom the supplier contracted shall take all he needs, notwithstanding that this quantity exceeds the minimum fixed in the contract.

Art. 2418. — *Price.*

Where supplies are to be made periodically, the price for each delivery shall, failing an express provision in the contract, be fixed in accordance with the provisions of Chapter 1 of this Title.

Art. 2419. — *Time of payment.*

- (1) Where supplies are to be made periodically, the price shall be due at the time of each delivery.
- (2) Where supplies are to be continuous, the price shall be due on the usual maturity dates.

Art. 2420. — *Term.*

- (1) The time fixed for the various performances shall be deemed to have been fixed in the interest of both parties.
- (2) Where the party entitled to the supplies is allowed to fix the time when each performance shall be made, he shall inform the supplier of such time by giving him reasonable notice.

Art. 2421. — *Non-performance of contract.*

- (1) Where one of the parties fails to carry out his duties regarding a given performance, the contract may be cancelled where non-performance is of importance and capable of destroying the confidence in the regularity of the performance of future obligations.
- (2) The supplier may only cancel the contract or suspend its performance after having given reasonable notice to his contracting party.
- (3) Any provision to the contrary shall be of no effect.

Art. 2422. — *Preference clause.* — 1. *Duration.*

- (1) A provision whereby a person undertakes to get supplies in preference from a given supplier, should he need certain kinds of goods, shall not be effective for more than three years,

- (2) It shall be reduced to three years where it has been made for a longer period.

Art. 2423. — *2. Application.*

- (1) Whosoever has entered into an undertaking as defined in Art. 2422 shall inform the supplier of the terms offered to him by third parties.
- (2) The supplier shall, under pain of loss of right, declare within the time fixed in the contract or within a reasonable time whether he intends to avail himself of the preference clause.

Art. 2424. — *Exclusive clause binding the client.*

- (1) Where provision has been made in a contract to the effect that a person shall supply himself exclusively with certain things from a given supplier, such person may not receive from third parties supplies of the things of the nature provided in the contract.
- (2) Unless otherwise agreed, such person may not himself manufacture or produce things of the nature provided in the contract.

Art. 2425. — *Exclusive clause binding the supplier.*

- (1) Where it has been agreed that the supplier shall supply his products to a given person only, the supplier may not, in the area provided in the contract and during the currency of the contract, directly or indirectly supply third parties with goods of the nature provided in the contract.
- (2) Where the contracting party has undertaken to develop, in the area provided in the contract, the sale of the things which have been reserved to him, he shall be liable where he fails to carry out this obligation, notwithstanding that he sold the minimum quantity provided in the contract.

Art. 2426. — *Termination of contract.*

Where the duration of the contract of supplies has not been fixed in the contract, each party may terminate the contract by giving notice as provided in the contract or, where not provided, reasonable notice.

Chapter 3. Donation

Art. 2427. — *Definition.*

A donation is a contract whereby a person, the donor, gives some of his property or assumes an obligation with the intention of gratifying another person, the donee.

Art. 2428. — *Donation mortis causa.*

A donation to be carried into effect on the death of the donor shall be subject to the provisions regarding wills,

Art. 2429. — *Donation on the occasion of marriage.*

- (1) A donation made on the occasion of a marriage shall be subject to the provisions regarding ordinary donations.
- (2) It shall in no case be deemed to be done for consideration.
- (3) Nothing in this Article shall affect the special provision regarding a donation made on the occasion of a marriage (Art. 2457).

Art. 2430. — *Gratuitous services.*

The fact of rendering gratuitous services or enabling another to dispose of a thing free of charge shall not be deemed to constitute a donation.

Art. 2431. — *Renunciation.*

The fact of renouncing rights in an inheritance, refusing a legacy or failing to fulfil a condition on which the acquisition or preservation of a right depends shall not be deemed to constitute a donation.

Art. 2432. — *Natural obligations.*

A payment made in performing a moral obligation shall not be deemed to constitute a donation.

Art. 2433. — *Reward.*

A payment made in accordance with usage to reward services rendered to the donor or his family shall not be deemed to constitute a donation.

Art. 2434. — *Personal nature of donation.*

- (1) A donation is an act purely personal to the donor.
- (2) The authority given to make a donation shall be of no effect unless it specifies the property to be donated and the donee.

Art. 2435. — *Promise to make a donation.*

- (1) A promise to make a donation shall give rise to no obligation.
- (2) Where such promise is broken, the promisor shall refund the other party such expenses as may have been made in good faith on the basis of such promise.

Art. 2436. — *Acceptance by donee.*

- (1) A contract of donation shall not be complete until the donee has expressed his intention to accept the liberality.
- (2) Such acceptance shall not be valid where it is expressed after the death of the donor or his having become incapable.
- (3) A donation may be accepted on behalf of the donee by his legal representative but not by his heirs.

Art. 2437. — *Donor of unsound mind.*

A donation may not be invalidated on the ground that the donor was of unsound mind unless:

- (a) the donor was interdicted at the time of the donation and the donation was not regularly made by his tutor; or
- (b) an application for the interdiction of the donor was made during his life and the donor died before the application was decided on by the court; or
- (c) the insanity of the donor can be inferred from the terms of the contract of donation.

Art. 2438. — *Unlawful motive.*

- (1) A donation shall be null and void where it was exclusively or principally inspired by an immoral or unlawful motive.
- (2) No donation shall be null in such case unless the immoral or unlawful motive can be inferred from the contract of donation or other documents written by the donor.

Art. 2439. — *Undue influence.* — 1. *Reference to successions.*

- (1) The court may reduce or invalidate a donation on the same conditions as it may reduce or invalidate a testamentary provision (Art. 868-873).
- (2) An application for reduction or invalidation may be made notwithstanding that the donee is a relative by consanguinity or affinity or the spouse of the donor.
- (3) In cases of a donation made to a guardian or tutor, the age of the donor shall not be taken into account.

Art. 2440. — 2. *Donation in consideration of a dispute.*

An application for the invalidation of a donation may be made where such donation had as its purpose to cause the donee or some other person to use his influence or give his assistance for the settlement of a dispute affecting the interests of the donor or the spouse or a relative of the donor.

Art. 2441. — 3. *Application how made.*

- (1) An application for the reduction or invalidation of a donation shall, under pain of loss of right, be made within two years from the donation.
- (2) After the death of the donor, it may only be made by the persons who are authorised by law to require the invalidation of a testamentary provision on the ground of undue influence (Art. 874).

Art. 2442. — *Mistake or fraud.*

- (1) The heirs of the donor may not apply for the donation to be invalidated on the ground of a mistake committed by the donor except on the conditions on which they may apply for the invalidation of a testamentary provision on the ground of mistake (Art. 877).
- (2) The heirs of the donor may not apply for the donation to be invalidated on the ground of fraud.
- (3) The heirs may in any case continue proceedings for the invalidation of the donation on the ground of mistake or fraud which have been instituted by the donor during his life.

Art. 2443. — *Form.* — 1. *Immovables.*

A donation relating to an immovable or a right on an immovable shall be of no effect unless it is made in the form governing the making of a public will (Art. 881-883).

Art. 2444. — 2. *Corporeal chattels and bearer titles.*

- (1) Corporeal chattels and bearer titles may be donated by mere delivery.
- (2) They may also be donated in the form governing the donation of immovables.

Art. 2445. — 3. *Other rights and credits.*

- (1) Other rights and credits may be donated in the form governing their assignment for consideration.
- (2) A donation may be made by remitting the donee's debt.
- (3) It may also be made by naming the donee as beneficiary of a stipulation for a third party contained in a contract made between the donor and another person.

Art. 2446. — *Disguised donation.*

- (1) A donation may be made in the form of an act made for consideration.
- (2) The substantive rules governing donations shall apply to disguised donations.

Art. 2447. — *Proof of donation.*

- (1) Whosoever alleges that a donation has been made shall prove its existence.
- (2) The possession of corporeal chattels or bearer titles shall not be proof of the existence of a donation unless such possession is unequivocal.

Art. 2448. — *Revocation for ungratefulness. — 1. By the donor.*

- (1) Notwithstanding any provision to the contrary, a donation may be revoked on the ground of ungratefulness of the donee, where the donee has committed an act which would make him unworthy to succeed the donor.
- (2) The donation may not be revoked where the donor has forgiven the donee.
- (3) Notwithstanding any evidence to the contrary, such forgiveness shall be deemed to have been granted where the donor has not informed the donee of his intention to revoke the donation within one year from his becoming aware of the possible ground for revocation.

Art. 2449. — 2. *By the heirs of the donor.*

A donation may not be revoked by the heirs of the donor unless:

- (a) the donor, before his death, unequivocally informed the donee of his intention to revoke the donation; or
- (b) the donee has intentionally caused the death of the donor; or
- (c) the alleged act of ungratefulness occurred after the death of the donor; or
- (d) the donee prevented the donor from exercising his right of revocation.

Art. 2450. — *Birth of child.*

Unless otherwise provided in the contract of donation, a donation may not be revoked where a child is born to the donor.

Art. 2451. — *Object of donation.*

- (1) A donation may only relate to property belonging to the donor on the day of the donation.
- (2) A donation shall be of no effect to the extent that it relates to future property.

Art. 2452. — *Disputed property.*

A donation shall be null and void to the extent that it relates to property which, on the day of the donation, is the subject matter of a dispute.

Art. 2453. — *Usufruct reserved.*

The donor may reserve for himself the usufruct of property donated by him.

Art. 2454. — *Donation of periodical dues.*

Unless otherwise expressly provided, a donation relating to periodical dues shall lapse on the death of the donor.

Art. 2455. — *Conditions or charges.*

- (1) A donation may be made subject to a condition or charge.
- (2) The provisions of the Title of this Code relating to "Successions" which concern conditions or charges in respect of legacies shall apply to conditions and charges in respect of donations (Art. 916-923).

Art. 2456. — *Impossible or unlawful condition or charge.*

- (1) Where the donor has made the donation subject to a condition or charge which is impossible or contrary to law or morals, such condition or charge shall be deemed not to have been imposed.
- (2) The donation shall not be null and void in such case, notwithstanding that the condition or charge was essential to the donor.

Art. 2457. — *Donation on the occasion of marriage.*

- (1) A donation to a future spouse shall be subject to the condition that the marriage be celebrated.
- (2) So shall a donation made, on the occasion of a marriage, to the father, mother or other relatives of one of the future spouses.
- (3) The effect of the cancellation or dissolution of the marriage on such donation shall be as prescribed in the Title of this Code relating to "Family relationship" (Art. 684 and 689).

Art. 2458. — *Duty to maintain donor.*

- (1) Unless otherwise expressly provided, the donation shall be subject to a charge compelling the donee to supply maintenance to the donor, should the donor be in need.
- (2) The donor may in his discretion require maintenance from the donee or from other persons legally bound to supply him maintenance.
- (3) Such persons may claim from the donee, where they have supplied maintenance to the donor.

Art. 2459. — *Charge for the payment of debts.*

A charge compelling the donee to pay the debts of the donor shall not be valid unless it specifies the amount of the debts to be paid by the donee.

Art. 2460. — *Returning donated property.*

- (1) The donor may stipulate that property donated by him shall be returned to him, should the donee die before him.
- (2) Unless otherwise expressly provided, a stipulation for the return of property may not be enforced where the deceased donee has left descendants.

- (3) A stipulation for the return of property shall have the same effect as a provision prohibiting assignment and shall be subject to the same formalities.

Art. 2461. — *Substitution.*

- (1) The donor may stipulate that the donee shall keep the property donated and transmit it, on his death or on the expiry of a given period of time or on the fulfilment of a given condition, to one or more persons who shall substitute themselves for the donee.
- (2) Such stipulation shall be effective on the conditions and subject to the formalities laid down in this Code in respect of substitution made by will (Art. 929-934).

Art. 2462. — *Execution of charge.*

- (1) The donor may demand that the charge stipulated in the contract of donation be executed.
- (2) Execution may also be demanded by the person in whose favour the charge was stipulated, by the person appointed for this purpose by the donor or by the heirs of the donor.
- (3) The duty of the donee to execute the charge shall be restricted to the value of the property donated as on the day of the donation.

Art. 2463. — *Endowment and trust.*

The donee may constitute an endowment or trust in accordance with the provisions of the Title of this Code relating to "Bodies corporate and Property with a specific destination" (Art. 483-544).

Art. 2464. — *Cancellation for failure to execute charge.*

- (1) A donation may, on the application of any of the persons mentioned in Art. 2462, be cancelled on the ground that the donee has failed to execute the charge.
- (2) It may not be cancelled on the application of the heirs of the donor unless the donor made an express provision to this effect and regulated the effect of such cancellation.
- (3) The conditions on which a donation may be cancelled and the effect thereof shall be as prescribed by the Title of this Code relating to "Contracts in general" (Art. 1808-1818).

Art. 2465. — *Warranty against eviction.*

- (1) The donor shall warrant the donee against eviction where he has expressly given such warranty or eviction is due to his default or a fraud committed by him.

- (2) Such warranty shall be subject to the provisions of this Code regarding contracts of sale (Art. 2282-2286).
- (3) The donee who has been evicted may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the donation and as have not been compensated by the acquisition of the fruits of the property donated.

Art. 2466. — *Warranty against defects.*

- (1) The donor shall not warrant the donee against defects in the property donated unless he has expressly given such warranty or he has committed fraud.
- (2) Such warranty shall be subject to the provisions of this Code regarding contracts of sale (Art. 2287-2300).
- (3) The donee may, in accordance with such provisions, require to be refunded such expenses as have been caused to him by the defects and as have not been compensated by the acquisition of the fruits of the property donated.

Art. 2467. — *Actio pauliana.*

- (1) The creditors of the donor may apply for the cancellation of any donation made by him in fraud of their rights.
- (2) The provisions of the Title of this Code relating to "Contracts in general" shall apply in such case (Art. 1995-1999).

Art. 2468. — *Creditors for maintenance.* — 1. *Principle.*

Whosoever has a claim for maintenance against the estate of a deceased donor may, where such estate is insufficient, claim against any person who has received a donation from the deceased within three years before his death.

Art. 2469. — 2. *Value to be taken into account.*

- (1) The donee shall be liable to the extent of the value of the property donated to him.
- (2) Such value shall be assessed as on the day of the donation.
- (3) Where appropriate, the value of the charges to which the donation was made subject shall be deducted.

Art. 2470. — 3. *Plurality of donations.*

- (1) Where the deceased made several donations within three years before his death, each donee shall be liable to satisfy claims for maintenance in proportion to the value of the property donated to him.
- (2) The date on which each donation was made shall not be taken into account.

Chapter 4. Loan of money and other fungibles

Art. 2471. — *Definition.*

The loan of money and other fungibles is a contract whereby a party, the lender, undertakes to deliver to the other party, the borrower, a certain quantity of money or other fungible things and to transfer to him the ownership thereof on the condition that the borrower will return to him as much of the same kind and quality.

Art. 2472. — *Proof of loan.*

- (1) Where the sum lent exceeds five hundred Ethiopian dollars, the contract of loan may only be proved in writing or by a confession made or oath taken in court.
- (2) The contract of loan may not be proved by any other means.
- (3) The provisions of this Article shall apply as regards the manner of proving the repayment of any sum exceeding five hundred Ethiopian dollars.

Art. 2473. — *Relations between bankers and their clients.*

- (1) The provisions of Art. 2472 shall not apply to the relations between persons or companies mainly concerned with banking business and their clients.
- (2) The contract of loan or the repayment of the loan may in such cases be proved by witnesses or presumptions.

Art. 2474. — *Obligations of lender.*

- (1) The provisions of the Chapter on "Sale" concerning the obligations of the seller shall apply to the lender (Art. 2273-2302).
- (2) The obligations of the lender shall however be construed with less strictness where the loan is made gratuitously.
- (3) In such case, the lender shall only warrant such defects of the thing as are known to him.

Art. 2475. — *Insolvency of borrower.*

- (1) The lender may refuse to deliver the promised thing where the borrower has become insolvent since the making of the contract.
- (2) He may do so notwithstanding that the insolvency arose before the making of the contract where he has known it only after having contracted.

Art. 2476. — *Expenses and safe keeping of thing.*

- (1) The provisions of the Chapter on "Sale" concerning the obligations of the parties relative to expenses or to the safe keeping of the thing shall apply to the loan (Art. 2314-2322).

- (2) In this respect, the lender shall assume the obligations of the seller and the borrower, those of the buyer.

Art. 2477. — *Risks.*

- (1) The borrower shall become the owner of the thing lent.
(2) He shall bear the risk of its loss or deterioration from the moment of delivery.

Art. 2478. — *Interest.* — 1. *When due.*

The borrower shall not owe interest to the lender unless the payment of interest has been stipulated.

Art. 2479. — 2. *Rate of interest.*

- (1) The parties may not stipulate a rate of interest exceeding twelve per cent per annum.
(2) Where it has been agreed that the loan will bear interest but a higher rate has not been fixed in writing, the borrower shall owe interest at the rate of nine per cent per annum.
(3) The borrower shall also owe interest at the rate of nine per cent per annum where a rate exceeding twelve per cent per annum has been agreed in writing.

Art. 2480. — 3. *Exigibility.*

Unless otherwise agreed, interest shall be paid at the end of each year reckoned from the making of the contract.

Art. 2481. — *Compound interest.*

- (1) The parties may not agree in advance that interest will be added to capital and itself produce interest.
(2) Nothing shall affect the rules for the calculation of compound interest on current accounts.

Art. 2482. — *Time for restitution.* — 1. *Agreed time.*

- (1) The borrower shall return the things lent in the same quantity and quality at the time agreed.
(2) Where the loan does not bear interest, he may return them before the time agreed after having informed the lender of his intention to restore them to him.
(3) Notwithstanding any agreement to the contrary, the provisions of sub-art. (2) shall apply where a rate of interest exceeding twelve per cent has been fixed in writing.

Art. 2483. — 2. *Absence of agreed time.*

- (1) Where no time has been fixed, the borrower shall return the thing lent within one month from the day when the lender claims the restitution of them from him.
- (2) He may in the same circumstances return them to the lender one month after having informed the latter of his intention to restore them to him.

Art. 2484. — 3. *Special stipulation.*

Where it has been agreed that the borrower will repay when he can or when he has the means to do so, the court shall fix a time for payment, according to the circumstances, which cannot exceed six months.

Art. 2485. — *Object of restitution.* — 1. *Sum in Ethiopian dollars.*

- (1) Where the thing lent is a sum of money expressed in Ethiopian dollars, the borrower shall discharge his obligation by paying an equal numerical sum in notes or cash being legal tender on the day of payment.
- (2) No regard shall be had to variations in the purchasing power of this sum since the date of the loan.
- (3) No regard shall be had to any change which may have occurred in the definition of the Ethiopian dollar since the date of the loan.

Art. 2486. — 2. *Sum in foreign currency.*

- (1) Where the thing lent is a sum of money expressed in a foreign currency, the borrower shall discharge his obligation by paying a sum numerically equal to the same sum in foreign currency in notes or cash being legal tender on the day of payment in the country of this currency.
- (2) He may, if he prefers, free himself by paying the equivalent on the day of payment of this sum in Ethiopian dollars.

Art. 2487. — 3. *Commodities or ingots.*

- (1) Where the thing lent consists of ingots, wares or commodities, the borrower shall free himself by returning the same quantity and quality.
- (2) No regard shall be had to the variations in the price of such ingots, wares or commodities since the date of the loan.
- (3) Where it is impossible for the borrower to restore the thing or this restitution is very difficult for a reason beyond his control, the borrower shall free himself by paying the lender the value of the thing estimated on the day and at the place where the restitution should take place.

Art. 2488. — *Delay of borrower. — 1. Cancellation of contract.*

- (1) In the case of non-payment of interest, the creditor may not demand the repayment of the loan, unless the borrower is in arrears for two consecutive payments representing together at least one tenth of the capital lent.
- (2) The provisions of sub-art. (1) shall apply where it has been agreed that the capital lent shall be repaid by instalments.
- (3) Any provision to the contrary shall be of no effect.

Art. 2489. — *2. Damages.*

- (1) Where the borrower is late in returning the thing lent or in paying the interest due by him, he shall pay legal interest in accordance with the provisions of the Title of this Code relating to "Contracts in general" (Art. 1790-1805).
- (2) Any provision increasing the liability of the borrower shall be of no effect.

Chapter 5. Contract for periodical payments

Art. 2490. — *Definition.*

- (1) The contract for periodical payments is a contract whereby a party confers on the other the right to demand the periodical payment of a certain sum of money or of a certain quantity of fungible things in exchange for the alienation of a thing or the assignment of capital.
- (2) The stipulation for such payments may also be agreed on as counterpart of a liberality.

Art. 2491. — *Title evidencing the debt.*

- (1) The creditor may compel the debtor to supply him with a new title where nine years have elapsed since the date of the title which he possesses.
- (2) The new title shall be established at the expense of the creditor.

Art. 2492. — *Perpetual annuity and life annuity.*

The annuity may be set up in perpetuity or as a life annuity.

Art. 2493. — *Payment of arrears.*

- (1) Unless otherwise agreed, the arrears of annuities shall be paid at the end of each year calculated from the conclusion of the contract.
- (2) The parties may not agree in advance that unpaid arrears shall themselves bear interest,

Art. 2494. — *Reference to rules governing loans.*

The provisions of Chapter 4 of this Title shall in addition apply to the contract for periodical payments.

Art. 2495. — *Saving clause.*

Nothing shall affect the rules concerning Government loans or loans issued by other public collectivities.

Section 1. Perpetual Annuity

Art. 2496. — *Power of redemption. — 1. Principle.*

The annuity set up in perpetuity may be redeemed by the debtor notwithstanding any contrary stipulation.

Art. 2497. — *2. Possible limitations.*

- (1) The parties may however agree that the redemption shall not take place before the death of the creditor or the expiration of a period not to exceed ten years.
- (2) They may also agree that the redemption shall only take place after notice of one year given to the creditor.
- (3) Where longer periods of time have been agreed, the maximum periods provided in sub-art. (1) and (2) shall be substituted therefor.

Art. 2498. — *Obligation of redemption.*

The debtor of an annuity set up in perpetuity may be compelled to redeem it where:

- (a) he ceases to fulfil his obligations for two years; or
- (b) he fails to furnish the lender with the sureties promised by the contract or new sureties equivalent to those which have failed; or
- (c) the insolvency of the debtor is judicially established.

Art. 2499. — *Capital due in case of redemption.*

- (1) In the case of redemption of the annuity, the debtor shall pay the creditor a sum corresponding to the capitalisation of the annuity effected on the basis of the rate of the legal interest.
- (2) Any stipulation increasing the liability of the debtor in this respect shall be of no effect.

Section 2. Life Annuity

Art. 2500. — *Duration of the annuity. — 1. Life of a person.*

- (1) The life annuity may be set up on the life of the creditor, of the debtor or of a third party.

- (2) Unless otherwise agreed, it shall be deemed to be set up on the life of the creditor.

Art. 2501. — *2. Lives of several persons.*

- (1) The life annuity may be set up on the lives of several persons.
(2) It may also be stipulated to be revertible, on the death of the creditor, on to the life of another person.

Art. 2502. — *Case of nullity.*

- (1) The contract setting up a life annuity shall be of no effect where none of the persons on whose lives the annuity is set up is alive on the day of the making of the contract.
(2) The revertibility clause shall be of no effect unless the person on whose life the annuity is stipulated to be revertible is alive on the day of the making of the contract creating the annuity.

Art. 2503. — *Transmissibility.*

Unless otherwise agreed, the annuity set up on the life of the debtor or of a third party shall pass to the heirs of the creditor.

Art. 2504. — *Usurious rate of arrears.*

- (1) Where the life annuity is set up in exchange for payment of a capital sum, the arrears due by the debtor shall not exceed twenty per cent of this capital.
(2) They shall be at the rate of twelve per cent where a higher rate has not been fixed in writing or a rate exceeding twenty per cent has been fixed.

Art. 2505. — *Cancellation of contract.*

The person for whose benefit the life annuity has been set up may require the cancellation of the contract where the settler does not give him the sureties stipulated for its performance.

Art. 2506. — *Non-payment of arrears.*

- (1) Mere failure in the payment of arrears of the annuity shall be no ground for the person in whose favour it has been set up to require the repayment of the capital or to re-enter into the goods alienated by him.
(2) He may only seize and cause to be sold the goods of his debtor and to have ordered or agreed to the setting aside, out of the proceeds of sale, of a sum sufficient to secure the payment of the arrears.

Art. 2507. — *Absence of power of redemption.*

- (1) The debtor may not free himself of payment of the annuity by offering to repay the capital and by renouncing to claim the recovery of the arrears paid.
- (2) He shall pay the annuity during the whole life of the person or of the persons on whose life or lives the annuity has been set up, whatever the length of the life of these persons and however onerous the payment of the annuity may become.

Art. 2508. — *Risks.*

- (1) The life annuity shall accrue to the creditor in proportion to the number of days that the person on whose life it is set up has lived.
- (2) Where it has been agreed that it will be paid in advance, the arrears shall accrue from the day when the payment was to be made.

Art. 2509. — *Assignment and attachment.*

- (1) Unless otherwise agreed, the creditor may assign his rights.
- (2) He who sets up an annuity gratuitously in favour of a third party may stipulate at the time when he sets up the annuity that it cannot be seized by the creditors of such third party.

Art. 2510. — *Proof of claim.*

The creditor of a life annuity may only demand the arrears by proving his existence or that of the person on whose life it has been set up.

Art. 2511. — *Annuity due by virtue of insurance.*

Nothing shall affect the rules governing the contract of insurance, where the life annuity is due by virtue of a contract of insurance.

TITLE XVI

CONTRACTS FOR THE PERFORMANCE OF SERVICES

Chapter 1. Contract of employment in general

Art. 2512. — *Definition.*

A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him.

Art. 2513. — *Public servants and State employees.*

- (1) The provisions of this Chapter shall not apply to the relations of public authorities with public servants.

- (2) Unless otherwise provided in special laws, the provisions of this Chapter shall apply to contracts of employment concluded by industrial or commercial undertakings administered by the State or its administrative or technical departments.

Art. 2514. — *Special categories.*

Nothing shall affect the special provisions applicable to certain categories of employees having a particular legal status.

Section 1. Formation of contract

Art. 2515. — *Formation of contract.*

The formation of a contract of employment shall not be subject to any special formalities.

Art. 2516. — *Collective agreements. — 1. Principle.*

Employers or associations of employers, on the one hand, and trade unions of employees, on the other hand, may lay down, in collective agreements, the conditions which shall be included in all individual contracts of employment subject to the authority of such collective agreements.

Art. 2517. — *2. Conditions of validity and duration.*

- (1) The collective agreements mentioned in Art. 2516 shall not be valid unless made in writing and confirmed by the competent public authorities.
- (2) They may, notwithstanding any contrary stipulation, be determined at any time after the expiration of a year by giving six months notice.

Art. 2518. — *3. Effect.*

- (1) The terms of an individual contract of employment which are inconsistent with a collective agreement shall be of no effect unless they are more favourable to the employee.
- (2) The void terms of an individual contract of employment shall be supplemented by the terms laid down in the collective agreement.

Art. 2519. — *Standard agreements. — 1. Principle.*

- (1) The public authorities may draw up standard agreements for different kinds of contracts of employment.
- (2) Standard agreements thus drawn up shall not be valid unless they are duly published.

Art. 2520. — *2. Effect.*

- (1) Individual contracts of employment shall be deemed to be made in accordance with the terms of the standard agreements.

- (2) The parties may, in writing, depart from the terms of the standard agreements.

Art. 2521. — *Staff regulations of an undertaking.*

- (1) Staff regulations drawn up by the employer for his undertaking shall not bind the employee unless they are reduced to writing and notified to him before the commencement of his employment.
- (2) Any penalties inflicted by the employer on the employee, by virtue of these regulations, may be modified by the court where they are contrary to law or equity.

Art. 2522. — *Terms unfavourable to the employee.*

- (1) Terms in a contract of employment which are less favourable to the employee than the provisions of this Title shall not be valid unless they are expressly authorised by law.
- (2) They shall be made in writing or they shall be of no effect.

Section 2. Work of employee

Art. 2523. — *Personal character of the obligation.*

The employee shall personally carry out the work to be undertaken, unless the contract or circumstances require otherwise.

Art. 2524. — *Obligation of care.*

- (1) The employee shall carry out his work with care.
- (2) He shall be liable for any damage he intentionally causes his employer, or for his negligence or imprudence.
- (3) In order to assess the liability of the employee, regard shall be had to the nature of the work to be undertaken, the degree of training, the abilities and the qualities of the employee that the employer knew or should have known.

Art. 2525. — *Obedience at work.*

The employee shall obey the orders of the employer relating to the execution of the work where such orders are not contrary to the contract, the law or morals and obedience to them entails no danger.

Art. 2526. — *Work to be done.* — 1. *Principle.*

The employee shall perform the work for which he has been employed.

Art. 2527. — 2. *Change of work.*

- (1) Unless otherwise agreed, the employer may at any time, where the interest of the undertaking so requires, assign a different work to the employee, provided that this entails for the employee no reduction in his wages nor a substantial change in his rank.

- (2) Where the new work carries a wage higher than that for which the employee has been engaged, the employee shall be entitled to that wage.

Art. 2528. — 3. *Overtime.*

- (1) The employer may require the employee to do more work than has been agreed in the contract.
- (2) The employee shall undertake this extra work where he is able to do so and his refusal would be contrary to good faith.
- (3) The employee shall be entitled to an additional remuneration for this extra work, which shall be fixed having regard to the agreed wage and to all circumstances of the case.

Art. 2529. — 4. *Piece work or contract work.*

- (1) The employee who is paid at piece-rates or for the contract may require the employer who engages him to give him an adequate amount of work for the duration of the contract.
- (2) Where there is no piece work or contract work available, the employer may employ the employee by the hour or the day.

Art. 2530. — *Tools and materials.* — 1. *Supply.*

- (1) Unless the contrary is agreed or customary, the employer shall provide the employee with the tools and materials necessary for his work.
- (2) Where the employee provides them himself in whole or in part without being compelled to do so, the employer shall compensate him for them.

Art. 2531. — 2. *Obligation of care.*

The employee shall preserve with care the things entrusted to him for the execution of his work.

Art. 2532. — *Inventions of the employee.*

- (1) Inventions made by the employee shall belong to him notwithstanding that they have been made during the work done by him in the service of his employer.
- (2) They shall however belong to the employer where the employee has been expressly engaged for making researches or inventions.

Art. 2533. — *Information concerning the undertaking.*

- (1) The employee shall, even after the termination of the contract of employment, keep the secrets of the employer of which he has learnt in the course of his work.

- (2) He may not make use, to the detriment of his employer, of information he has obtained in the course of his work.

Section 3. Wages due to employee

Art. 2534. — *Right to wages.*

Any work shall be deemed to be done in consideration of wages, unless it is the custom that the work should be done without payment or the work falls within the professional duties of the person who carries it out.

Art. 2535. — *Amount of wages.*

- (1) The employee shall be entitled to the wages which have been agreed or result from collective agreements or standard agreements binding the employer.
- (2) Failing such stipulations, the amount of wages shall be fixed in accordance with the custom of the occupation or the custom of the place where the work is performed.
- (3) In the absence of custom, it shall be fixed by the court in accordance with equity.

Art. 2536. — *Method of fixing wages.*

- (1) Wages may be fixed for a given period of time, such as an hour, a day, a week, a fortnight, a month or a year.
- (2) They may also consist of a lump sum or be calculated at piece-rates or on the contract for work done, according to the work that the employee delivers to the employer.

Art. 2537. — *Share in the profits.*

- (1) Wages may consist, in whole or in part, of a share in the profits made by the employer, or a percentage of the turnover of the employer, or a percentage of the turnover of the undertaking, or a part of the gains realized by the undertaking, or other remuneration of the same kind.
- (2) In this case, the employer shall provide the employee, after each assessment, with an account of what he owes him.
- (3) The employee may demand that the account so provided be verified by a third party appointed by agreement between the parties or, failing such agreement, by the court.

Art. 2538. — *Tips.*

Wages may consist, in whole or in part, of the tips given by the customers to the employee or collected, on behalf of his employees, by the employer.

Art. 2539. — *Date of payment.*

- (1) Wages shall be paid to the employees doing work of a physical nature at the end of each calendar fortnight or at the end of such shorter period as may be fixed in the contract.
- (2) Wages shall be paid to office or shop employees at the end of each month or at the end of such shorter period as may be fixed in the contract.
- (3) Wages shall in any case be paid where the contract of employment comes to an end.

Art. 2540. — *Termination of work.*

Without prejudice to the provisions of Art. 2541-2543, the employee shall not be entitled to wages for days on which he has not worked.

Art. 2541. — *Absence from work.*

- (1) The employee shall be entitled to his wages, even where he has done no work, where this is due to the fact that the employer has not given him work or has prevented him from working.
- (2) The employer may deduct from the wages the savings which the employee has made by not doing his work and the profits that the employee has gained in carrying out some other work.
- (3) Where absence from work is not due to his fault, the employer may also deduct from the wages the profits which the employee could have made, acting in good faith, in carrying out some other work.

Art. 2542. — *Employee's sickness. — 1. Principle.*

- (1) The employee shall be entitled to half his wages where, after having worked for at least three months, he is prevented from working by reason of sickness not intentionally contracted.
- (2) The right to wages shall cease at the end of one month where the employee has worked for his employer during one year or more before ceasing his work, and at the end of a fortnight in other cases.
- (3) The employer may deduct from what is due the sums which, under a scheme of compulsory national insurance, are paid to the employee on account of the cessation of his work.

Art. 2543. — *2. Piece-rates and tips.*

- (1) Where wages are paid for piece work or contract work, regard shall be had, in applying Art. 2542, to the average wages paid to employees who, in the undertaking, are doing the same work as the employee absent through sickness.

- (2) Regard shall be had also to the average wages paid to the sick employee in the month preceding his cessation of work.
- (3) Where all or part of the wages consist of tips, regard shall only be had to tips which are collected on behalf of his employees by the employer, or which are subject in some other way to rules which permit him to control them.

Art. 2544. — *Attachment or assignment of wages.*

- (1) The wages of an employee may not be attached by his creditors except on the conditions laid down in the code of civil procedure.
- (2) They may not be assigned by the employee to a third party, except on the same conditions.

Art. 2545. — *Advance on wages.*

- (1) The employer shall grant advances to an employee in need according to the work which has already been done, where the employer can do so without detriment to himself.
- (2) He may not grant an advance to the employee for work which has not yet been done unless the wages of the employee may be transferred by him.

Art. 2546. — *Set-off.*

- (1) The employer may not set-off the employee's wages unless they may be transferred.
- (2) They may, however, be set-off against compensation due from the employee by reason of damage that he has intentionally caused his employer.

Art. 2547. — *Deductions from wages.*

- (1) Where it has been agreed that deductions may be made from the wages, such deductions shall, unless otherwise agreed, be deemed to be made for the sole purpose of compensating the employer for future damage which the employee may cause him.
- (2) Such deductions shall not be allowed unless the wages may be transferred.
- (3) They shall bear interest from the day on which they are made.

Section 4. Safety precautions to be taken by the employer

Art. 2548. — *Principle.*

- (1) The employer shall take such measures as are required by the special circumstances of the work to safeguard the life, physical integrity, health and moral standing of the employee.

- (2) He shall in particular arrange the premises and keep up the equipment in his undertaking with this object in view, in accordance with the general practice and technical requirements.

Art. 2549. — *Accidents arising from work.*

The employer shall be liable for accidents which the employee suffers arising from his work.

Art. 2550. — *Assimilated cases.*

The employer shall be liable for accidents which the employee suffers arising from activities which he performs in the interests of the undertaking, notwithstanding that these activities have not been ordered by the employer.

Art. 2551. — *Accidents at the time and place of work.*

- (1) Where the employee performs his work on the premises or at the place assigned to him by the contract of employment, the employer shall be liable for the accidents which the employee suffers during the time and at the place where he works.
- (2) Rest periods belonging to the work shall be regarded as part of the work-time.
- (3) Premises placed by the employer at the disposal of the employee during these rest periods shall be regarded as part of the work place.

Art. 2552. — *Professional diseases.*

- (1) The employer shall be liable for diseases which the employee contracts arising from his work.
- (2) Administrative regulations for the different industries shall specify what diseases shall, notwithstanding any proof to the contrary, be deemed to have been contracted arising from work.
- (3) The employee may at any time claim that he has contracted a disease arising from his work, which is not included in any list.

Art. 2553. — *Non-liability of employer. — 1. Fault of employee.*

- (1) The employer shall be relieved of his liability under the preceding Articles where he proves that the accident or disease is due to the intentional act of the victim.
- (2) He shall also be relieved of liability where he proves that the accident or disease has happened because the employee has contravened a regulation to which his attention had been especially drawn in writing.

Art. 2554. — 2. *Absence of relationship with work.*

The employer shall not be liable where he proves that the accident has no connection with the work of the employee nor with the contract of employment with which it is associated.

Art. 2555. — 3. *Other causes.*

The employer shall not be relieved of his liability for any other cause.

Art. 2556. — *Scope of liability.* — 1. *Medical and other expenses.*

- (1) The employer shall meet all the medical, pharmaceutical, hospital, and other expenses which the accident or the disease necessitates for the employee and which the latter reasonably incurs.
- (2) He shall on the same conditions, meet the funeral expenses, where the employee dies because of the accident or the disease.

Art. 2557. — 2. *Apportionment of wages.*

- (1) The employer shall, during a period of a year, pay to the employee 75% of his wages from the moment when the employee has had to cease work, where the employee is prevented from working because of the accident or the disease.
- (2) The amount due from the employer shall be increased by 5% for each year that the employee has given to the service of the employer, provided the wages of the employee are not exceeded.
- (3) This amount may however not exceed five hundred Ethiopian Dollars per month.

Art. 2558. — 3. *Obligation of maintenance.*

- (1) After the expiry of the period laid down in Article 2557 and where the employee is permanently deprived, by reason of the accident or the disease, of half or more than half of his capacity to work, the employer shall maintain the employee and his children who are under age.
- (2) Such obligation shall not bind the employer unless the employee cannot obtain maintenance from members of his family.
- (3) It shall be governed by the provisions of the Book of this Code relating to "Family Relationship" (Art. 807-825).

Art. 2559. — 4. *Serious offences or fraud of the employer.*

- (1) Where the accident or disease of the employee is caused by an intentional act or the recklessness of the employer, the provisions of Art. 2557 and 2558 shall not apply.
- (2) The employee, his family and his heirs may in such case claim compensation for the damage which they have suffered in accordance

with the provisions of the Chapter of this Code relating to "Extra-contractual Liability" (Art. 2027-2161).

- (3) There shall be a serious offence where the employer makes a mistake or commits an act of imprudence or negligence such that it can only be explained by the stupidity, recklessness or indifference to the life or health of his employees.

Section 5. Holidays due to the employee

Art. 2560. — *Usual hours and days.*

The employer shall grant the employee the usual hours and days of rest.

Art. 2561. — *Annual leave.*

Where the employer uses the whole or main time of the employee, he shall grant the employee a period of annual leave during which time he shall pay him his wages.

Art. 2562. — *Duration of leave.*

- (1) The duration of the leave shall be ten consecutive days where the employee has been in the service of the employer for one to five years.
- (2) It shall be fifteen consecutive days where the employee has been in the service of the employer for five to fifteen years.
- (3) It shall be twenty consecutive days where the employee has been in the service of the employer for more than fifteen years.

Art. 2563. — *Termination of contract.*

Where the contract of employment comes to an end, the employee shall be entitled to his leave for a number of days proportionate to the time that he has worked during the year for the employer.

Art. 2564. — *Days to be deducted.*

- (1) The employer shall deduct from the leave the days that have been taken during the year, at the request or on the initiative of the employee, in advance of his annual leave.
- (2) He may not deduct the days that the employee has not worked for some other reason.

Art. 2565. — *When leave is to be taken.*

- (1) The leave shall be granted at the time of the year which is most convenient.
- (2) Regard shall be had to the nature of the work and the mutual interests of the employee and the employer shall as far as possible be reconciled.

- (3) The employee shall receive notice at least a month in advance of the time when his leave shall be taken.

Art. 2566. — *Maternity leave.*

- (1) An employee who expects a child shall be entitled to one month's leave during the period of her confinement.
- (2) The employer shall pay half her salary, during this leave.

Section 6. Termination of the contract

Art. 2567. — *Contracts of fixed duration.*

- (1) A contract of employment made for a fixed period shall expire at the end of the agreed term.
- (2) A contract concluded for the carrying out of a definite piece of work shall expire when the agreed work has been accomplished.
- (3) Unless otherwise agreed, no notice shall be required to terminate the contract.

Art. 2568. — *Maximum duration of contract.*

- (1) No person may commit his services for more than five years.
- (2) A contract of employment made for the life of one of the parties or for a period exceeding five years shall bind the parties for five years only.
- (3) Beyond this period, either party may terminate the contract by giving six months notice.

Art. 2569. — *Renewal of contract.*

A contract of employment made for a fixed period shall be deemed to be renewed for an indefinite time where, after the elapsing of the agreed term, the employee continues his work without the employer objecting thereto.

Art. 2570. — *Contract of indefinite duration.*

- (1) Where the duration of a contract has not been fixed and does not result either from the nature of the work to be done or from any other circumstance, either party may at any time terminate the contract.
- (2) The exercise of the right to terminate the contract shall be subject to prior notice being given by the employer or employee.

Art. 2571. — *Period of notice.*

- (1) Prior notice shall be given at least seven days in advance and shall not be effective until the day on which the next payment of salary falls due.

- (2) Where the contract of employment has lasted for more than a year, prior notice shall be given at least two months in advance and become effective at the end of a month.
- (3) The employer need not give prior notice to the employee where he pays him immediately his wages for the periods laid down in sub-art. (1) and (2).

Art. 2572. — *Reason for termination of a contract.*

The employer shall inform the employee in writing, where the latter so requires, of the reason for terminating a contract of employment of indefinite duration or not renewing a contract of employment for a fixed period.

Art. 2573. — *Compensation for dismissal.*

The employee shall be entitled to fair compensation where the employer terminates a contract or refuses to renew it without good cause justifying fully this decision.

Art. 2574. — *Amount of compensation.*

- (1) In fixing the amount of compensation, the court shall take into consideration the nature and duration of the services of the employee, the seriousness of the faults with which he may have been charged, the financial position of the undertaking and any other circumstances it thinks fit.
- (2) The compensation shall not exceed the wages paid during the last six months to the employee.

Art. 2575. — *Good cause.*

- (1) There shall be good cause for the decision of the employer where, in the circumstances, it would not be reasonable to expect the contract to be extended or renewed, having regard to the nature of the work.
- (2) There shall also be good cause where the employee does not show in carrying out his work, the technical knowledge, conscientiousness, reliability or speed which could reasonably be expected of him.
- (3) There shall also be good cause where the situation filled by the employee is abolished in good faith.

Art. 2576. — *Where the employee terminates the contract.*

- (1) Compensation for dismissal may be paid to the employee, even when the termination of the contract has not been the act of the employer, where the latter, by his manoeuvres, has compelled the employee apparently to put himself an end to it.

- (2) This shall be the case in particular where the employer has dealt unjustly with the employee or substantially or repeatedly violated the provisions of the contract.

Art. 2577. — *Services of trust.*

- (1) Where the contract of employment relates to confidential matters which require special qualifications, the employer need not reveal the reasons for which he has terminated or not renewed the contract.
- (2) In such case, the termination of the contract shall not give rise to a claim for damages, unless it is proved that it has been purposely done with a view to injuring the other party or without due consideration of the loss which it will cause him.

Art. 2578. — *Cancellation of contract.* — 1. *Principle.*

The employer or the employee may, without prior notice, immediately cancel the contract of employment where there exists good cause for cancellation.

Art. 2579. — 2. *Non-performance of obligations.*

Non-performance, by one party, of his obligations under the contract shall not constitute good cause for its cancellation unless it is sufficiently serious in character, having regard to the circumstances and usages.

Art. 2580. — 3. *Involuntary termination of the work.*

Where an employee is prevented from working by reason of sickness or some other cause, this shall not constitute for the employer good cause for cancellation where it has not been due to the fault of the employee.

Art. 2581. — 4. *Strike.*

- (1) The participation of the employee in a strike shall constitute for the employer good cause for cancellation where the strike has been instigated with the sole purpose of injuring the employer or has been declared unlawful by law or the public authorities.
- (2) It shall in no other case constitute good cause for cancellation.

Art. 2582. — 5. *Bankruptcy or insolvency of employer.*

Where the employer is bankrupt or insolvent, the employee may not cancel the contract unless the security he has requested to guarantee his wages has not been given to him within a reasonable time.

Art. 2583. — *Obligation to compensate.* — 1. *Unfair cancellation.*

Where the contract is cancelled in an unfair manner by one of the parties, this party shall make good the loss suffered by the other party by reason of the unfair breaking of the contract.

Art. 2584. — 2. *Justified cancellation.*

Where the good cause for which the contract is cancelled by one party involves a violation of the contract or is related to such violation, the party who has failed in his duties shall make good the loss suffered by the other party by the termination of the contract.

Art. 2585. — *Death of employee.*

- (1) A contract of employment shall terminate on the death of the employee.
- (2) The heirs of the employee shall not incur, by reason of the contract, any personal obligation.

Art. 2586. — *Death of employer.*

- (1) A contract of employment shall not terminate on the death of the employer, unless his person has been a material element in making it.
- (2) Where a contract of employment terminates by the death of the employer, the employee shall be entitled to his wages after the death, as though he had received on that day prior notice of termination of a contract of service of indefinite duration.

Art. 2587. — *Transfer of undertaking.*

- (1) Where the employer transfers his undertaking, the contracts of employment made by him shall continue between his employees and the purchaser of the undertaking.
- (2) The employees shall keep the seniority rights that they have acquired before the transfer of the undertaking.
- (3) The purchaser shall be jointly liable with the transferor to pay all sums which are due to an employee at the time of the transfer in connection with his work, including sums due by reason of the termination of the contract by the transferor, on condition that the purchaser has been informed at the time of the transfer that these sums were due, or that they are shown to be due to the employee in the books of the undertaking or his work-book.

Art. 2588. — *Providing certificate of work.*

- (1) The employee may demand at the end of his contract that the employer shall give him a certificate showing only the nature of his work and the length of his service, as well as the name and address of the employer.
- (2) The certificate shall not include a testimonial concerning the quality of the work done or the conduct of the employee, unless the employee expressly requires his employer to give this testimonial.

Art. 2589. — Provisions for restraint of trade. — 1. Principle.

- (1) Where the work given to the employee enables him to meet the clients of the employer or enter into the secrets of his business, the parties may provide that the employee shall not, after the termination of the contract, enter into competitive business with his employer or engage in any way whatsoever in an undertaking which would compete with the employer.
- (2) Such provision shall be of no effect unless it is express and made in writing.

Art. 2590. — 2. Restriction.

- (1) Provisions under Art. 2589 shall not be valid unless they are necessary for the protection of the legitimate interests of the employer and do not impede, in an inequitable manner, the economic future of the employee.
- (2) They shall not be valid, in particular, unless they are limited as to time, place and business forbidden to the employee.

Art. 2591. — 3. Penalties.

- (1) Whosoever infringes a provision made under Art. 2589 shall be liable for the damage resulting from such infringement.
- (2) Where the provision contains a penalty, the employee may, unless otherwise stipulated, discharge his obligation by paying the employer the amount of the penalty fixed.
- (3) Provided it is expressly agreed in writing, the employer may, in addition to damages, obtain an injunction restraining the contravention, where such action is justified by the importance of the interests which are injured or threatened by the conduct of the employee.

Art. 2592. — 4. Lapsing of provision.

- (1) A provision under Art. 2589 shall lapse where it is proved that the employer has no material interest in its maintenance.
- (2) The employer may not avail himself of such provision where he has cancelled the contract of employment or refused to renew it, without the employee having given him good cause so to do.
- (3) Nor may he avail himself thereof where he has himself given to the employee good cause for cancelling the contract.

Art. 2593. — Receipt in final discharge.

- (1) A receipt in final discharge, signed by the employee, shall only relate to wages due from the employer.

- (2) Other amounts that may be due to the employee from the employer shall not be regarded as settled unless they are the subject of special receipts acknowledging their payment or the employee has signed in respect of such amounts a document renouncing his right to them.

Chapter 2. Contracts of particular kinds of work

Section 1. Contracts of apprenticeship

Art. 2594. — *Training of apprentice by employer.*

- (1) The employer bound by a contract of apprenticeship shall undertake to give all his attention to the professional training of the apprentice.
- (2) The employee may only be employed on work connected with the particular occupation specified in the contract.

Art. 2595. — *Attendance at schools.*

- (1) The employer shall ensure that the apprentice attend compulsory schools.
- (2) He shall grant him the necessary time to attend the schools and professional courses and to sit for apprenticeship examinations.

Art. 2596. — *Prohibited work.*

Except where it is justified by the circumstances, the apprentice may not be employed on night work or on Sundays.

Art. 2597. — *Reference to provisions regarding contracts of employment.*

The provisions regarding contracts of employment shall apply to contracts of apprenticeship.

Section 2. Contracts with a trial period

Art. 2598. — *Trial engagements.*

- (1) The employee may be engaged on trial.
- (2) Unless otherwise provided in writing, the employee engaged on trial shall be regarded as having been employed for an indefinite period.

Art. 2599. — *Presumption.*

In a contract of employment made with domestic servants, the first two weeks shall be regarded as a trial period, unless otherwise agreed.

Art. 2600. — *Termination of a trial contract.*

- (1) During the trial period, either party may terminate the contract without being required to give notice or to pay compensation.

- (2) Where the trial is fixed for a minimum time, the right to terminate the contract may however not be exercised before that minimum time has elapsed.

Section 3. Contracts of domestic servants living in

Art. 2601. — *Health and moral well-being of servant.*

Where the employee lives with the employer's family, the latter shall in regard to living-quarters, food, times of work and rest, take all reasonable steps to safeguard the health and moral well-being of the employee.

Art. 2602. — *Obligation to look after the employee. — 1. Principle.*

- (1) Where an employee who is living with the family of the employer and being fed by the latter falls sick, the employer shall, during the currency of the contract, provide any care which the illness of the employee requires, either by way of medical attendance at his house or by sending the servant to hospital.
- (2) Such obligation shall be limited to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract.
- (3) The employer may set off any expenses which he thus incurs against the wages that become due during the period of illness.

Art. 2603. — *2. Saving clauses.*

- (1) The employer shall be relieved of the obligations laid down in Art. 2602 where the illness has been intentionally contracted by the employee.
- (2) The employer shall also be relieved where the employee goes into hospital under a scheme of compulsory health insurance.
- (3) The employer may not relieve himself of the obligations laid down in Art. 2602 by terminating the contract on the ground of the illness of his employee.

Art. 2604. — *Payment of wages.*

- (1) Unless the contract of employment provides for a shorter term, the wages of the employee living in with the employer shall be paid every three months, with the expiry of the term.
- (2) The wages shall in any case be paid where the contract terminates.

Section 4. Contract for agricultural work

Art. 2605. — *Principle.*

- (1) Contracts for the performance of agricultural work shall be subject to the provisions of this Chapter, in particular, where appropriate, to those of Section 3 above.
- (2) Nothing shall affect the provisions of the following Articles.

Art. 2606. — *Contract for undefined period of time.*

- (1) A contract made for an undefined period of time may not be terminated by the employer except on giving three months notice.
- (2) The period fixed in sub-art. (1) shall be increased by one month for each year spent by the employee in the service of the employer or which the employee spent, during his minority, in the undertaking of the employer.
- (3) The termination of the contract shall only become effective on the first of Megabit following the day of termination.

Art. 2607. — *Employer bound to supply maintenance.*

- (1) The employer shall supply maintenance to an employee having worked for ten years in a given undertaking.
- (2) Without prejudice to the provisions of the following Articles, the obligation to supply maintenance shall be subject to the provisions of the Title of this Code relating to "Family Relationship" (Art. 807-825).

Art. 2608. — *Subsidiary nature of obligation.*

- (1) The employee may not claim maintenance to the detriment of persons bound to the employer by consanguinity or affinity to whom the employer supplies maintenance.
- (2) Where persons bound to the employee by consanguinity or affinity are compelled or able to supply him maintenance, the employee may not claim maintenance from the employer.

Art. 2609. — *Time limit.*

The employer shall not supply maintenance for more than two years after the contract came to an end.

Chapter 3. Contract of work and labour

Art. 2610. — *Definition.*

A contract of work and labour is a contract whereby one party, the contractor, undertakes to produce a given result, under his own responsibility, in consideration of a remuneration that the other party, the client, undertakes to pay him.

Art. 2611. — *Building undertakings.*

- (1) The provisions applicable to contracts of work and labour relating to an immovable are laid down in the Title of this Code regarding "Contracts relating to Immovables" (Art. 3019-3040).
- (2) The provisions of this Chapter shall however apply where the total cost of the building to be done does not exceed five hundred Ethiopian dollars.

Art. 2612. — *Implied acceptance.*

- (1) Where a person has publicly offered to execute a certain task or where the carrying out of this task is within his professional duties, a contract of work and labour shall be formed where such person, having received an offer, does not immediately refuse to carry out the task which has been ordered.
- (2) The same shall apply where a person is appointed by the public authorities to carry out a certain task and does not immediately refuse to do so.

Art. 2613. — *Materials and tools.*

- (1) The contractor shall provide at his own expense the materials and tools necessary for the carrying out of the task.
- (2) It may however be stipulated that he shall only provide his services and that the materials or the tools shall be provided by the client.

Art. 2614. — *Materials provided by contractor.*

- (1) The contractor shall be liable for the good quality of the materials provided by him.
- (2) He shall give the same warranties as a seller.
- (3) There shall be a contract of sale and not a contract of work and labour where the work which a party undertakes to do has a character of secondary importance in relation to the value of the things which such party provides.

Art. 2615. — *Materials provided by client.*

- (1) Where the materials are provided by the client, the contractor shall use them with care.
- (2) He shall render an account to the client of the use which he has made of them and restore to him what remains after the execution of the work.
- (3) Where the materials provided to him by the client are defective, the contractor shall immediately give notice thereof to the client.

Art. 2616. — *Independence of contractor.*

- (1) The contractor shall carry out his task as he wishes and shall comply with the rules of his profession.
- (2) He shall not be bound to comply with the orders of the client, except in so far as he has agreed, at the time of the contract, to comply therewith.

Art. 2617. — *Personal execution of work.*

The contractor shall carry out the task in person unless, considering the nature of the work ordered, his personal capacities are not of importance to the client.

Art. 2618. — *Delay in execution of work.*

- (1) Where the contractor delays the carrying out of his task so that it becomes evident that he cannot accomplish it in the time fixed in the contract, the client may fix him a reasonable time limit to begin the execution of the task.
- (2) Where the contractor, after this time limit, has not begun the task or has interrupted it in bad faith, the client may cancel the contract without waiting for the expiry of the period laid down for the completion of the task.
- (3) Where appropriate, the client may also claim, in such a case, damages from the contractor.

Art. 2619. — *Where no time limit has been fixed.*

- (1) Where no time limit has been fixed in the contract, the contractor shall immediately begin the execution of his task and complete it within a reasonable time in accordance with custom.
- (2) The provisions of Art. 2618 shall apply where the contractor does not immediately begin the carrying out of his task or where he interrupts it.

Art. 2620. — *Defective execution of the task.*

- (1) Where it appears, during the currency of the contract, that the task is being carried out in a defective manner or contrary to the contract, the client may fix a reasonable time limit for the contractor to put right the fault.
- (2) Where the contractor does not put the matter right within this time limit, in accordance with the rules of his profession and the contract, the client may cancel the contract without awaiting, in order to assert his rights, the term provided for the completion of the task.
- (3) He may in addition claim damages from the contractor, where appropriate.

Art. 2621. — *Putting work at client's disposal.*

- (1) Where the contractor has finished his task, he shall put the result at the disposal of the client at the place fixed in the contract or, in the absence of such a place, at the place where the contractor has his undertaking or residence.
- (2) The client shall take over the work immediately in accordance with business practice.

Art. 2622. — *Warranty against defects.*

- (1) The contractor shall guarantee to the client that the work conforms to the contract and is not defective.
- (2) The provisions of the Chapter of this Code relating to "Sale" shall apply to the warranty given by the contractor to the client (Art. 2287-2300, 2332, 2344-2346).

Art. 2623. — *Time for payment.*

- (1) The price shall be paid to the contractor where the work has been completed and has been accepted by the client.
- (2) Where partial deliveries and payments have been agreed, the price attaching to each part of the work shall be paid at the time of the delivery and acceptance of that part.

Art. 2624. — *Price fixed in advance.*

- (1) Where the price has been fixed in advance, the client shall pay that price.
- (2) The contractor may not claim an increase on the ground that the work has required more effort or expense than had been foreseen.
- (3) The client may not claim a reduction on the ground that the work has required less effort or expense than had been foreseen.

Art. 2625. — *Changes in the agreed work.*

- (1) The price fixed in advance for the work shall remain the same notwithstanding that changes have been made by a new agreement between the parties in the conditions under which the execution of the work was originally to have been carried out.
- (2) Such changes shall not give rise to an increase or decrease in price unless such has been agreed.

Art. 2626. — *Price not fixed in advance.*

- (1) Where the price has not been fixed by the contract, it shall be fixed by the contractor in accordance with professional rates and usages.

- (2) In the absence of professional rates and usages, it shall be fixed by reference to the value of the materials provided by the contractor, the work normally necessary to carry it out and the expenses of the contractor.

Art. 2627. — *Price fixed approximately.*

Where a price has been fixed approximately on the making of the contract, the actual price may not exceed by more than twenty per cent the approximation thus made.

Art. 2628. — *Right of retention.*

- (1) The contractor shall have, as a guarantee of the obligations that the client owes him under the contract, a right of retention over such movable goods belonging to the client as he has made or repaired and as are in his possession.
- (2) Where the things which the client has entrusted to him belong to a third party, the contractor may set up his right of retention against such third party, unless he knew or should have known that the things were entrusted to him without the knowledge or against the will of the third party.

Art. 2629. — *Risks.*

- (1) Where the materials necessary to the execution of the work have perished by force majeure, their loss shall be borne by the party who has provided them.
- (2) The provisions of the Chapter of this Code relating to "Sale" shall apply as regards the transfer of risks (Art. 2323-2328).

Art. 2630. — *Death of contractor.*

- (1) Where the contractor dies or is prevented by force majeure from completing the work, the contract shall terminate where it had been made on the basis of the personal capacities of the contractor.
- (2) The client shall accept such parts already executed of the work as he can use and shall pay the price for them.
- (3) He may demand that the materials and plans prepared for carrying out the work be delivered to him against fair payment.

Art. 2631. — *Unilateral termination of the contract.*

- (1) The client may at any time terminate the contract.
- (2) The contractor shall in this case be entitled to the price that had been fixed.

- (3) From this price, there shall however be deducted savings made by the contractor in consequence of the termination of the contract and any advantages that he may have gained by employing his work elsewhere or that he may have failed thus to gain by reason of his bad faith.

Chapter 4. Hiring of intellectual work

Art. 2632. — *Provisions applicable.*

- (1) A contract relating to the performance of services of an intellectual character shall be subject to the provisions of the following Articles.
- (2) The provisions of the preceding Chapter shall also apply in so far as they are consistent with these provisions and the relationship involved (Art. 2610-2631).
- (3) Nothing shall affect the provisions of special laws relating to the exercise of certain professions.

Art. 2633. — *Personal nature of obligation.*

- (1) Whosoever hires out his work shall carry out his obligations personally.
- (2) He may however employ assistants, under his control and on his own responsibility, where such collaboration is allowed by the contract or usual practice and is not incompatible with the object of the contract.

Art. 2634. — *Advances by client.*

- (1) The client shall make an advance payment to the other contracting party for the expenses necessary to carry out the work.
- (2) He shall also grant him, where it is the practice, instalments on his remuneration.

Art. 2635. — *Excessive payment.*

The remuneration agreed between the parties may be reduced by the court where it is so excessive as to be contrary to the etiquette of the profession of the person hiring out his work.

Art. 2636. — *Required care and responsibility.*

- (1) Whosoever hires out his work shall undertake to carry it out in the best interest of his client, conscientiously and in conformity with the practice and rules of his profession.
- (2) He shall not be liable to his client, unless he commits an error, having regard to the rules of his profession.

- (3) The error may consist in an omission or an act detrimental to his client.

Art. 2637. — *Termination of contract. — 1. By the client.*

- (1) The client may at any time terminate the contract.
(2) He shall in this case compensate the other party for his expenses and pay him a fair remuneration for the work that he has completed.

Art. 2638. — *2. By the other party.*

- (1) Whosoever hires out his work may terminate the contract at any time.
(2) He shall in such case return to the client any advances that he has received on account of his remuneration and expenses.
(3) The termination of the contract shall be effected, under pain of damages, in such a way that the client will suffer the least possible prejudice thereby.

Chapter 5. Medical or hospital contracts

Art. 2639. — *Definition of medical contract.*

A medical contract is a contract whereby a physician undertakes to provide a person with medical care and to do his best to maintain him in good health or cure him, in consideration of payment of a fee.

Art. 2640. — *Medical profession.*

The rules relating to a medical contract shall apply to surgeons, dentists, psychiatrists, radiologists, midwives, nurses and other persons following similar professions concerned with the medical art.

Art. 2641. — *Definition of contract of hospitalization.*

A contract of hospitalization is a contract whereby a medical institution undertakes to provide a person with medical care from one or several physicians, in connection with a given illness.

Art. 2642. — *Formation of contract.*

- (1) The contract may be made directly between the person in need of medical care and the physician or the medical institution.
(2) It may also be made with the physician or medical institution by a third party, on behalf of the person in need of treatment.

Art. 2643. — *Obligation of patient.*

Where a contract has been made on his behalf by a third party, the patient shall pay the fees of the physician or the medical institution where:

- (a) the person who has made the contract on the patient's behalf is his father, mother or some other person bound by law or a contract to care for his health; or
- (b) he was not capable at the time of the contract of expressing his wishes and it was at that moment essential to provide him with treatment.

Art. 2644. — *Obligation of person calling upon physician.*

Whosoever makes a contract with a physician or a medical institution on behalf of another shall be liable for the fees of the physician or medical institution where:

- (a) he is bound by law or a contract to care for the health of the person to whom the treatment has been given; or
- (b) it has been expressly agreed that he shall be personally liable to the physician or medical institution.

Art. 2645. — *Reimbursement.*

Where a person has paid a physician or medical institution, he shall have a right of reimbursement from the patient who has been cared for.

Art. 2646. — *Fees.*

- (1) The fees of the physician and the medical institution shall be fixed by the contract.
- (2) Where not fixed by the contract, they shall conform to usages.
- (3) The court may revise the amount of fees fixed in the contract where they are so excessive as to be contrary to the etiquette of the medical profession.

Art. 2647. — *Liability of physician.*

- (1) A physician shall not be liable to the person towards whom he is bound under the contract unless he commits a fault, having regard to the rules of his profession.
- (2) The fault may consist in an omission or an act detrimental to the patient.
- (3) The physician shall be liable in particular where he abandons without good cause the patient he has undertaken to care for and fails to arrange for his substitution in accordance with usages.

Art. 2648. — *Guarantee of cure.*

A physician shall not guarantee the success of his treatment unless he has expressly assumed this obligation in writing.

Art. 2649. — *Personal nature of obligation.*

- (1) A physician who undertakes to treat a person shall carry out his obligations personally.

- (2) He may however employ assistants under his control on his own responsibility.
- (3) He shall in such case be liable, in accordance with the provisions of the Chapter of this Code relating to "Extra-contractual Liability" (Art. 2130-2133), for any damage caused to the patient by the fault of one of his assistants.

Art. 2650. — *Liability to third parties.*

- (1) Only the husband or wife of a sick person or his ascendants or descendants may, in the case of a mortal accident due to the fault of the physician, claim from the physician compensation for the loss which they have suffered through the death of the sick person.
- (2) Compensation shall not be due on account of moral loss suffered by these persons unless the death of the sick person has been due to the intentional act of the physician.
- (3) No other persons may claim compensation in their own right by reason of the death of the sick person, notwithstanding that they are able to prove that the latter rendered them material assistance or that they were maintained by him.

Art. 2651. — *Liability of medical institution. — 1. Medical treatment.*

The medical institution shall be civilly liable for the damage caused to a sick person by the fault of the physician or auxiliary staff which it employs.

Art. 2652. — *2. Board and lodging.*

Where the sick person, for purposes of his treatment, is lodged and fed by the medical institution, such institution shall, as regards its obligations and responsibility arising from that lodging and feeding, be subject to the provisions regarding innkeepers' contracts (Art. 2653-2671).

Chapter 6. Contracts of innkeepers

Art. 2653. — *Definition.*

- (1) An innkeepers' contract is a contract whereby a person who exercises the occupation of innkeeper undertakes to lodge a client during one or several nights.
- (2) Where the lodging is provided for a month or more, there shall be a contract of letting and not an innkeepers' contract.

Art. 2654. — *Duration of contract.*

- (1) Unless otherwise provided, hotel rooms shall be engaged from mid-day to mid-day.

- (2) The innkeeper may demand that the room, if not re-engaged by the client, be vacated by him at mid-day.

Art. 2655. — *Renewal of contract.*

A room occupied by a client shall be deemed to have been engaged for an additional day where the client or the innkeeper has not expressed before mid-day his intention not to extend the contract.

Art. 2656. — *Equipment.*

The innkeeper shall provide the client, in addition to given rooms, with furniture and equipment necessary for lodging, such as light and heating, in accordance with the class of the hotel and usages.

Art. 2657. — *Care of luggage.*

The innkeeper shall receive the client and look after his luggage without having any right to additional payment, from the morning when the room is engaged until the evening of the day when it is to be vacated.

Art. 2658. — *Innkeepers' warranty.*

- (1) The innkeeper shall warrant to the client that the rooms engaged by him and those parts of the hotel used in common are habitable, healthy and safe.
- (2) Where he provides the client with food or drink, he shall also warrant that they are sound and harmless.
- (3) He shall be relieved of his liability under this Article where damage is due to force majeure or the client's fault.

Art. 2659. — *Caterers and café proprietors.*

Caterers and café proprietors shall similarly warrant to their clients that the food and drink provided by them are sound and harmless.

Art. 2660. — *Reservation of rooms.*

- (1) A client who has engaged a room for a specified day and who has received from the innkeeper notice that the room has been reserved for him shall pay the price of this room for a day, even where, on account of force majeure, he has not occupied it.
- (2) He shall not be relieved of this obligation unless he has notified the innkeeper in due time that he has renounced to contract and the innkeeper, after receiving notice, was able to let to a third person the room that had been reserved.
- (3) Unless otherwise provided, compensation shall be due for one day only, notwithstanding that the room had been reserved for several days and payment agreed by the week or month.

Art. 2661. — *Cancellation of contract.*

- (1) Where the room has been engaged for several days, the contract shall be cancelled where the client does not occupy it on the day fixed by him.
- (2) The innkeeper shall not be liable where, in this case, he lets the room to another person, unless he has received notice from the client, or anyone acting on his behalf, that the client wants the room to be kept.
- (3) Where the innkeeper has received an advance, he shall put the room at the disposal of his client in so far as he is covered by this advance.

Art. 2662. — *Right of retention.*

- (1) The innkeeper may retain the property brought into the hotel by the client until the total payment due to him on account of the client's stay at the hotel has been made.
- (2) He shall have in relation to such property the rights and benefits of a pledgee.

Art. 2663. — *Principle of liability.*

- (1) The innkeeper shall have the same liability as a paid bailee for the things that his clients have brought into the hotel.
- (2) Evidence that the things had been brought into the hotel by a client may be adduced by any means.

Art. 2664. — *Limitation of liability.*

The innkeeper's liability shall be limited to a total sum of five hundred Ethiopian dollars.

Art. 2665. — *Unlimited liability. — 1. Fault or actual deposit.*

The liability of the innkeeper shall however be unlimited where:

- (a) the loss is due to the fault of the innkeeper or a member of his family, or a member of his staff; or
- (b) the loss occurs to the things which the client has especially deposited with the innkeeper.

Art. 2666. — *2. Refusal of actual deposit.*

- (1) The liability of the innkeeper shall also be unlimited where the loss occurs to the things that the innkeeper has refused, without good cause, to have deposited with him.
- (2) There shall be good cause where the goods possess an excessive value or are unwieldy having regard to the standing of the hotel and the available accommodation.

Art. 2667. — *Non-liability.*

- (1) The liability of the innkeeper shall cease where he can prove that the removal, loss or deterioration was due to the fault of the client himself, or persons who have visited or accompany him or are employed by him.
- (2) He shall also be released from liability where the loss or deterioration is due to the nature of or a defect in the thing or to force majeure.

Art. 2668. — *Obligation to give notice.*

The innkeeper shall be released from liability where the client does not notify him of the damage as soon as he knows of it.

Art. 2669. — *Provision of non-liability.*

Any provision excluding or limiting the liability of an innkeeper shall be of no effect.

Art. 2670. — *Scope of the law.*

- (1) The provisions of this Chapter shall apply from the time when the things enter the hotel, unless the client, having sent them in advance, does not arrive.
- (2) They shall also apply to things, such as carriages, motorcars, live animals, accommodated in premises adjacent to the hotel or put at the disposal of the clients by the hotel.

Art. 2671. — *Establishments similar to hotels.*

The provisions of this Chapter shall apply to the management of medical institutions, convalescent homes, public places of entertainment, bathing establishments, boarding houses, restaurants, sleeping-cars, public stables and other establishments of a similar nature.

Chapter 7. Publishing contracts

Art. 2672. — *Definition.*

A publishing contract is a contract whereby a party, hereinafter called the author, assigns in whole or in part his incorporeal rights in a literary or artistic work to the other party, hereinafter called the publisher, who undertakes to reproduce or produce the work and to distribute it to the public.

Art. 2673. — *Obligation to disclose.*

Where all or part of the work has already been assigned to another publisher or has been otherwise published to the author's knowledge,

the latter shall inform the publisher thereof before the contract is entered into.

Art. 2674. — *Form of contract.*

The authorisation given by the author to reproduce or produce his work shall be explicit.

Art. 2675. — *Assignment of future works. — 1. Conditions.*

- (1) The assignment by the author of a work which he has not yet executed shall be valid where it relates to a work or works, sufficiently well-defined, which, in the estimation of a reasonable person, the author can complete within a period not exceeding two years.
- (2) Where the author has assigned his rights in future works beyond this limit, he may at any time, notwithstanding any provision to the contrary, terminate the contract and retain the payments made to him by the publisher.

Art. 2676. — *2. Publisher's prior right.*

- (1) An author who has terminated his contract shall be bound for a period not exceeding five years from the date of termination of the contract to assign his rights to the publisher in preference to any other person.
- (2) He shall inform the publisher of such conditions as are proposed to him by third parties for the acquisition of these rights.
- (3) The publisher shall, under pain of loss of right, declare within a reasonable period whether he intends to avail himself of his prior right.

Art. 2677. — *Effect.*

- (1) The contract shall transfer to the publisher the author's copyright in his work, in so far as the performance of the contract requires such transfer, in accordance with the provisions of this Title.
- (2) The parties may depart from these provisions where the law does not expressly forbid the provision substituted therefor.
- (3) In cases of doubt, the provisions of the contract shall be interpreted in favour of the author.

Art. 2678. — *Restrictive interpretation.*

- (1) The authorisation given to the publisher to deal with the work in a certain manner shall be interpreted restrictively.
- (2) The publisher may not deal with the work otherwise than provided in the contract.

Art. 2679. — *Authorised methods of dealing with work.*

- (1) However general the terms of the contract, the publisher shall acquire the right to deal with the work by such methods only as the parties had in view or ought to have had in view on the making of the contract.
- (2) In this respect, regard shall be had to the estimation of a reasonable person.

Art. 2680. — *Modification and translation.*

An authorisation to reproduce or produce a work shall not imply an authorisation to adapt it, to modify it or to authorise its translation.

Art. 2681. — *Recording of broadcast works.*

An authorisation to broadcast a work shall not imply an authorisation to record, by means of a machine involving the fixation of sounds or image, the work broadcast.

Art. 2682. — *Separate and complete works.*

- (1) The right to publish the works of an author separately shall not imply the right to publish them in the form of a complete edition.
- (2) The right to publish the complete works of an author, or a certain class thereof, shall not confer upon the publisher the right to publish separately the various works they comprise.

Art. 2683. — *Author's warranty.*

The author shall warrant the publisher that he possesses and has the right to assign the literary or artistic copyright which he transfers to the publisher under the publishing contract.

Art. 2684. — *Rights transferred to the publisher.*

- (1) So long as the editions which the publisher has the right to issue are not out of print, the author may not dispose of the work or any part thereof to the publisher's prejudice.
- (2) Contributions to a collective work, or articles, may not be republished by the author before the expiration of three years from the date when the first publication was completed.

Art. 2685. — *Conflict between two publishers.*

- (1) Where the author, having assigned his rights to a publisher, assigns the same rights to another publisher, the contract concluded with the latter shall be valid unless he knew of the first contract.
- (2) The author shall make good the damage done to each publisher.

Art. 2686. — *Reproduction of the work.*

- (1) The publisher shall reproduce the work in an appropriate form, without abridgements, additions or modifications.
- (2) He shall ensure publicity for the work and take the usual steps to ensure its distribution.
- (3) He shall fix the selling price.

Art. 2687. — *Author's corrections.*

- (1) The author may at any time make corrections or improvements to his work, provided that they do not prejudice the publisher's interests or increase his liability.
- (2) Where such corrections or improvements involve the publisher in expense, the author shall indemnify him for it.

Art. 2688. — *New edition.*

Before issuing a new edition or a new impression, the publisher shall give the author an opportunity of improving his work.

Art. 2689. — *Authorised editions and impressions.*

- (1) Unless otherwise agreed, the publisher shall have the right to publish only one edition of the work.
- (2) Where the contract fails to specify how many copies an edition shall comprise, the publisher shall determine the size of the impression.

Art. 2690. — *Edition out of print.*

- (1) Where the contract authorises the publisher to publish several editions or all the editions of a work, the author may, when the last edition of the work becomes out of print, allow the publisher a period of one year within which to issue a new edition.
- (2) The publisher shall forfeit his rights where he fails to do so within this period.
- (3) Any provision to the contrary shall be of no effect.

Art. 2691. — *Effect in the case of successive editions.*

- (1) Where the publisher is entitled to issue several editions, the conditions agreed upon for the first edition shall be deemed to apply to each subsequent edition.
- (2) The provisions of sub-art. (1) shall apply in particular to the conditions relating to the author's remuneration.

Art. 2692. — *Author's remuneration. — 1. Principle.*

- (1) A person assigning a work for publication shall be deemed to be entitled to a remuneration unless there are circumstances justifying the assumption that he agreed to forego any remuneration.

- (2) In the absence of agreement between the parties, the remuneration due to the author shall be fixed by the court in accordance with equity.

Art. 2693. — 2. *Free copies.*

- (1) The author shall be entitled to a certain number of free copies.
- (2) In the absence of any provision in the contract, the number of these copies shall be fixed by the court in an equitable manner.

Art. 2694. — 3. *Payment.*

- (1) The author's remuneration shall be due as soon as the work is ready for sale.
- (2) Where the parties have agreed that the author's remuneration shall depend either wholly or partly on the expected sales, the publisher shall submit proofs of sale to the author at agreed intervals.
- (3) Failing any provision to the contrary, the publisher's accounts shall be rendered to the author during the first month of each year.

Art. 2695. — *Loss of work.* — 1. *Before publication.*

- (1) Where, after its delivery to the publisher, the work is accidentally lost or destroyed before publication, the publisher shall pay the author his remuneration.
- (2) Where the author has a copy of the lost work, he shall place it at the publisher's disposal.
- (3) In other cases, he shall do the work again, against reasonable compensation, where this can be easily done and the publisher so requests.

Art. 2696. — 2. *After publication.*

- (1) Where the edition made ready by the publisher is accidentally lost or destroyed, wholly or partly, the publisher may replace the lost copies at his own expense.
- (2) The publisher shall replace such copies where he can do so without unreasonable expense.

Art. 2697. — *Lapse of contract.*

- (1) A publishing contract shall lapse where the author dies or becomes incapable before the work is completed or where, without his fault, he is prevented from completing it.
- (2) The death or incapacity of the publisher shall not terminate the contract.

- (3) Where the publisher is declared bankrupt, the author may entrust the work to another publisher, unless he is given security for the performance of those of the publisher's obligations which have not been performed at the time when the bankruptcy is declared.

TITLE XVII. CONTRACTS FOR THE CUSTODY, USE OR POSSESSION OF CHATTELS

Chapter 1. General Provisions

Art. 2698. — *Scope of this Title.*

- (1) Where, under the terms of a contract, a person is in possession of a chattel the custody or possession of which has been transferred to him by his contracting party, his rights and obligations in his dealings with his contracting party shall be as provided in this Title.
- (2) Where provided by law, the same provisions shall apply to the relations between the owner and holder of a chattel regardless of any contract.

Art. 2699. — *Immovables.*

- (1) The provisions governing the hiring of immovables are laid down in the Title of this Code regarding "Contracts relating to immovables" (Art. 2896-3018).
- (2) The provisions of this Title relating to free loans shall apply where the use or possession of an immovable is given to another free of charge (Art. 2701-2726 and 2767-2778).

Art. 2700. — *Owner.*

- (1) For the purpose of this Title, the word "owner" means the person who has transferred the possession of the chattel.
- (2) The provisions of this Title shall apply by analogy where the right which he has or claims to have on the chattel is one other than ownership.
- (3) For the purpose of this Title, the holder shall be assimilated to the possessor.

Art. 2701. — *Obligation to deliver.*

The owner shall deliver the chattel with its accessories to the holder in fit state for the use for which it is intended by its nature or under the contract.

Art. 2702. — *Reference to the rules of sale.*

The place and time of delivery shall be governed by the provisions relating to sale.

Art. 2703. — *Defective chattel. — 1. Rescission of the contract.*

- (1) Where, at the time of its transfer to the holder, the chattel is affected by a defect which appreciably diminishes its usefulness to the holder or makes it more difficult or costly to preserve it, the holder may apply for the rescission of the contract.
- (2) The holder shall have the same right where the defect occurs or becomes apparent after delivery of the chattel.
- (3) A particular usefulness to the holder shall not be taken into account unless the owner knew or should have known thereof on the making of the contract.

Art. 2704. — 2. *Damages.*

- (1) The owner shall make good any damage which the holder has suffered owing to the defect of the chattel, where he knew or should have known of the defect on delivering the chattel to the holder and failed to inform the latter accordingly.
- (2) The same shall apply where the defect arises during the performance of the contract through the default of the owner.

Art. 2705. — 3. *Contractual warranty.*

The holder may apply for the rescission of the contract and the making good of the damage caused to him by the chattel where the chattel does not possess or ceases to possess a quality the existence of which was guaranteed by the owner.

Art. 2706. — 4. *Holder knowing of defect.*

- (1) The owner shall not warrant against a defect which he shows was known to the holder on the making of the contract.
- (2) Any express warranty given by the owner in such case shall be of no effect.

Art. 2707. — *Dangerous defect.*

- (1) Where the chattel is in such a state as seriously to endanger the life or health of the holder, of members of his household or of his employees, the holder may apply for the rescission of the contract notwithstanding that he knew of the defect of the chattel on the making of the contract.
- (2) Any stipulation to the contrary shall of no effect.

Art. 2708. — 6. *Non-liability clause.*

A stipulation whereby the owner excludes or limits his liability for defects of the chattel shall be of no effect where he has fraudulently concealed

the defects or the defects are such as to make the chattel useless to the holder.

Art. 2709. — *Peaceful possession.*

The owner shall guarantee the holder the peaceful possession of the chattel during the currency of the contract.

Art. 2710. — *Modification to the chattel.*

The owner may not make any modification to the chattel that would render its possession less advantageous or more costly for the holder.

Art. 2711. — *Disturbance.*

- (1) The owner shall not be bound to guarantee the holder against disturbance of his possession by third parties who do not claim a right on the chattel.
- (2) The holder may take action against such third parties in his own name.

Art. 2712. — *Encumbrances and taxes.*

Encumbrances and taxes on the chattel shall be borne by the owner.

Art. 2713. — *Custody and preservation of the chattel.*

- (1) The holder shall ensure the custody and preservation of the chattel.
- (2) He may not change the way in which the chattel is used without the owner's consent.

Art. 2714. — *Duty to inform the owner.*

The holder shall without delay inform the owner of all matters requiring his attention, such as urgent repairs, discovery of defects, encroachments, disturbances or damage caused by third parties to the chattel.

Art. 2715. — *Cost of preservation and upkeep.*

- (1) Where the preservation or upkeep of the chattel entails expenses which are not to be borne by the holder, the latter shall inform the owner accordingly.
- (2) The holder shall be entitled to the reimbursement of expenses he incurs in urgent cases, provided he immediately informs the owner accordingly.

Art. 2716. — *Owner's verification.*

- (1) The owner may at any time satisfy himself that the holder complies with his obligations under the contract.
- (2) Such verification shall be exercised in a reasonable and non-vexatious manner without causing the holder undue trouble.

Art. 2717. — *Claim by a third party to the chattel.*

- (1) Where a third party claims the ownership of or a right on the chattel, the holder shall immediately inform the owner thereof under penalty of damages.
- (2) Where the third party institutes legal proceedings, the holder may demand to be dismissed from the case and that the dispute be settled as between the third party and the owner.
- (3) In such case, he may release himself from his liability to return the chattel by depositing it at the owner's expense under conditions fixed by the court.

Art. 2718. — *Obligation to restore.*

- (1) The holder shall return the chattel in the state in which and at the place where he received it.
- (2) The state in which the holder received the chattel shall be specified in an inventory drawn up by the parties.
- (3) Failing such inventory, the chattel shall be deemed to have been in good condition when the holder received it.

Art. 2719. — *Dispossession of the holder.*

- (1) Where the holder has been dispossessed of the chattel in consequence of an event for which he is not to blame, he shall be released from his obligation to return it.
- (2) He shall inform the owner immediately, under penalty of damages, of the event in consequence of which he ceased to be in possession of the chattel.
- (3) The owner shall be entitled to anything which the holder receives in exchange for the chattel as a result of the dispossession and shall be subrogated to the holder's rights.

Art. 2720. — *Loss or deterioration of the chattel.* — 1. *Gainful custody.*

- (1) Where he receives compensation for taking charge of the chattel or he is authorised to make use of it or he in any way derives profit from it, the holder shall be liable where the chattel is lost or deteriorates after he has received it.
- (2) He shall also be liable for any loss or deterioration caused by a person whom he has authorised to make use of the chattel, even temporarily.

Art. 2721. — 2. *Limit of liability.*

- (1) The holder shall not be liable only where he shows that the loss or deterioration was due to force majeure.
- (2) He shall not be liable where he shows that the loss or deterioration

was due to the decay, dilapidation or other defect of the chattel.

- (3) He shall not be liable where deterioration is due to the normal and authorised use of the chattel.

Art. 2722. — 3. *Custody without consideration.*

- (1) Where he derives no profit from the chattel and he has taken charge of it in the sole interest of the owner, the holder shall not be liable for the loss or deterioration of the chattel unless it is due to his own default or occurs after he has been summoned to return the chattel.
- (2) The holder shall not be at fault unless he exercised less care in keeping and preserving the chattel than he exercises in the custody and preservation of his own property.

Art. 2723. — *Holder in default.*

Where the holder has been summoned to return the chattel, he shall not be liable where he shows that the chattel would have been lost or deteriorated in like manner, had he returned it to the owner on the due date.

Art. 2724. — *Improvements made to the chattel.* — 1. *Right to indemnity.*

- (1) The holder shall not be entitled to any indemnity in respect of improvements he has made to the chattel.
- (2) Where such improvements have been made with the owner's consent, the holder may however demand the reimbursement of the amount he has spent or of the surplus value of the chattel at the time of its return, whichever is the less.

Art. 2725. — 2. *Compensation and right of removal.*

- (1) Even where the holder is not entitled to any indemnity, he may set off against any loss of value caused by deterioration for which he is liable but which is not due to his default, any increase he has brought about in the value of the chattel.
- (2) The holder may remove the improvements he has made to the chattel, if this can be done without damaging it.

Art. 2726. — *Lien.*

- (1) The holder may refuse to return the chattel to the owner until the latter has paid any indemnities due under this Chapter.
- (2) He may not refuse to return the chattel pending payment of a claim to which he is entitled on another ground.
- (3) Where he denies that he owes the holder an indemnity, the owner may demand that the chattel be returned to him on his providing adequate security for the discharge of any liability he may have incurred.

Chapter 2. Letting and Hiring

Section 1. General Provisions

Art. 2727. — *Definition.*

A contract of letting or hiring is a contract whereby one party, the lessor, undertakes to transfer to the other party, the lessee, the possession of an object for a fixed term in return for a consideration called the rent or hire.

Art. 2728. — *Letting and hiring and sale.*

- (1) The object hired shall remain the property of the lessor to whom it shall be returned on the termination of the contract.
- (2) Where it is stipulated that, after a certain number of payments of the rent or hire, the lessee shall become the owner of the object, the contract shall constitute a contract of sale, notwithstanding that the parties have termed it a contract of hire.

Art. 2729. — *Letting and hiring and free loans.*

Where no rent or hire has been stipulated, the provisions relating to free loans shall apply.

Art. 2730. — *Wrongful use.*

- (1) The lessor may apply for the rescission of the contract where the lessee does not make use of the property in accordance with the contract or usages and such use entails risk of irreparable damage to the object hired.
- (2) Where the object has already suffered damage or rescission prejudices him in any way, the lessor shall in addition be entitled to damages.

Art. 2731. — *Upkeep of object.*

- (1) The lessee shall maintain the object.
- (2) The cost of upkeep shall be borne by the lessee.

Art. 2732. — *Payment of rent or hire.*

- (1) The lessee shall pay the rent or hire on the agreed or customary dates.
- (2) In the absence of any stipulation or custom to the contrary, the rent shall be paid as it falls due, at the end of each quarter.

Art. 2733. — *Arrears of payment.*

- (1) Where the lessee is in arrears with a payment of the rent or hire, the lessor may grant him ten days' grace, notifying him at the same time that in default of payment, the contract will be rescinded upon the expiration of that period.

- (2) The period of grace shall run from the day on which the lessee receives the lessor's notification.

Art. 2734. — *Sub-letting.*

Unless otherwise agreed, the lessee may not sub-let the object hired or assign the contract without the consent of the lessor.

Art. 2735. — *Termination of contract.*

- (1) A contract of hire concluded for a fixed term shall terminate on the date agreed upon by the parties.
- (2) Unless otherwise provided, the contract shall not be terminated by the death or incapacity of one or both of the parties.
- (3) Where the lessee becomes bankrupt, the lessor may rescind the contract unless he is provided, within a reasonable time, with security for the rent or hire in arrears and the rent or hire falling due in the future.

Art. 2736. — *Indeterminate contracts.*

- (1) Where the duration of the contract of hire has not been fixed, either party may terminate the contract at any time.
- (2) In such case, the other party shall be entitled to a reasonable period within which to discharge his obligation to return the object hired or to take delivery of it.

Art. 2737. — *Delay in return.*

- (1) Where the lessee fails to return the object when summoned to do so, he shall pay the rent or hire until it is returned.
- (2) He shall in addition compensate the lessor for any damage caused to him by the delay.

Art. 2738. — *Extension of the contract.*

- (1) Where, on the expiration of a contract of hire entered into for a fixed term, the lessee remains in possession of the object hired and the lessor does not claim its return, the contract of hire shall be deemed to have been extended by the parties for an indeterminate period on the same terms as the original contract.
- (2) In such case, third parties who have guaranteed the performance of the original contract shall be released from their liabilities.

Section 2. Hiring of cattle

Paragraph 1. — *Cattle included in lease of agricultural undertaking*

Art. 2739. — *Scope of this Paragraph.*

Unless otherwise agreed by the parties, the provisions of the following

Articles shall apply where an agricultural undertaking leased to a farmer includes cattle.

Art. 2740. — *Sale of cattle. — 1. Rights of farmer.*

- (1) The farmer may sell the cattle included in the undertaking.
- (2) He shall however keep on the land cattle equivalent in species, number and quality to that which he received.
- (3) The lessor may not compel the farmer to sell cattle, notwithstanding that the cattle have increased in number.

Art. 2741. — *2. Rights of lessor.*

- (1) The lessor may not sell the cattle included in the undertaking.
- (2) He may compel the farmer to prepare every year an inventory of the cattle to be found within the undertaking.
- (3) He may terminate the contract where it appears that the cattle are reduced in number by more than one quarter for reasons attributable to the farmer.

Art. 2742. — *Products of animals. — 1. Principle.*

- (1) Without prejudice to the provisions of the following Articles, the farmer may freely dispose of the products of the animals, of their hides, skins and increase.
- (2) He shall account for his management to the lessor, where the rent consists of a share of these products or is fixed having regard thereto.

Art. 2743. — *2. Wool.*

- (1) Only the farmer may sell the wool of sheeps and ewes where he manages the undertaking or the flock consists of less than fifty heads.
- (2) Only the lessor may sell such wool where he manages the undertaking or the flock consists of more than fifty heads.

Art. 2744. — *3. Manure.*

Manure from animals shall be used exclusively for the exploitation of the land.

Art. 2745. — *4. Increase from breeding.*

Animals which perish or are slaughtered shall be replaced in proportion to the increase from breeding.

Art. 2746. — *Duty to return cattle.*

- (1) The farmer shall, at the end of the contract, return cattle equivalent in species, number and quality to that which he received.
- (2) The provisions of sub-art. (1) shall apply notwithstanding that the cattle were valued in the contract.

Art. 2747. — *Deficit. — 1. Loss borne by the lessor.*

- (1) Where there is a deficit, the loss shall be borne by the lessor where the rent consists of a given share in the profits or of certain products of the animals.
- (2) The farmer shall not be liable for such deficit unless the loss of the animals is due to his fault or that of a person for whom he is liable.

Art. 2748. — 2. *Loss borne by the farmer.*

The farmer shall be liable to repay the value of animals not returned by him where the rent is fixed independently of the profits of the animals.

Art. 2749. — 3. *Extent of liability.*

- (1) The value of animals not returned shall be fixed having regard to the valuation made by the parties.
- (2) Failing such valuation, the farmer shall repay their value as on the day of the termination of the contract.

Paragraph 2. — Cattle principal object of the contract

Art. 2750. — *Scope of this Paragraph.*

- (1) The provisions of the following Articles shall apply where the main object of the contract consists in cattle or other animals the breeding of which is of an agricultural or commercial interest.
- (2) Nothing shall affect contrary usages.

Art. 2751. — *Model contracts.*

- (1) Model contracts may be drawn up by the Ministry of Agriculture to serve as a basis for individual contracts regarding certain kinds of animals or contracts to be executed in certain regions of the Empire.
- (2) Individual contracts relating to the animals or regions specified in model contracts shall be deemed to be made on the conditions laid down in such model contracts.
- (3) The parties may by express provisions depart from the terms of model contracts.

Art. 2752. — *Duration of contract.*

- (1) Unless otherwise expressly agreed, the contract shall be deemed to be made for four years.
- (2) The period of four years shall be reckoned from the day of the making of the contract.

Art. 2753. -- *Notice to landowner.*

- (1) Where cattle is given to another person's farmer, notice shall be given to the owner whose land is exploited by such farmer.
- (2) Where notice is not given, the owner may, notwithstanding any custom to the contrary, seize or retain the animals with a view to obtaining payment of his claims against the farmer.
- (3) It may not be alleged that he knew or should have known that the animals did not belong to his farmer.

Art. 2754. -- *Inventory of animals.*

- (1) The ownership of animals shall not be transferred to the tenant as a result of an inventory of the animals having been made in the contract.
- (2) Such inventory has as its sole purpose to permit of establishing whether there is a profit or loss at the end of the contract.

Art. 2755. -- *Upkeep of animals.*

- (1) The tenant shall preserve and maintain the animals with the care required by custom.
- (2) He shall bear the costs arising therefrom.

Art. 2756. -- *Increase from breeding.*

Increase from breeding shall be jointly owned by the lessor and tenant.

Art. 2757. -- *Products of animals.*

Only the tenant shall be entitled to the dairy products, manure and work of the animals.

Art. 2758. -- *Wool.*

- (1) The wool of sheeps and ewes shall be divided equally between the lessor and tenant.
- (2) The tenant shall inform the lessor of the day when the shearing will take place.

Art. 2759. -- *Sale of animals.*

- (1) The tenant may not, without the consent of the lessor, dispose of any animal of the flock or of the increase from breeding.
- (2) The lessor may not dispose thereof without the consent of the tenant.

Art. 2760. -- *Loss of animals.*

- (1) The tenant shall not be liable for the loss of animals unless it is due to his fault.
- (2) The lessor shall prove that the tenant is at fault.
- (3) The tenant shall account for the hides of animals which have died.

Art. 2761. — *Accounts.*

- (1) The lessor may demand that the tenant submit every year an inventory of the animals together with his annual accounts.
- (2) He may terminate the lease where it appears that the animals have reduced in number by more than one quarter for reasons attributable to the tenant.

Art. 2762. — *Termination of contract.*

- (1) The contract shall terminate on the expiry of the period agreed by the parties or prescribed by law.
- (2) A party who intends to terminate the contract shall give the other party at least six months notice in advance.

Art. 2763. — *Death of parties.*

- (1) The contract shall not be terminated by the death of either party.
- (2) The heirs of the deceased tenant may however terminate the contract by giving notice to the lessor within six months from the death of the tenant.
- (3) In such case, the contract shall terminate on the first of Megabit which follows but not less than three months after the lessor has received notice from the heirs of the tenant.

Art. 2764. — *Settlement of accounts.*

- (1) Where the contract comes to an end or is rescinded, a new inventory of the animals shall be made.
- (2) The lessor may take animals of each species to the extent shown in the first inventory made.
- (3) What remains shall be divided equally between the lessor and the tenant.

Art. 2765. — *Insufficient number of animals.*

- (1) Where the animals are reduced below the number shown in the first inventory, the lessor shall take what remains and the parties shall bear the loss equally.
- (2) The tenant shall not be liable for the loss unless it is due to his fault or that of a person for whom he is liable.

Art. 2766. — *Usages or stipulations null and void.*

- (1) Any usage or stipulation to the effect that the tenant shall be liable where all the animals are lost as a result of a fortuitous event and without his fault shall be of no effect.

- (2) Any usage or stipulation to the effect that the share of the tenant in the loss shall be greater than his share in the profits shall be of no effect.
- (3) Any usage or stipulation to the effect that the lessor may, at the end of the contract, take more animals than he supplied shall be of no effect.

Chapter 3. Loan for Use, or Free Loan

Art. 2767. — *Definition.*

A loan for use, or free loan, is a contract whereby one party, the lender, undertakes to transfer a chattel to the other party, the borrower, for gratuitous use.

Art. 2768. — *Gratuitousness of the contract.*

- (1) The free loan is essentially gratuitous.
- (2) Where it is stipulated that the lender shall receive a remuneration, the rules of contracts of letting and hiring shall apply.

Art. 2769. — *Ownership of chattel.*

- (1) The lender shall retain the ownership of the chattel loaned.
- (2) The borrower shall return the chattel to the lender on the termination of the contract.

Art. 2770. — *Upkeep of chattel.*

- (1) The borrower shall maintain the chattel.
- (2) The cost of upkeep shall be borne by the borrower.

Art. 2771. — *Use of chattel.*

- (1) The borrower may use the chattel loaned only for the purpose defined in the contract or, failing such stipulation, for a purpose in keeping with its nature.
- (2) He may not allow a third party to make use of the chattel without the lender's consent.

Art. 2772. — *Return of chattel.*

- (1) The borrower shall return the chattel at the agreed time.
- (2) Where no time has been agreed and the use for which the chattel has been lent itself implies no such time, the borrower shall return the chattel immediately at the lender's request.

Art. 2773. — *Premature return. — 1. Borrower's right.*

The borrower may return the chattel before the agreed time unless such return causes damage to the lender.

Art. 2774. — 2. Lender's right.

The lender may claim the return of the chattel before the time at which it should normally have been returned where the borrower makes an uncovenanted use thereof, deteriorates it or allows a third party to make use of it or where the lender himself is in urgent and unforeseen need of it.

Art. 2775. — Death of borrower.

Where the borrower dies, the lender may require his heirs to return the chattel to him immediately, notwithstanding that he had agreed to lend it to the borrower for a fixed term.

Art. 2776. — Wrongful use.

- (1) The borrower shall be liable for the loss or deterioration of the chattel, even due to force majeure, where he puts the object to an unauthorised use or improperly allows a third party to make use of it.
- (2) In such case, he shall not be released from his liability unless he can prove that the chattel would have been lost or deteriorated, had he not violated his obligation.

Art. 2777. — Avoidable loss.

The borrower shall be liable for the loss of the chattel through force majeure where he could have averted the loss by using a chattel of his own or, being unable to save both his own chattel and that lent to him, chose to save his own.

Art. 2778. — Contractual valuation.

Where the chattel was valued on the making of the contract, the borrower shall be liable for its loss in all cases.

Chapter 4. Bailment

Section 1. Bailment in General

Art. 2779. — Definition.

A contract of bailment is a contract whereby one person, the bailee, undertakes to receive a chattel from another, the bailor, and to keep it on the latter's behalf.

Art. 2780. — Bailment, conditional sale and hire of services.

- (1) Where the bailee has the option of retaining the chattel on the expiration of the contract, on paying its price, the rules of conditional sale shall apply and not those of bailment.

- (2) Where the bailee undertook to repair the chattel or to transform it the rules of hire of services shall apply and not those of bailment.

Art. 2781. — *Ownership of chattel.*

- (1) The bailor shall retain the ownership of the bailed chattel.
- (2) The bailee shall return the chattel to him on the termination of the contract.

Art. 2782. — *Bailment of consumable chattels.*

- (1) Where the chattel entrusted to the bailee is a sum of money or a certain quantity of consumable goods and the bailee has been authorised to make use of them, the rules relating to loans of money and other fungibles shall apply.
- (2) Where the chattel entrusted to the bailee is a sum of money which has been handed over to the bailee unsealed and unclosed, the bailee shall be deemed to be authorised to make use of it.

Art. 2783. — *Use of bailed chattel.*

- (1) Where the bailment consists of other chattels, the bailee may not make use of them without the bailor's authorisation.
- (2) Where he violates this rule, the rules governing the letting and hiring shall apply to his detriment.
- (3) The bailor may in particular demand payment of a rent the amount of which shall be fixed equitably.

Art. 2784. — *Gratuitous or paid bailment.*

- (1) Bailment shall be gratuitous where it is not apparent that the parties intended to provide for a remuneration to the bailee.
- (2) In this regard, the professional standing of the bailee and all other relevant circumstances shall be taken into account.

Art. 2785. — *Modification of circumstances of bailment.*

- (1) Where urgent circumstances so require, the bailee may keep the chattel under conditions other than those agreed upon and may in particular entrust the chattel to a third party or alienate it, where it is in imminent danger of loss or deterioration.
- (2) He shall inform the bailor as soon as possible of these events.

Art. 2786. — *End of bailment. — 1. Bailor's right.*

- (1) The bailee shall return the chattel to the bailor as soon as the latter claims it, unless a fixed term has been provided in favour of the bailee.
- (2) The bailor shall indemnify the bailee for expenses he has incurred in consideration of the agreed term,

Art. 2787. — 2. Bailee's right.

- (1) The bailee may at any time require the bailor to take the chattel back, unless a fixed term has been provided in favour of the bailor.
- (2) Where no such term has been agreed, the court may grant the bailor a reasonable period within which to take the chattel back.

Art. 2788. — Several bailors.

- (1) Where the chattel has been entrusted to the bailee by several bailors who are unable to agree upon the conditions on which the chattel is to be returned, the court shall fix such conditions.
- (2) The provisions of sub-art. (1) shall apply where the bailor dies leaving several heirs and the chattel is indivisible.

Art. 2789. — Bailment in the interest of third party.

Where the bailment was made in the interest of a third party and such third party has informed the bailor and bailee of his agreement, the latter shall not return the chattel to the bailor without the third party's consent.

Art. 2790. — Return of chattel.

- (1) Where it has been agreed that the bailee shall keep the chattel in a certain place, it shall be returned in that place.
- (2) The expense and risk of the return of the chattel shall in all cases be borne by the bailor.

Art. 2791. — Return of profits.

The bailee shall return the profits he has collected from the chattel.

Art. 2792. — Restitution to whom made.

- (1) The bailee shall return the chattel to the bailor or to the person designated by him.
- (2) He may require the bailor to prove that he is the owner of the chattel.

Art. 2793. — Bailor's duties.

- (1) The bailor shall pay the bailee the agreed remuneration.
- (2) He shall indemnify him for all expenses incurred for the preservation of the chattel.
- (3) He shall compensate him for all damage the bailment may have caused him, unless such damage is due to the bailee's default or that of a person for whom the bailee is liable.

Art. 2794. — Lien.

The bailee may retain the chattel until all monies due to him in consequence of the bailment have been paid in full.

Art. 2795. — *Bailee's heir.*

- (1) Where he has alienated the chattel in good faith and in ignorance of the bailment, the bailee's heir shall only repay the price he has received.
- (2) Where the price has not yet been paid, the bailor shall be subrogated to the heir's claim against the buyer.

Section 2. Bailment on Trust

Art. 2796. — *Definition.*

There shall be bailment on trust where a chattel, the legal position of which is in dispute or uncertain, is entrusted to a third party, the trustee, who keeps it and returns it to its lawful owner when the doubt has been resolved.

Art. 2797. — *Appointment and dismissal of trustee.*

- (1) The trustee shall be appointed by agreement between the parties to the dispute.
- (2) Failing such agreement, he shall be appointed by the court.
- (3) The trustee may not be dismissed before he has completed his function, except where the parties so agree or for good cause.

Art. 2798. — *Return of the chattel.*

The trustee may not return the chattel except with the agreement of all the interested parties or upon an order of the court.

Art. 2799. — *Reference to rules regarding bailment.*

The rules of bailment shall apply in addition to those of this Section.

Section 3. Bailment in Distress

Art. 2800. — *Definition.*

There shall be bailment in distress where a person is compelled by urgent necessity to entrust to another the custody of chattels belonging to himself, in order to preserve them from imminent danger.

Art. 2801. — *Special rules for bailment in distress.*

- (1) The person to whom the chattels are offered may not refuse to accept them without good cause.
- (2) He may demand a remuneration where the bailment lasts for more than one week.
- (3) The court may reduce the amount of the remuneration required by him at the time of bailment.

Art. 2802. — *Forms and proof.*

- (1) Bailment in distress shall not be subject to any special form.
- (2) It may be proved by any means.

Art. 2803. — *Application of rules of bailment.*

The rules regarding a contract of bailment shall apply in addition to those of this Section.

Section 4. Chattels Found, or Deposited with a Person
without his knowledge

Art. 2804. — *Finder's rights and obligations.*

- (1) Whosoever has found a chattel and taken possession of it shall, by virtue of the law, be in the same position as a bailee.
- (2) Nothing shall affect the provisions of the Title of this Code relating to "Individual Ownership" (Art. 1154-1158).

Art. 2805. — *Deposit without the knowledge or against the will of another.*

- (1) The rules of bailment shall not apply where chattels have been deposited with a person without his knowledge or against his will.
- (2) The person with whom chattels are thus deposited shall incur no liability as a consequence of the deposit.

Chapter 5. Warehousing

Art. 2806. — *Definition.*

A contract of warehousing is a contract whereby one party, the warehouseman, being duly licensed for the purpose by the public authorities, undertakes to receive and store goods on behalf either of the bailor or of the purchaser of the goods or of a person who received them in pledge.

Art. 2807. — *Loss or deterioration of goods.*

- (1) The warehouseman shall be liable for the preservation of the goods he has received.
- (2) He shall not be liable where he shows that the loss or deterioration of the goods is due to force majeure, or to the nature or defects of the goods or their packing.

Art. 2808. — *Duty to inform bailor.*

The warehouseman shall inform the bailor where the goods undergo changes which seem to call for further measures,

Art. 2809. — *Return of goods.*

- (1) The warehouseman shall store the goods until the expiration of the agreed period.
- (2) He may not avail himself of circumstances as a result of which a bailee would be authorised to return the goods before the due date because of unforeseen events.

Art. 2810. — *Mixing goods.*

- (1) The warehouseman may not mix fungible goods with other goods of the same kind and quality without express authority.
- (2) The bailor may claim out of goods thus mixed such quantity as corresponds to his share thereof.
- (3) The warehouseman may return this share without the co-operation of the other bailors.

Art. 2811. — *Sale of goods.*

- (1) After giving the bailor due notice, the warehouseman may sell the goods where they are not removed by the bailor on the date stipulated in the contract.
- (2) Where no definite term has been fixed for the storage, he may sell the goods after one year from the date of deposit.
- (3) He may in any case sell the goods whenever they are in danger of decay.

Art. 2812. — *Disposal of proceeds.*

After deduction of the expenses entailed by the sale and other sums due to the bailee, the proceeds of the sale shall be held at the disposal of the persons entitled to them.

Art. 2813. — *Receipt and voucher.*

- (1) Where the bailor so requires, the warehouseman shall give him a receipt for the goods warehoused.
- (2) The receipt shall be accompanied by a voucher containing the same information as the receipt.
- (3) The receipt and voucher shall be taken from the same counterfoil register. The counterfoil shall be retained by the warehouseman.

Art. 2814. — *Particulars in receipt and voucher.*

The receipt and voucher shall state:

- (a) the name and surname, or trade name, and address of the bailor; and
- (b) the place of storage; and
- (c) the kind and quantity of the goods stored and any other information necessary to identify them; and

- (d) whether customs duties have been paid on the goods and whether they are insured.

Art. 2815. — *Beneficiaries of documents of title.*

- (1) The receipt and voucher may be made out in the name of the bailor or in that of a third party designated by him.
- (2) They may be transferred, either together or separately, by endorsement.

Art. 2816. — *Rights of holder of both titles.*

- (1) A person in possession both of the receipt and of the voucher may demand that the goods stored be handed over to him.
- (2) He may also require that the goods be divided up into a number of lots at his expense and that the warehouseman give him a receipt and voucher for each separate lot in exchange for the original titles.

Art. 2817. — *Rights of holder of voucher.*

A person in possession of the voucher alone shall have a right of pledge on the goods detained by the warehouseman

Art. 2818. — *Transfer of voucher.*

- (1) Where the voucher alone has been endorsed for the first time, the amount of the debt and interest thereon, and the date on which payment falls due, shall be stated on it.
- (2) The endorsement and the above information shall be entered on the receipt and countersigned by the beneficiary of the endorsement.

Art. 2819. — *Absence of required information.*

- (1) Where the endorsement on the voucher fails to state the amount of the debt guaranteed, the goods stored shall be secured to their full value to guarantee the debt.
- (2) Where he has paid a sum that was not due, the person in whose name the receipt is made out, or the holder of the receipt, may recover from the first endorsee and from any person holding the voucher in bad faith.

Art. 2820. — *Rights of holder of receipt.*

- (1) A person in possession of the receipt only may inspect the goods stored and take the customary samples.
- (2) He may not remove the goods stored unless he deposits with the warehouseman or trustee the sum due at maturity to the pledgee.

Art. 2821. — *Sale by pledgee.*

- (1) Where he is not paid on maturity and he has drawn up a protest in accordance with the provisions of Art. 781-784 of the Commercial Code, the holder of the voucher may cause the goods to be sold eight days after payment becomes due.
- (2) An endorser who has of his own free will paid the holder of the voucher shall be subrogated to the holder's rights.
- (3) He may cause the goods to be sold eight days after the debt has become due.

Art. 2822. — *Sale of goods stored.*

Where the goods stored have to be sold, either by the warehouseman or by the creditor holding the voucher, the relevant provisions of the chapter on pledges shall apply to the sale.

Art. 2823. — *Redress against endorsers.*

- (1) The person holding the voucher may not bring an action against the endorser before he has caused the goods to be sold.
- (2) The time-limits for actions for recovery against successive endorsers shall be as prescribed by Art. 817 (3) of the Commercial Code.
- (3) They shall run from the date on which the goods were sold.

Art. 2824. — *Non-compliance with required formalities.*

- (1) The holder of the voucher shall lose his right to recover from the endorsers where he fails to draw up his protest upon maturity or fails to institute, within fifteen days from the date of the protest, proceedings to have the goods sold.
- (2) He shall however retain his right to recover from the endorsers of the receipt and from the debtor.
- (3) Such right of recovery shall be barred after three years.

Chapter 6. Contracts of Pledge

Section 1. Contracts of Pledge in General

Paragraph 1. — Conditions for the validity of the contract

Art. 2825. — *Definition.*

A contract of pledge is a contract whereby a debtor undertakes to deliver a thing, called the pledge, to his creditor as security for the performance of an obligation.

Art. 2826. — *Person furnishing the pledge.*

A contract of pledge may be made between the creditor and a third party to secure the debt of another person.

Art. 2827. — *Debt guaranteed.*

A contract of pledge may be made in order to guarantee a future or conditional debt.

Art. 2828. — *Form of contract.*

- (1) The maximum amount of the debt guaranteed shall in all cases be specified in the contract of pledge or the contract shall be void.
- (2) Where the amount exceeds five hundred Ethiopian dollars, the contract of pledge shall not be valid except where it is evidenced by writing and as from the day when such deed acquires undisputed date.

Art. 2829. — *Pledge.*

- (1) The pledge may consist of a chattel, a totality of effects, a claim or another right relating to movable property.
- (2) It must be capable of being sold separately by public auction.

Art. 2830. — *Creditor's possession.*

- (1) The creditor shall be deemed to be in possession of the pledge where the document of title without which the pledge cannot be disposed of has been delivered to him.
- (2) The provisions of sub-art. (1) shall apply in particular where a voucher for goods warehoused, or the bill of lading or way-bill in the case of goods in transport, has been endorsed in his favour.

Art. 2831. — *Possession by an agreed third party.*

- (1) The parties may agree that the pledge be delivered to a third party acceptable to them both.
- (2) The rights and duties of such third party shall be as prescribed by the provisions relating to the bailment of goods or warehousing.

Art. 2832. — *Debtor's possession.*

- (1) The furnishing of a pledge without dispossession of the debtor may be made in such cases only as are expressly provided by law.
- (2) In all other cases, the contract shall be of no effect where it stipulates that the pledge shall remain with the debtor.

Art. 2833. — *Regulation of contract of pledge.*

- (1) The rules governing contracts of pledge are to be found, in addition to this Chapter, in the special laws relating to particular cases and forms of pledging or to the institutions authorised to lend against security.
- (2) The special rules governing the committal of goods in warehouses are given above in the Chapter on warehousing.

Paragraph 2. — Rights and Duties of Pledger

Art. 2834. — *Ownership of pledge.*

- (1) The pledger shall retain his rights on the pledge, save for the restrictions arising out of the contract of pledge.
- (2) He may dispose freely of his rights and may in particular alienate the pledge or re-pledge it subsequently.

Art. 2835. — *Cost of maintaining and preserving the pledge.*

The pledger shall reimburse the pledgee for expenses incurred in maintaining and preserving the pledge.

Art. 2836. — *Abuse by creditor.*

Where the creditor fails to observe the provisions of the law in respect of the pledge, the pledger may demand that it be delivered to a trustee.

Art. 2837. — *Premature payment of the debt.*

- (1) The pledger may at any time demand the return of the pledge by paying the debt secured by it.
- (2) Any stipulation to the contrary shall be of no effect.

Art. 2838. — *Pledge furnished by a third party.*

- (1) Where the pledge has been furnished by a third party, no contract between the creditor and the debtor made subsequently to the furnishing of the pledge may impair the third party's position.
- (2) The pledger may set up against the creditor all the defences the debtor himself could have raised, without it being possible to set up against him the fact that the debtor had waived them.

Paragraph 3. — Rights and Duties of Pledgee

Art. 2839. — *General principle.*

- (1) The pledgee shall have on his debtor's property the rights of a creditor.
- (2) He shall in addition have on the pledge the particular rights deriving from this Chapter.

Art. 2840. — *Use of the pledge.*

The pledgee may not make use of the pledge without the pledger's consent, except where such use is necessary for its preservation.

Art. 2841. — *Fruits.*

- (1) Where the pledge produces fruits, the creditor, or the custodian of the pledge, shall collect them.

- (2) The fruits shall become the property of the pledgee.
- (3) The value of the fruits produced by the pledge shall be applied successively to the expenses incurred for the custody and preservation of the pledge, to interest and to the capital of the debt secured.

Art. 2842. — *Action for possession.*

- (1) The pledgee may bring actions for possession in respect of the pledge.
- (2) The custodian of the pledge shall inform the pledgee and the pledger without delay of circumstances requiring the institution of such actions.

Art. 2843. — *Third party's claim to the pledge.*

The pledgee may exercise the rights deriving from the contract of pledge notwithstanding that the pledge has been delivered to him by a person who was not authorised to dispose of it.

Art. 2844. — *Exception.*

- (1) The owner of the pledge may take it back where he shows that the pledgee knew or should have known, on the making of the contract, that the other party was not authorised to pledge the thing.
- (2) He may also take the pledge back by discharging the debt secured by it.

Art. 2845. — *Return of pledge.*

- (1) The creditor shall return the pledge to the pledger or to the person designated by him, where the contract of pledge is extinguished by payment of the debt or for any other reason.
- (2) Until the pledge is returned, he shall be liable for the loss of or damage to the pledge in accordance with the provisions of Art. 2720.

Art. 2846. — *Lien.*

The pledgee may retain the pledge until monies due to him under the provisions of this Chapter have been paid in full.

Art. 2847. — *Loss or deterioration of the pledge.*

Where the pledge has been entrusted to his keeping, the pledgee shall be liable for its loss or deterioration as provided in Art. 2720 and 2721 of this Code.

Art. 2848. — *Subrogation to property rights.*

Where the pledge is lost or damaged for any reason whatsoever, the pledgee's right shall apply to the compensation due for its replacement from the person liable for the loss or deterioration, from the insurer or from the person who has expropriated it.

Paragraph 4. — Extinction of Contract of Pledge

Art. 2849. — *Accessory character of the contract.*

The contract of pledge shall be extinguished and the pledge shall be returned where the debt it guaranteed is discharged.

Art. 2850. — *Indivisibility of pledge.*

The creditor may not be compelled to return the pledge or part thereof until he has been paid in full, notwithstanding that the debt or pledge is divisible.

Paragraph 5. — Sale of Pledge

Art. 2851. — *Commissoria lex.*

- (1) Any agreement, even subsequent to the furnishing of the pledge, authorising the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by law shall be of no effect.
- (2) It may however be agreed, after the debt has become due, that the debtor shall make over the pledge to the creditor in settlement of the debt.

Art. 2852. — *Effect on third parties.*

- (1) The contract of pledge shall not affect third parties unless the pledge is in the possession of the pledgee, or the person designated for the purpose by the parties, at the time when the pledgee invokes the contract.
- (2) The contract of pledge shall be of no effect where at that time the pledge is still in the debtor's possession or it has returned to his possession with the pledgee's consent or it is in the possession of a third party from whom the creditor cannot demand its return.

Art. 2853. — *Default.*

- (1) Before causing the pledge to be sold, the pledgee shall call upon the pledger to discharge his obligation and give him due notice that, upon default, he will cause the pledge to be sold.
- (2) Similar notice shall be given to the third party who has furnished the pledge.

Art. 2854. — *Sale of pledge.*

- (1) Where, within eight days from the notice provided in Art. 2853, no objection has been raised or the objection is dismissed, the pledgee may cause the pledge to be sold by public auction.

- (2) Where the pledge is quoted on the market or has a current price, the pledgee may cause it to be sold by private contract through the intermediary of a person authorised to make such sales.

Art. 2855. — *Limitation by the court.*

The court may, on the application of the pledger, limit the creditor's right to the sale of one of the pledges which is sufficient to pay off the pledgee.

Art. 2856. — *Assignment of pledge to the pledgee.*

The pledgee may apply to the court to order that the pledge be given to him in payment, to the extent of the amount due to him, according to an expert valuation or the current price of the pledge, where it is quoted on the market.

Art. 2857. — *Priority right.*

- (1) The pledgee may be paid out of the proceeds of the sale of the pledge before all other creditors.
- (2) In addition to the debt specified in the contract of pledge, the pledge shall secure the contractual interest and legal interest on the debt and the expenses incurred for the custody, preservation or sale of the pledge.

Art. 2858. — *Limitation of creditor's rights.*

- (1) The pledgee may not enforce his priority right arising out of the contract of pledge beyond the maximum amount specified therein.
- (2) The pledgee may not enforce his priority right to obtain security for another debt, even if incurred subsequently to the contract of pledge, owed to him by the debtor or pledger.

Art. 2859. — *Disposal of proceeds.*

- (1) The proceeds shall be attributed to the creditor to the amount of the debt due to him and shall be deemed to have been paid by the pledger.
- (2) The balance of the proceeds shall be handed over to the pledger.

Art. 2860. — *Several pledgees.*

- (1) Where the pledge is encumbered with several rights of pledge, the creditors shall be paid according to their rank.
- (2) The rank shall be determined by the dates on which the various pledges were entered into.

Art. 2861. — *Purchaser's rights.*

The purchaser of the pledge shall acquire the ownership thereof free of any encumbrance.

Art. 2862. — *Creditor's liability.*

A creditor who sells a thing belonging to a third party which has been duly pledged shall not be liable unless he knew or should have known, on the making of the contract, that it belonged to the third party.

Section 2. Pledging of Claims or other Intangibles

Art. 2863. — *Relation of pledger and debtor.*

The provisions governing the relations of a guarantor and principal debtor shall apply to the relations between a third party who has furnished a pledge and the principal debtor.

Art. 2864. — *Claims not established by title.*

- (1) The pledging of claims which are not established by a title shall, regardless of the amount of the sum guaranteed, be executed in the form of a document specifying the claim pledged and the maximum amount of the debt guaranteed.
- (2) The pledging shall be notified, under pain of being declared void, to the debtor of the claim which has been pledged, or shall be accepted by him in a document of undisputed date.

Art. 2865. — *Rights not established by title.*

- (1) The pledging of rights which are not rights of claims and which are not established by a title shall be executed in the forms prescribed for the transfer of the said rights.
- (2) A document of undisputed date, and adequately specifying the right pledged and the debt guaranteed, shall be required in all cases, under pain of nullity.
- (3) Nothing shall affect such special provisions as may govern the pledging of some of such rights.

Art. 2866. — *Acknowledgement of debt.*

- (1) Where the claim or right pledged is established by an acknowledgement of debt or by another non-negotiable instrument, such instrument shall be delivered to the pledgee or the third party named in the contract of pledge.
- (2) The pledging of claims and rights established by negotiable instruments shall be carried out in accordance with the provisions of Art. 950-958 of the Commercial Code.

Art. 2867. — *Claims producing periodical income.* — 1. *Extent of pledge.*

- (1) A pledge founded on a claim yielding interest or other periodical income, such as a dividend, shall, unless otherwise provided, apply only to current benefits to the exclusion of those previously due.

- (2) Where such accessory benefits are represented by separate titles, they shall not be included in the pledge unless themselves committed in the form required by law.

Art. 2868. — *2. Rights and duties of pledgee.*

- (1) The pledgee shall collect the interest on the claim pledged with him and all other periodical payments due from the debtor under his claim.
- (2) He shall apply the proceeds successively to the expenses due to himself, to interest and to the capital of the debt guaranteed.
- (3) The pledger may not object to such payment.

Art. 2869. — *Preservatory measures.*

The pledgee shall take such steps as are necessary to prevent the extinction of the claim or right pledged with him.

Art. 2870. — *Pledged shares.*

Pledged shares shall be represented at the annual general meeting of the company by the shareholder himself and not by the pledgee.

Art. 2871. — *Rights of debtor of claim pledged.*

- (1) The debtor of the claim which has been pledged may set up against the pledgee the defences he is entitled to raise against his own creditor.
- (2) Where he has accepted the pledging without reservation, he may however not oppose the setting-off of a counter-claim which arose against his own creditor before his acceptance.

Art. 2872. — *Collection of debt pledged.*

- (1) The pledgee shall collect the debt pledged with him when it falls due.
- (2) However, where the pledger objects to such payment, the debtor may obtain his discharge only by depositing the sum or the goods due from him.
- (3) Sums of money or other fungible things received in payment shall be deposited in the place agreed upon by the parties or, in the absence of such agreement, in a place fixed by the court.

Art. 2873. — *Sale of claim or right pledged.*

Where the debt secured has become due, the pledgee may cause the debt or right pledged with him, or the goods received from the debtor in payment, to be sold as provided in Section 1 of this Chapter.

Art. 2874. — *Reference to preceding Section.*

Anything relating to the pledging of claims or intangibles that is not governed by this Section shall be governed by the provision of Section 1 of this Chapter.

TITLE XVIII

CONTRACTS RELATING TO IMMOVABLES

Chapter 1. Sale of Immovables

Art. 2875. — *Principle.*

Without prejudice to the provisions of the following Articles, the provisions of the Title of this Code regarding "Contracts relating to the assignment of rights" shall apply to the sale of immovables.

Art. 2876. — *Work and labour relating to immovables and sale.*

A contract whereby one of the parties undertakes to deliver to the other party a house, a flat or another building which does not yet exist, is a contract of work and labour relating to immovables and not a contract of sale.

Art. 2877. — *Form of contract.*

A contract of sale of an immovable shall be of no effect unless it is made in writing.

Art. 2878. — *Registration in registers of immovable property.*

The sale of an immovable shall not affect third parties unless it has been registered in the registers of immovable property in the place where the immovable sold is situate.

Art. 2879. — *Cooperation of seller.*

- (1) The seller shall furnish to the buyer all the documents necessary to enable the buyer to cause the transfer of the immovable to be registered in the registers of immovable property.
- (2) Such obligation shall be deemed to be an essential stipulation of the contract of sale.

Art. 2880. — *Seller to declare certain rights.*

- (1) The seller shall declare to the buyer the rights which third parties have on the immovable sold where such rights may be set up against the buyer independently of a registration in the registers of immovable property.
- (2) The contract may compel the seller to declare to the buyer the rights which third parties have on the immovable notwithstanding that such rights are entered in the registers of immovable property.

Art. 2881. — *Registered rights and burdens. — 1. Principle.*

The buyer shall be deemed to know all the rights and burdens affecting the immovable which have been registered in the registers of immovable property in the place where the immovable is situate.

Art. 2882. — *2. Express warranty by seller.*

- (1) In respect of the rights mentioned in Art. 2881, the buyer may not avail himself of the provisions concerning the warranty against eviction, unless the seller has warranted that such rights did not exist.
- (2) Such warranty may only result from an express provision in the contract of sale.

Art. 2883. — *3. Mortgage and antichresis.*

The buyer may avail himself of the provisions concerning the warranty against eviction where the immovable is attached and sold at the request of a creditor who has a mortgage or an antichresis.

Art. 2884. — *Sale of immovable belonging to others.*

- (1) The provisions concerning the warranty against eviction shall apply where the sale relates to an immovable which, in whole or in part, did not belong to the seller.
- (2) The buyer may avail himself of the provisions relating to the warranty against eviction without waiting until he has been evicted.
- (3) He may not avail himself of such provisions where, at the time when the court is to make its decision, such eviction is no longer to be feared.

Art. 2885. — *Right of recovery.*

Unless otherwise expressly agreed, the seller shall not be liable in damages to the buyer where the latter is evicted by a person who avails himself of a legal right of recovery on the immovable sold.

Art. 2886. — *Liability of seller.*

In case of total or partial eviction of the buyer, the seller shall refund to the latter, in addition to the price and the expenses of the contract, all the expenses incurred by him in altering the immovable.

Art. 2887. — *Lesion.*

A sale of an immovable may not be rescinded by the buyer or the seller on the ground of lesion.

Art. 2888. — *Warranty of area. — 1. Principle.*

The seller shall guarantee the area of the immovable sold where such area has been indicated in the contract.

Art. 2889. — 2. *Rights of buyer.*

- (1) Where the true area is smaller than that which has been indicated, the buyer may require that the price be reduced accordingly.
- (2) He may require the rescission of the contract where the true area is smaller by at least one-tenth than that which has been indicated or where it renders the immovable unsuitable for the use which the buyer intended to make of it and such use was known to the seller.

Art. 2890. — 3. *Conditions and time.*

The action of the buyer based on the warranty of area shall be subject to the same conditions and be instituted within the same time as an action based on the warranty against defects.

Art. 2891. — 4. *Rights of seller.*

- (1) The seller may not require an increase of price where the true area is larger than that indicated in the contract.
- (2) The provisions of sub-art. (1) shall not apply where the error of the seller is due to fraud on the part of the buyer.

Art. 2892. — *Compulsory execution of contract.*

- (1) The buyer of an immovable shall be deemed to have a particular interest in the specific performance of the contract.
- (2) He may accordingly demand such execution.
- (3) The buyer shall lose the right to demand the specific performance of the contract where he fails to demand it within one year after he has ascertained the delay of the seller.

Art. 2893. — *Sale with right of redemption.*

- (1) The seller may, in the contract of sale, reserve to himself the right to purchase the immovable from the buyer during a certain period.
- (2) The provisions of the Title of this Code relating to "Joint ownership, usufruct and other rights in rem" concerning the promise of sale shall apply to such stipulation (Art. 1410-1425).

Art. 2894. — *Reference.*

Those provisions in the Title of this Code regarding "Contracts relating to the assignment of rights" which apply to contracts of barter, assignment of rights other than property and hire-purchase shall apply to contracts relating to immovables.

Art. 2895. — *Registration in the case of hire-purchase.*

In the case of a hire-purchase, the hire-purchaser may register in the

registers of immovable property in the place where the immovable is situate the right of contractual pre-emption resulting from the contract.

Chapter 2. Lease

Section 1. Lease of immovables in general

Art. 2896. — *Definition.*

- (1) The lease of an immovable is a contract whereby one of the parties, the lessor, undertakes to ensure to the other party, the lessee, the use and enjoyment of an immovable, for a specified time and for a consideration fixed in kind or otherwise.
- (2) Nothing shall affect the provisions of the Commercial Code or of particular laws concerning the lease of immovables in which a business or other industry is carried out.

Art. 2897. — *Lease and sale.*

Where it is agreed that the lessee shall become the owner of the immovable after the payment of a certain number of terms of rent, the contract shall constitute a sale, notwithstanding that the parties have termed it as a contract of lease.

Art. 2898. — *Proof of contract.*

- (1) So long as the lease has not had a beginning of execution, the proof that an immovable has been let may be made only by a written instrument, by an admission made or oath taken in court.
- (2) No other means of evidence shall be admitted to prove the existence of such contract.
- (3) Where a contract of lease has had a beginning of execution, it may be proved by witnesses or presumptions.

Art. 2899. — *Entry in registers of immovable property.*

- (1) Leases made for a period exceeding five years shall not affect third parties until they are entered in the registers of immovable property at the place where the immovable is situate (Art. 1571).
- (2) Leases made for a period exceeding five years which have not been entered in the registers of immovable property shall, where their date is certain, affect third parties during five years from the day when such third parties have registered their rights on the immovable.
- (3) In other cases, such leases shall be deemed to have been made for an undefined period of time.

Art. 2900. — *Delivery of immovable.*

- (1) The lessor shall deliver to the lessee the immovable given on lease and its accessories, in a state to serve for the use for which it is intended in terms of the contract or according to its nature.
- (2) The place and time of delivery shall be regulated in accordance with the provisions relating to sale.

Art. 2901. — *State of tenement and inventory.* — 1. *Principle.*

- (1) On the request of either of the parties and as soon as such request is made, there shall be drawn up a statement showing the condition of the tenement as well as an inventory with a valuation of the movable property, accessory to the immovable given on lease, the use and enjoyment of which have been given to the lessee.
- (2) Any stipulation to the contrary shall be of no effect.

Art. 2902. — 2. *Expenses.*

- (1) The inventory and the statement showing the condition of the tenement shall be made at common expense.
- (2) Where the lessee has advanced the expenses, he may deduct the amount due by the lessor from the rent due by him to the latter.

Art. 2903. — 3. *Sanctions.*

- (1) Where one of the parties does not take part in the drawing up of the statement and inventory together with the other party, such other party may draw them up or cause them to be drawn up at his expense and communicate them to the other contracting party.
- (2) Where the latter fails to make known his objections and his reservations within a reasonable period, the statement and inventory shall be deemed to have been approved by him.
- (3) The objections and reservations shall not be taken into consideration unless the contracting party causes a statement showing the condition of the tenement and an inventory to be drawn up at his expense within six months from his having received the communication under sub-art. (1).

Art. 2904. — *Defect of thing.* — 1. *Rescission of contract.*

- (1) Where, at the time of delivery, the thing has defects of such nature that its normal use is appreciably diminished, the lessee may demand the rescission of the contract.
- (2) The lessee shall have the same right where the defect occurs or is discovered after the immovable has been delivered to him.

- (3) A special use to the lessee shall not be taken into consideration unless the lessor knew or should have known thereof on the making of the contract.

Art. 2905. — 2. *Damages.*

- (1) Where the lessor knew or should have known of the defect of the thing at the time of delivery and failed to inform the lessee thereof, he shall be liable for the damage thereby caused to the lessee.
- (2) The lessor shall also be liable for the damage caused to the lessee during the currency of the contract through the fault of the former.

Art. 2906. — 3. *Relation with rescission.*

- (1) The damages provided in Art. 2905 are independent of the rescission of the contract.
- (2) They may be awarded notwithstanding that the contract is not rescinded.
- (3) They may be awarded where rescission is ordered, in particular with a view to compensating the damage resulting from rescission.

Art. 2907. — 4. *Apparent defect.*

The lessee may not exercise his rights under the preceding Articles where the defect on which his claim is based is apparent or where he knew or should have known of the defect on the making of the contract.

Art. 2908. — 5. *Dangerous defect.*

- (1) Where the thing is in such a state as to constitute a serious danger to the life or health of the lessee or of those who reside with him or of his employees, the lessee may require the rescission of the contract even in a case of an apparent defect or of a defect of which the lessee knew at the time of the contract.
- (2) Any stipulation to the contrary shall be of no effect.

Art. 2909. — 6. *Agreement of exemption from liability.*

Any stipulation whereby the lessor excludes or limits the liability which he incurs as a consequence of the defects of the thing shall be of no effect where the lessor has in bad faith failed to mention the defects or the defects are such as to render the thing completely useless for the lessee.

Art. 2910. — 7. *Contractual warranty.*

- (1) The lessee may require the rescission of the contract and compensation for the loss sustained by him where the thing given on lease does not have or ceases to have a quality the existence of which has been expressly warranted by the lessor.

- (2) The limitations made to such right by the preceding Articles may not be invoked by the lessor.

Art. 2911. — *Peaceful enjoyment of immovable.*

The lessor shall warrant to the lessee the peaceful enjoyment of the immovable during the currency of the lease.

Art. 2912. — *Alteration of immovable.*

The lessor may not, during the currency of the lease, make any alterations in the immovable without the consent of the lessee.

Art. 2913. — *Claims of third parties on the immovable.*

- (1) Where a third party claims the ownership of the immovable let or claims to have any right thereon, the lessee shall immediately inform the lessor of such claim.
- (2) Where the third party institutes proceedings, the lessee may demand that the proceedings against him be discontinued and that the suit be proceeded with between the third party and the lessor.
- (3) Where his enjoyment has been interrupted in consequence of such proceedings, the lessee shall be entitled to a proportional reduction of the rent, where he informed the lessor of the molestation or hindrance.

Art. 2914. — *Mere molestations of fact.*

- (1) The lessor shall not warrant the lessee against molestations to his possession by third parties who do not claim to have any right on the immovable.
- (2) The lessee may take action in his own name against such third parties.

Art. 2915. — *Burdens and taxes.*

The lessor shall pay the burdens and taxes charging the immovable.

Art. 2916. — *Repairs.* — 1. *Duties of lessor.*

The lessor shall maintain the immovable in good condition and make therein during the currency of the lease such repairs as are necessary and are not repairs incumbent upon the lessee.

Art. 2917. — 2. *Duty to give notice to lessor.*

Where the thing let requires, for its preservation or maintenance, expenses which are not incumbent upon the lessee, the latter shall inform the lessor of such requirement.

Art. 2918. — 3. *Duty to suffer repairs.*

Where, during the currency of the lease, the thing let requires repairs which cannot be delayed until the expiration of the lease, the lessee shall suffer them, whatever the inconvenience which they cause him and notwithstanding that he may be deprived of a part of the immovable let during their execution.

Art. 2919. — 4. *Limitation of duty of lessor.*

The lessor may not be compelled to carry out the repairs which are at his charge, where their cost is higher than the rent which he is to receive from the immovable in the course of three years of lease.

Art. 2920. — 5. *Sanction of duties of lessor.*

- (1) Where repairs which are necessary to ensure the enjoyment and which are at the charge of the lessor are not executed without delay by the latter, the lessee may have them executed at his expense and retain their cost, with legal interest thereon, from the rent payable by him.
- (2) The lessee may, where he prefers to do so, according to circumstances, claim damages from the lessor and, where appropriate, the termination of the lease.

Art. 2921. — *Enjoyment of immovable by lessee.*

- (1) The lessee shall use the immovable let with all necessary care and according to the purpose which has been given to it in the lease.
- (2) In particular, he may not make in the immovable or in the mode of its exploitation any important alteration the effects of which extend beyond the period of the lease.

Art. 2922. — *Control by lessor.*

- (1) The lessor may at any time satisfy himself that the lessee fulfills his obligations.
- (2) Such control shall be exercised reasonably, without causing an excessive inconvenience to the lessee and without assuming a vexatious character.

Art. 2923. — *Payment of rent.*

- (1) The lessee shall pay the rent at the times fixed by the contract.
- (2) In default of a stipulation in the contract, he shall pay it at the times fixed by the law.

Art. 2924. — *Right of retention of lessor. — 1. Principle.*

The lessor shall have a right of retention on the movables which furnish the immovable let and which serve either for its fitting up or for its

use, as a security for the rent in respect of the year which has elapsed and of the current period of six months.

Art. 2925. — 2. *Movables affected.*

- (1) The right of retention shall not affect those things which the lessor has known or should have known not to be the property of the lessee.
- (2) Where the lessor comes to know only during the currency of the lease that some movables brought by the lessee are not the property of the latter, his right of retention on such movables shall lapse unless he gives notice for the termination of the contract for the next following term of the lease.

Art. 2926. — 3. *Effect.*

- (1) By virtue of his right of retention, the lessor may, with the authorisation of the court, compel the lessee to leave in the immovable let as many movables as are necessary to guarantee the rent.
- (2) The things taken away secretly or with violence shall continue to be subject to the settlement of the preferential claims of the lessor, where the latter attaches them within ten days after they have been removed.

Art. 2927. — *Duration of contract.*

- (1) The lease of an immovable may be made for a determinate or an indeterminate period.
- (2) It may not be made for more than sixty years.
- (3) A lease of an immovable made for a period of more than sixty years shall be deemed to have been made for sixty years.

Art. 2928. — *Death of lessor or lessee.*

- (1) A contract of lease shall not terminate upon the death of the lessor or lessee or upon either of them becoming incapable.
- (2) Nothing shall affect the special provisions relating to the lease of lands and those of the Commercial Code relating to the bankruptcy of the lessee.

Art. 2929. — *Loss of immovable let.*

- (1) Where, during the currency of the lease, the immovable let is totally destroyed by fortuitous event, the lease shall terminate as of right.
- (2) Where the immovable is only partly destroyed, the lessee may, according to circumstances, require a reduction of the rent or the termination of the lease.
- (3) No compensation shall be payable in either case.

Art. 2930. — *Lessor failing to fulfil his obligations.*

- (1) The lessee may require the termination of the lease, where the lessor fails to fulfil his obligations in such a manner that the use or enjoyment of the immovable is thereby notably diminished.
- (2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfilment of obligations on the part of the lessor causes to him.

Art. 2931. — *Lessee failing to fulfil his obligations.*

- (1) The lessor may require the termination of the lease, where the lessee fails to fulfil his obligations so that the rights of the lessor are endangered.
- (2) In addition to or independently of such termination, he may claim damages in compensation of the loss which the non-fulfilment of obligations on the part of the lessee causes to him.

Art. 2932. — *Lease set up against purchaser of immovable. — 1. Principle.*

- (1) Unless otherwise expressly agreed between the lessor and the lessee, a contract of lease may be set up against a third party who acquires the ownership or usufruct of the immovable given on lease after the delivery of the immovable to the lessee.
- (2) Nothing shall affect the case where the immovable has been expropriated by the public authorities.

Art. 2933. — *2. Lease not registered in registers of immovable property.*

- (1) The person who acquires the immovable may regard the lease as having been made for an indeterminate period, where it has not been registered in the registers of immovable property in the place where the immovable is situate.
- (2) Where the date of the lease is certain, the lessee may set it up against the purchaser during five years from the purchaser having registered his contract in the registers of immovable property.

Art. 2934. — *Stipulation relating to such case. — 1. Effect.*

- (1) Where the lessor and the lessee have agreed that the person who acquires the immovable may terminate the lease, the person acquiring the immovable shall, within three months from the lessee having required him to do so, inform the latter whether or not he intends to terminate the lease.
- (2) The person who acquires the immovable shall lose such right where he fails to exercise it within such period.

Art. 2935. — 2. *Sale with reservation of right of redemption.*

The person who acquires an immovable subject to a right of redemption may not make use of the right to expel the lessee until such time as he becomes the absolute owner by the expiry of the period fixed for the redemption.

Art. 2936. — *Duty to restore thing.* — 1. *Principle.*

- (1) The lessee shall, at the end of the lease, restore to the lessor the immovable given on lease.
- (2) He shall also restore in kind to the lessor all the things which he has received with the immovable and which still exist in kind.

Art. 2937. — 2. *Conformity with statement or inventory.*

Where a statement showing the condition of the tenement or an inventory has been made by the lessor and the lessee, the latter shall restore the thing as he has received it, according to such statement or inventory.

Art. 2938. — 3. *Absence of statement or inventory.*

- (1) Where a statement showing the condition of the tenement has not been drawn up conjointly by the parties, the lessee shall be deemed to have received the immovable in good condition.
- (2) Where an inventory has not been drawn up conjointly by the parties, the immovable shall be deemed not to have comprised any accessories.
- (3) Evidence shall be admitted to rebut such presumption.

Art. 2939. — 4. *Power of the court.*

Where a statement showing the condition of the tenement or an inventory has been drawn up unilaterally by one of the parties and has not been approved by the other, the court shall give to such statement or inventory the credit which, in the circumstances, it thinks it deserves.

Art. 2940. — *Loss or deterioration of thing.*

- (1) The lessee shall be liable where the thing is lost or deteriorates after he has received it.
- (2) He shall be liable in particular where the loss or deterioration is caused by a person of his household or by a person he has admitted to the immovable.

Art. 2941. — *Limit of liability.*

- (1) The lessee shall not be liable where he proves that the loss or deterioration is due to the fault of the lessor or to a fortuitous event.
- (2) He shall not be liable where he proves that the loss or deterioration is due to old age or to some other defect of the thing given on lease.

- (3) He shall not be liable where the deterioration is due to normal and lawful use of the thing given on lease.

Art. 2942. — *Lessee in default.*

Where the lessee has been called upon to restore the thing, he shall be liable unless he proves that the thing would have been lost or deteriorated, had he restored it to the lessor at the time required.

Art. 2943. — *Amount of damages.*

- (1) Where the things which are not restored have been valued conjointly by the parties, the lessee shall be bound by the amount of such valuation.
- (2) The lessor may obtain additional damages where he proves that the lessee has alienated such things at a price higher than the amount of the valuation.
- (3) The provisions of sub-art. (2) shall not apply where the alienation of the thing by the lessee amounted to an act of management according to the common intention of the lessor and lessee at the time of the conclusion of the contract of lease.

Art. 2944. — *Case of rescission attributable to the lessee.*

The lessee, where rescission is caused by his fault, shall pay the rent during the time required to re-let the immovable without prejudice to the damages which may have been caused by the abuse.

Section 2. Special rules regarding the lease of houses

Art. 2945. — *Scope of this Section.*

- (1) The provisions of this Section shall apply where the contract of lease relates to a house, furnished or unfurnished, a flat, a room or some other building or part of a building.
- (2) Nothing shall affect the provisions governing contracts relating to hotels in the Title of this Code relating to "Contracts for the performance of services" (Art. 2653-2671).

Art. 2946. — *Model contracts.*

- (1) Model contracts for the lease of houses or flats situate within the territory of a particular commune may be drawn up by the municipal authorities.
- (2) Individual contracts relating to such houses or flats shall be deemed to have been made on the terms laid down in such model contracts.
- (3) They may depart from such terms by express stipulations.

Art. 2947. — *Lease of part of immovable. — 1. Duties of lessor.*

- (1) Where part only of an immovable is given on lease to a lessee, the lessor shall, on giving on lease the other part of the immovable, take into consideration the interests of the lessee according to custom and the nature of the immovable.
- (2) The lessor shall comply with the provisions of sub-art. (1) as regards both the selection of the other lessees and the provisions to be included in the contracts made with them.

Art. 2948. — *2. Duties of lessee.*

- (1) The lessee shall have the consideration which is due to the other persons who dwell in the house a part of which has been given to him on lease.
- (2) The lessor may require the termination of the lease where the lessee or other persons living with him or whom he admits to the immovable, behave in such a manner that they disturb the other lessees in the enjoyment of the immovable.
- (3) Nothing shall affect the right of such other lessees or of the lessor to claim damages in compensation of the damage caused to them.

Art. 2949. — *Duty to furnish immovable given on lease.*

- (1) The lessee shall furnish the immovable given on lease in conformity with its nature and according to the custom of the place.
- (2) The provisions of sub-art. (1) shall not apply where the lessee has taken on lease furnished premises or paid a term of rent in advance or given a security or other guarantee for such payment.

Art. 2950. — *Amount of rent.*

- (1) The amount of the rent shall be fixed freely by agreement between the parties.
- (2) In case of doubt, it shall be fixed in conformity with the tariffs established by the municipal authorities or, failing such tariffs, in conformity with the custom of the place.

Art. 2951. — *When the rent falls due.*

- (1) Unless otherwise agreed, the rent shall be paid at the end of each quarter where the lease has been made for one or more years.
- (2) It shall be paid at the end of each month, where the lease is of a shorter duration or made for an indeterminate period.
- (3) The rent shall in all cases be paid on the expiry of the lease.

Art. 2952. — *Delay of lessee.*

- (1) Where the lessee is late in paying a term of rent which has fallen due, the lessor may give him a period of thirty days where the lease is for a year or more, and a period of fifteen days where the lease is for a shorter period, informing him that, in default of payment, the contract shall be terminated at the end of that period.
- (2) The period shall run from the day when the lessee has received the notice of the lessor.
- (3) Any stipulation reducing such periods or giving to the lessor the right to terminate the lease forthwith on account of a failure in the payment of rent shall be of no effect.

Art. 2953. — *Repairs incumbent upon lessee. — 1. Duties of lessee.*

The lessee shall carry out at his expense the repairs which are incumbent upon him.

Art. 2954. — *2. Which repairs are incumbent upon lessee.*

- (1) The repairs which in the contract of lease are placed at the charge of the lessee shall be deemed to be repairs incumbent upon him.
- (2) Unless otherwise agreed, repairs necessary to the doors, windows, floorboards, tiling, taps and water-drains shall be deemed to be repairs incumbent upon the lessee.
- (3) The works of cleaning and maintenance which become necessary by the enjoyment of the thing shall also be deemed to be repairs incumbent upon the lessee.

Art. 2955. — *Old age or force majeure.*

- (1) No repairs which are deemed to be incumbent upon the lessee shall be at the charge of the lessee where they are occasioned only by old age or force majeure.
- (2) The contract of lease may derogate such rule by an express stipulation.

Art. 2956. — *Deprivation of enjoyment due to repairs.*

- (1) Where the repairs which the lessor carries out on the immovable during the lease take more than fifteen days, the rent shall be reduced in proportion to the time and to the portion of the thing let of which the lessee is deprived.
- (2) Where the repairs are of such a nature as to render uninhabitable what is necessary for the accommodation of the lessee and his family, the lessee may require the termination of the lease.

Art. 2957. — Sub-lease. — 1. Principle.

- (1) The lessee may sub-let all or part of the immovable let to him.
- (2) Prior to sub-letting, he shall give notice of his intention to the lessor and ask him whether he has any objection to such sub-lease.

Art. 2958. — 2. Objection by lessor.

- (1) The lessor may object to such sub-lease where it is contrary to contractual undertakings made by him in favour of other lessees of the same immovable or is of such nature as to cause to him damage for any other reason.
- (2) The lessee may in such case terminate the contract.
- (3) Nothing shall affect the right of the lessor to claim damages where the reason of his opposition was known or should have been known by the lessee on the making of the contract.

Art. 2959. — 3. Provision restricting right to sub-let.

- (1) A contract of lease may prohibit the sub-lease of the immovable or make such sub-lease conditional on the acceptance of the sub-lessee by the lessor.
- (2) Where, under the contract of lease, the sub-lease of an immovable is made conditional on the acceptance of the sub-lessee by the lessor, the lessee may demand the termination of the lease where the lessor arbitrarily refuses his consent to the sub-lease.

Art. 2960. — 4. Duties of lessee.

- (1) A lessee who has sub-let all or part of the immovable shall remain bound, in his relations with the lessor, by all the obligations which, by virtue of the contract of lease, have to be performed by him.
- (2) The provisions of sub-art. (1) shall apply notwithstanding that the lessor has given his consent to the sub-lease.
- (3) The lessee shall not be released from such obligations unless such release has been expressly stipulated between the lessor and himself.

Art. 2961. — 5. Duties of sub-lessee.

- (1) The sub-lessee shall comply with the provisions of the principal lease concerning the enjoyment of the immovable given on lease.
- (2) The lessor may take action directly against the sub-lessee to enforce compliance with such provisions.
- (3) Where the sub-lessee did not know of such provisions or was dispensed by the lessee from observing them, he shall have recourse against the lessee.

Art. 2962. — 6. *Direct action of lessor.*

- (1) The sub-lessee shall be liable only up to the amount of rent payable in respect of what has been sub-let to him.
- (2) The lessor may require the sub-lessee to pay such rent directly to him.
- (3) The sub-lessee may not set up against the lessor the payment made by him in advance, with the exception of the payments made in respect of the current term of the principal lease.

Art. 2963. — 7. *Right of retention.*

The right of retention of the lessor may be exercised by the lessor and by the lessee on the movables brought in the immovable by the sub-lessee.

Art. 2964. — 8. *Termination of principal lease.*

- (1) The termination of the principal lease shall bring the contract of sub-lease to an end.
- (2) Where the lessor has expressly consented to the sub-lease, the sub-lessee may substitute himself for the lessee for the execution of the principal lease.

Art. 2965. — *Termination of contract of lease for a determinate period.*

A contract of lease made for a determinate period shall terminate as of right on the expiration of the period agreed upon without the necessity of giving notice.

Art. 2966. — *Termination of lease for an indeterminate period.*

- (1) Where the contract of lease has not been made for a determinate period, notice may be given by the lessor to the lessee or by the lessee to the lessor.
- (2) In such case, the contract shall terminate on the day when, under the contract or the law, the second term of rent becomes or would have become exigible, had notice of termination not been given.

Art. 2967. — *Person acquiring the immovable.*

- (1) Where a person who acquires the immovable wishes to terminate the lease, in the case where such right has been reserved to him, he shall observe the period laid down in Art. 2966.
- (2) Any stipulation to the contrary shall be of no effect.

Art. 2968. — *Renewal of contract.*

- (1) Where, at the expiration of the lease, the lessee continues in the enjoyment of the thing with the knowledge and without the opposition of the lessor, the contract of lease shall be renewed for an indeterminate period.

- (2) The rights and duties of the parties for the further duration of the lease shall be governed by the provisions of the previous contract.
- (3) The security given for the original lease shall however be released.

Art. 2969. — *Retaking of immovable by lessor.*

- (1) Unless otherwise agreed, the lessor may not terminate the lease, notwithstanding that he declares that he himself wants to occupy the house let.
- (2) Where it has been agreed in the contract of lease that the lessor may occupy the house, he shall give to the lessee notice to quit and shall observe the period laid down in Art. 2966.

Art. 2970. — *Fire on immovable. — 1. Principle.*

The lessee shall be liable for fire to the lessor unless he proves that the fire was due to force majeure or a defect of construction or started in a neighbouring house.

Art. 2971. — *2. Several lessees.*

- (1) Where there are several lessees, they shall all be liable, in case of fire, in proportion to the rental value of the part of the immovable which they occupy.
- (2) Where it is proved that the fire has started in the dwelling of one of them, he alone shall be liable for it.
- (3) Where some lessees prove that the fire could not have started in their dwellings, such lessees shall not be liable for it.

Art. 2972. — *3. Immovable partly inhabited by lessor.*

- (1) The provisions of Art. 2971 shall also apply where the lessor dwells in a part of the immovable which has caught fire.
- (2) In such case, the lessor shall be treated as though he himself were the lessee on that part of the immovable.

Art. 2973. — *Improvements made in immovable. — 1. Right to indemnity.*

- (1) The lessee shall not be entitled to compensation for improvements which he has made in the immovable without the consent of the lessor.
- (2) Where the improvements have been made with the consent of the lessor, the lessee may claim the reimbursement of the lesser sum between the amount of expenses made by him and the increase in the value of the immovable, as at the time of the restoration.

Art. 2974. — *2. Set-off and right of removal.*

- (1) Even where the lessee is not entitled to compensation, he may set off the increase in value procured by him to the immovable against the

decrease in value that such immovable has sustained as a consequence of deteriorations for which he is liable but which have been caused without any fault on his part.

- (2) The lessee may also remove the improvements which he has made in the immovable where this can be done without damage to the immovable.

Section 3. Special rules regarding the lease of lands

Art. 2975. — *Scope of this Section.*

- (1) The provisions of this Section shall apply where the contract of lease relates to a piece of land which the lessee undertakes to exploit.
- (2) The parties may in their contract derogate such rules unless such derogation is expressly prohibited by law.

Art. 2976. — *Model contracts.*

- (1) Model contracts may be drawn up by the Ministry of Agriculture, concerning lands intended for certain kinds of cultivation or lands situate in certain areas of Ethiopia.
- (2) Individual contracts regarding the lands to which such model contracts relate shall be deemed to have been made on the terms laid down in such model contracts.
- (3) They may derogate them by express stipulations.

Art. 2977. — *Direction of exploitation.* — 1. *To whom it pertains.*

- (1) The direction of the exploitation shall be ensured in accordance with the agreement of the parties.
- (2) Unless otherwise agreed or provided by custom, it shall pertain to the lessor where the rent consists, exclusively or principally, of a determinate part of the products or of determinate products of the land given on lease.
- (3) Unless otherwise agreed or provided by custom, it shall pertain to the lessee where the rent consists, exclusively or principally, of a sum of money which is to be paid in cash to the lessor.

Art. 2978. — 2. *Rights of other party.*

- (1) The other party shall be consulted where the decisions which are contemplated are of such a nature that their effects shall continue after the end of the lease.
- (2) Such party may and shall take a decision instead of the other contracting party where the latter has not informed him of his decision in good time and such decision may not be delayed without serious inconvenience.

Art. 2979. — *Obligation of exploiting.*

- (1) A farmer-tenant shall exploit the land and keep it in a good state of productivity.
- (2) The lessor may require the rescission of the lease where the farmer-tenant does not fulfil such obligation.

Art. 2980. — *Nature and manner of cultivation.*

The contracting party who has the direction of the exploitation shall decide on the nature and manner of the cultivation to be undertaken.

Art. 2981. — *Time of works.*

- (1) The farmer-tenant shall in any case decide on the time when he will do the works of cultivation or other works.
- (2) The lessor may only make to him recommendations in this regard.

Art. 2982. — *Expenses of exploitation.*

- (1) The ordinary expenses arising from the exploitation shall be borne by the farmer-tenant.
- (2) Where the rent consists of a part of the products or determinate products of the land, the lessor shall advance to the farmer-tenant such expenses, without interest, where the latter is unable to meet such expenses.
- (3) The advance so made shall be reimbursed to the lessor out of the products of the next crop.

Art. 2983. — *Repairs and maintenance.*

- (1) The farmer-tenant shall make on premises to be used as dwellings, barns, stables and other buildings given to him on lease such repairs as are incumbent upon the lessee under Section 2 of this Chapter.
- (2) He shall maintain according to local custom the roads, wells, fences, ditches, canals and dikes included in the tenement given on lease.

Art. 2984. — *Old age or force majeure.*

- (1) The repairs referred to in Art. 2983 shall be made by the farmer-tenant notwithstanding that they are caused by old age or force majeure.
- (2) The farmer-tenant shall replace the implements or tools of small value which have perished by old age or force majeure.

Art. 2985. — *Extraordinary expenses.*

The farmer-tenant shall not be bound to make extraordinary expenses for the purpose of reconstructing the tenement following an exceptional disaster.

Art. 2986. — *Exchange of parcels of lands.*

- (1) The party who has the direction of the exploitation may, in order to facilitate such exploitation, exchange parcels of land with other owners or farmer-tenants.
- (2) Where such exchanges are made by the farmer-tenant, they shall affect only the enjoyment of such parcels.
- (3) They shall as of right cease to have effect at the end of the lease, unless they have been decided upon by the lessor or the lessor has given his consent thereto.

Art. 2987. — *Management of tenement.*

The farmer-tenant may destroy the slopes, trenches or fences which are an obstacle to the rational exploitation of the tenement given on lease.

Art. 2988. — *Kinds of rent.*

- (1) The rent may consist of a fixed sum of money, or of a fixed quantity of agricultural products, or of a sum of money which varies according to the current price of certain agricultural products.
- (2) The rent may also consist of a fixed share of the agricultural products or of various agricultural products of the land given on lease.

Art. 2989. — *Amount of rent.*

The amount of the rent shall be fixed by agreement between the parties.

Art. 2990. — *Legal presumptions.*

- (1) Unless otherwise provided by custom, the rent shall consist of one half of the agricultural products of the land given on lease.
- (2) Unless otherwise provided by custom, the products shall be shared in kind between the lessor and the farmer-tenant.
- (3) Before any partition, the farmer-tenant may retain the seeds necessary for the next crop.

Art. 2991. — *Legal maximum.*

- (1) The share of the products due to the lessor may in no case exceed three fourths.
- (2) Where a greater share has been stipulated, such stipulation shall be of no effect and the products shall be divided equally between the lessor and the farmer-tenant.

Art. 2992. — *Products necessary for subsistence. — 1. Principle.*

- (1) The farmer-tenant may in any case keep such part of the products as is necessary for his subsistence and that of the persons living with him.

- (2) The provisions of sub-art. (1) shall not apply where the products are equally necessary for the subsistence of the lessor and of those who live with him.
- (3) In such case, the products shall be divided equally between the lessor and the farmer-tenant.

Art. 2993. — 2. *Reservation of rights of lessor.*

Where, by applying the provisions of Art. 2992, the lessor has not received the whole part which is due to him, he shall exercise his rights on the next crop.

Art. 2994. — *Crops.*

- (1) Where the rent consists of a portion of the crops or is fixed having regard to such crops, the farmer-tenant shall, as far as possible, inform the lessor, before gathering the crops.
- (2) He shall ensure the custody and preservation of such crops until such part thereof as is under the contract to be given to the lessor has been delivered to him.

Art. 2995. — *Rent when to be paid.* — 1. *Principle.*

- (1) The rent shall be paid at the end of each year of lease where it consists of an amount of money or of a predetermined quantity of agricultural products.
- (2) The year of the lease shall begin on the day when the lessor has delivered the immovable to the farmer-tenant.

Art. 2996. — 2. *Default of farmer-tenant.*

- (1) Where the farmer-tenant is late in the payment of a term fallen due, the lessor may give him a period of sixty days, informing him that, in default of payment, the contract shall terminate at the end of that period.
- (2) Such period shall run from the day when the farmer-tenant has received the notice of the lessor.
- (3) Any stipulation or custom reducing such period or giving to the lessor the right to terminate the lease immediately by reason of failure in the payment of rent shall be of no effect.

Art. 2997. — 3. *Rent consisting of products.*

- (1) Where the rent consists of a determinate share of the products, or of determinate products of the tenement given on lease, the part due to the lessor shall be delivered to him upon his requiring so, after the products have been separated from the ground.
- (2) Nothing shall affect any custom to the contrary.

Art. 2998. — *Revision of rent. — 1. Principle.*

- (1) Where the rent consists of a sum of money or of a quantity of agricultural products determined beforehand, the farmer-tenant may require a remission of part of his debt or time for the payment of such debt where, in consequence of an invasion of locust, an exceptional drought or other extraordinary accidents or disasters of the same nature, the yield of a given year has diminished by at least one half in comparison with the normal yield.
- (2) Any stipulation or custom to the contrary shall be of no effect.

Art. 2999. — *2. Exceptions.*

- (1) The farmer-tenant may not obtain any remission where the loss of the crops takes place after they have been separated from the ground.
- (2) The farmer-tenant may not require a remission where the cause of the damage existed and was known on the making of the contract.
- (3) He may not require a remission where the damage suffered by him is covered by an insurance or otherwise.

Art. 3000. — *3. Amount of remission.*

- (1) For the purpose of fixing the amount of the remission which the farmer-tenant may require, regard shall be had to the usual yield and the importance of the loss which has been sustained.
- (2) Regard shall also be had to the profits which the farmer-tenant made on the crops of the preceding years or which he can expect to make during the years of the lease which are still to run.
- (3) The court shall not alter the terms of the contract unless equity so requires and to the extent necessary to enable the farmer-tenant and his family to live and to continue the exploitation.

Art. 3001. — *Sub-lease. — 1. Principle.*

- (1) Unless otherwise provided by custom, the farmer-tenant may not sub-let without the consent of the lessor.
- (2) He may require the rescission of the lease where the lessor arbitrarily refuses to consent to the sub-lease.

Art. 3002. — *2. Exception.*

- (1) The farmer-tenant may sub-let buildings which appertain to the thing given on lease, where no change prejudicial to the lessor arises therefrom.
- (2) The provisions of Section 2 of this Chapter concerning sub-leases shall apply in such case as well as where the lessor agrees to the sub-lease.

Art. 3003. — *Termination of contract. — 1. Principle.*

- (1) A contract of lease shall terminate at the expiration of the period fixed, provided that notice has been given by one party to the other at least six months before that date.
- (2) Nothing shall affect any custom to the contrary.

Art. 3004. — 2. *Renewal of lease.*

- (1) Unless otherwise provided by custom, the contract of lease shall be renewed for four years where notice as provided in Art. 3003 has not been given or where, notwithstanding such notice, the farmer-tenant remains in the enjoyment of the thing with the knowledge and without opposition of the lessor.
- (2) The rights and obligations of the parties under the renewed contract shall be settled in accordance with the terms of the previous contract.
- (3) The security given for the original lease shall however be released.

Art. 3005. — 3. *Contracts of long duration.*

- (1) Where the contract of lease has been made for a lifetime or for a period exceeding ten years, the farmer-tenant may unilaterally alter such provision as to time where ten years have elapsed from the land having been delivered to him.
- (2) In such case, the contract of lease shall terminate on the first day of Megabit, four years after the lessor has received notice of the intention of the farmer-tenant to terminate the contract.
- (3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3006. — 4. *Lease for an indeterminate period.*

- (1) A lease made without an indication of its duration shall be deemed to have been made for four years to be reckoned from the day when the farmer-tenant entered in possession of the tenement.
- (2) Nothing shall affect any custom to the contrary.

Art. 3007. — 5. *Transfer of immovable.*

- (1) Where a person acquiring the immovable intends to terminate the lease, such right having been reserved in his favour, he shall give notice to the farmer-tenant within three months from the acquisition made by him.
- (2) The lease shall terminate on the first day of Megabit which follows but not less than three months from the day when such notice has been given.
- (3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3008. — 6. *Right of farmer-tenant.*

- (1) The farmer-tenant to whom notice has been given may advance the day on which the contract terminates by giving notice of his intention to the lessor or to the person who has acquired the immovable.
- (2) In such case, the contract shall terminate on the day fixed by the farmer-tenant a month, at the earliest, after the lessor or the person who has acquired the immovable has received notice of the intention of the farmer-tenant.

Art. 3009. — *Death of farmer-tenant or lessor.*

- (1) In case of death of the farmer-tenant, his heirs may terminate the contract of lease by giving notice to the lessor within six months from the death.
- (2) In case of death of the lessor, the farmer-tenant may terminate the contract of lease by giving notice to the heirs of the lessor within six months from the death of the latter, where the direction of the exploitation has been reserved to the lessor by the contract of lease.
- (3) In the cases mentioned in sub-art. (1) and (2), the contract shall terminate on the first day of Megabit which follows but not less than three months after the lessor or his heirs have received the notice from the farmer-tenant or from the heirs of the farmer-tenant.

Art. 3010. — *Illness of farmer-tenant.* — 1. *Right of farmer-tenant.*

- (1) The farmer-tenant may terminate the lease before the time fixed by the contract or by law where an illness affecting him or a member of his family prevents him from continuing the exploitation in a normal manner.
- (2) The farmer-tenant shall not be liable to pay compensation where he avails himself of such right.
- (3) The contract shall terminate six months after the lessor has received the notice from the farmer-tenant.

Art. 3011. — 2. *Right of lessor.*

- (1) Where the rent consists of a determinate share of the products, or of determinate products of the tenement, the lessor may terminate the lease before the time fixed by the contract or by law, where an illness affecting the farmer-tenant or a member of the family of the farmer-tenant prevents him from continuing the exploitation in a normal manner.
- (2) Where the lessor avails himself of such right, he shall pay to the farmer-tenant compensation equal to a moiety of the average rent of one year.

- (3) The contract shall terminate six months after the farmer-tenant has received the notice of the lessor.

Art. 3012. — *Fire.*

The provisions of Section 2 of this Chapter regarding the destruction or deterioration by fire of the thing let shall apply to the dwelling places and other buildings which form part of the immovable let to the farmer-tenant.

Art. 3013. — *Settlement at the end of the contract.* — 1. *Stable-litter, forage and manure.*

- (1) The outgoing farmer-tenant shall leave the stable-litter, forage and manure of the last year, in the quantity required for the normal exploitation of the tenement.
- (2) Where, on entering in possession of the tenement, he received a smaller quantity, he shall be entitled to compensation in respect of the difference.
- (3) Unless otherwise provided by custom, he shall pay compensation in respect of the difference where he received more.

Art. 3014. — 2. *Seeds.*

Unless otherwise provided by custom, the outgoing farmer-tenant shall not be bound to leave seeds for the next crop.

Art. 3015. — 3. *Expenses of cultivation.*

- (1) The farmer-tenant shall not be entitled to the fruits which, at the termination of the contract, are still undetached.
- (2) The court may, where equity so requires, grant him compensation for the expenses of cultivation incurred by him.
- (3) Such compensation may not exceed the value of the fruits from which the lessor derives a benefit.

Art. 3016. — *Improvements made in tenement.* — 1. *Principle.*

- (1) Whatever the reason for the termination of the lease, the lessee who, by his work or at his expense, has made improvements in the tenement let shall be entitled to compensation at the end of the lease.
- (2) The farmer-tenant shall also be entitled to compensation where he has erected constructions on the tenement given on lease.
- (3) Any stipulation or custom to the contrary shall be of no effect.

Art. 3017. — 2. *Amount of compensation.*

- (1) The compensation due shall be equal to the increase in the rental value of the tenement for nine years resulting from the improvements or constructions.

- (2) The court may grant the lessor a period of time for the payment of such compensation.

Art. 3018. — 3. *Right of removal.*

The farmer-tenant may, where he so prefers, remove the improvements or destroy the constructions which he has made, where this can be done without damaging the immovable.

Chapter 3. Contract of work and labour relating to immovables

Art. 3019. — *Applicable provisions.*

- (1) The provisions of this Chapter shall apply to contracts of work and labour relating to work to be done in connection with the building, repair or installation of immovables.
- (2) The provisions relating to contracts of work and labour laid down in the Title of this Code relating to "Contracts for the performance of services" shall also apply where they are not inconsistent with those of this Chapter (Art. 2610-2631).

Art. 3020. — *Making and proof of contract.*

- (1) The contract shall be complete where the parties have agreed on the work to be done and on the price.
- (2) There shall be evidence of the contract where the contractor has undertaken work to the knowledge of the client or received an advance from the client.

Art. 3021. — *Work to be done. — 1. Sufficient description.*

- (1) The work to be done may be described by means of a plan, scheme or other document.
- (2) The contractor shall in such case comply with the indications given in such documents.

Art. 3022. — 2. *General description.*

- (1) Where the work to be done has been described in a general manner, the contract shall be construed in a restrictive manner as regards the importance of such work.
- (2) Prior to undertaking a work, the contractor shall, whenever this appears reasonable, satisfy himself that the client agrees to the work to be undertaken.

Art. 3023. — *Provisions as to price.*

- (1) The price to be paid by the client may be fixed by way of a lump sum.

- (2) An estimate price may be fixed.
- (3) Where no lump sum or estimate price is fixed, the price shall be deemed to be fixed having regard to the value of the materials and importance of the work necessary to perform the contract.

Art. 3024. — *Price fixed approximately.*

- (1) Where the price has been fixed approximately, the contractor shall carry out the contract as though the price had been fixed by way of a lump sum.
- (2) He shall fix the price definitively having regard to the expenses made and difficulties encountered in the performance of the contract but the price so fixed may not exceed by more than twenty per cent the price agreed as approximate price.
- (3) Unless otherwise agreed, the client may not demand accounts for the price so fixed nor may he appeal against such price.

Art. 3025. — *Price fixed having regard to expenses and labour.* — 1. *Duty to account.*

- (1) Where the price is fixed having regard to the value of the materials and the work necessary for the performance of the contract, the contractor shall, notwithstanding any agreement to the contrary, inform the client of the work already done and expenses already incurred.
- (2) Unless otherwise agreed, such information shall be given at the end of each month.

Art. 3026. — 2. *Remuneration of contractor.*

- (1) The contractor shall be entitled to the remuneration fixed by agreement between the parties.
- (2) In the absence of a specific provision, he may only enter in the accounts given by him to the client wages corresponding to his work.

Art. 3027. — 3. *Rights of client.*

- (1) The client may at any time require that the amounts appearing in the accounts of the contractor be checked by experts.
- (2) Where the parties have not agreed on the remuneration of the contractor, the client may require that such remuneration be fixed by arbitrators.

Art. 3028. — *Examination of work.*

The client may at any time cause to be examined by experts the progress achieved in the work, the quality of the materials used and of the work completed.

Art. 3029. — *Delivery and payment.*

- (1) Payment of the price shall raise the presumption that the work has been examined and accepted by the client.
- (2) The provisions of sub-art. (1) shall not apply where the sums paid are to be regarded as instalments on the price.

Art. 3030. — *Partial delivery and payment.*

- (1) Where it has been agreed that the work would be carried out by stages, such work shall be examined and delivered on completion of each of such stages.
- (2) The contractor may require that part of the price corresponding to the work completed be paid to him on completion of each of such stages.

Art. 3031. — *Alterations required by client. — 1. Rights of client.*

The client may demand that alterations be made in the work as originally planned where such alterations can technically be made and are not such as to impair the solidity of the work.

Art. 3032. — *2. Effect.*

- (1) The client may require a reduction in the price as originally agreed where the alterations required by him reduce the expenses of the contractor.
- (2) The contractor may require an increase in the price and his remuneration as originally agreed, where the alterations required by the client increase his expenses, work or liability.
- (3) Where the parties do not agree, such reduction or increase shall be settled by arbitrators appointed by the parties or, failing such, by the court.

Art. 3033. — *3. Contractor refusing alterations.*

- (1) The contractor may refuse the alterations required by the client where such alterations affect plans, schemes or other documents on which the parties had agreed.
- (2) The contractor may also refuse the alterations where they are of such a nature or importance that they constitute a work absolutely different to the agreed work.
- (3) The work shall be deemed to be absolutely different to the agreed work where it implies an alteration exceeding by twenty per cent the value at which the original work was or could have been estimated.

Art. 3034. — *Alterations required by contractor.*

- (1) Where it appears necessary for technical reasons to make alterations in the work as originally agreed, the contractor shall, except in urgent cases, give notice thereof to the client.
- (2) The contractor shall give such notice notwithstanding that the proposed alterations do not result in the client having to pay an increased price.

Art. 3035. — *Termination of contract.*

The client may at any time terminate the contract, notwithstanding that the contractor has committed no fault.

Art. 3036. — *Rights of contractor.* — 1. *Price fixed by way of a lump sum.*

- (1) Where the client terminates the contract, the contractor shall be entitled to the lump sum or approximate price agreed.
- (2) The amounts saved by the contractor in consequence of the termination of the contract shall be deducted.
- (3) Where the price had been fixed approximately, the contractor may increase by not more than twenty per cent the sums due by the client under sub-art. (1) and (2).

Art. 3037. — 2. *Price fixed otherwise.*

- (1) Where the price had been fixed having regard to the value of the materials and the work necessary for the performance of the contract, the contractor shall be entitled to the value of the materials used and work carried out before he was informed of the termination of the contract.
- (2) The client shall be bound by the contracts made in good faith by the contractor prior to the termination of the contract or shall make good the damage caused to the contractor by the rescission of such contracts.
- (3) The contractor shall be entitled to the whole remuneration agreed with the client.

Art. 3038. — *Rescission of contract.*

- (1) Where the contract is rescinded by reason of a fault committed by the contractor or his refusing to accept alterations required by the client, the contractor shall be entitled to such part of the price and remuneration as corresponds to the work already carried out.
- (2) Nothing shall affect the client's right to claim damages for the prejudice caused to him by the contractor failing to perform his obligations.

Art. 3039. — *Warranty due by contractor.*

- (1) The contractor shall guarantee during ten years from its delivery the proper execution and the solidity of the work done by him.
- (2) He shall be liable during this period for such loss or deterioration of the work as is due to a defect in its execution or to the nature of the soil on which the work has been done.
- (3) Any provision shortening the period laid down in sub-art. (1) or excluding the warranty due by the contractor shall be of no effect.

Art. 3040. — *Claim by sub-contractors or workmen.*

Independent contractors or workmen employed under a contract of work and labour relating to an immovable may claim against the person on whose behalf the work was done with a view to obtaining payment of their claims to the extent of the amount due by the client to the principal contractor on the day the claim is made.

Chapter 4. Mortgage and antichresis

Section 1. Creation of mortgage

Art. 3041. — *Mortgage how created.*

A mortgage may result from the law or a judgment or be created by a contract or other private agreement.

Art. 3042. — *Legal mortgage of seller of immovable.*

Whosoever sells an immovable shall have a legal mortgage on such immovable as a security for the payment of the agreed price and for the performance of any other obligation laid down in the contract of sale.

Art. 3043. — *Legal mortgage of co-partitioner.*

- (1) A co-partitioner shall have a legal mortgage on the immovables allotted to his co-partitioners in accordance with the act of partition.
- (2) Such mortgage shall secure the payment of any compensation in cash that may be due to him or such other compensation as may be due by the co-partitioners where he is dispossessed of any property allotted to him.

Art. 3044. — *Judicial mortgage.*

- (1) A court or arbitration tribunal may secure the execution of its judgments, orders or awards by granting one party a mortgage on one or more immovables the property of the other party.
- (2) The judgment or award shall specify the amount of the claim secured by mortgage and the immovable or immovables to which such mortgage applies.

Art. 3045. — *Instrument creating mortgage.*

- (1) The contract or other agreement creating a mortgage shall be of no effect unless it is made in writing.
- (2) It shall be of no effect unless it specifies in Ethiopian currency the amount of the claim secured by mortgage.

Art. 3046. — *Claim secured by mortgage.*

- (1) A mortgage may be created to secure any claim whatsoever, whether existing, future, conditional or contingent.
- (2) It may be created to secure a claim embodied in a title to order or to bearer.

Art. 3047. — *Property liable to mortgage.*

- (1) A mortgage may charge an immovable only.
- (2) Nothing shall affect the provisions of this Code or special laws whereby certain kinds of movables may be mortgaged.

Art. 3048. — *Immovable mortgaged.*

- (1) The act creating the mortgage shall clearly specify the immovable mortgaged.
- (2) Such act shall specify in particular the commune in which the immovable is situate, the nature of the immovable and, where appropriate, the number of the immovable in the cadastral survey plan.
- (3) Where the immovable is situate in an area where there is no cadastral survey plan, not less than two of its boundaries shall be specified.

Art. 3049. — *Conditions for creating a mortgage.*

- (1) A mortgage may be created by the debtor or by some other person in favour of the debtor.
- (2) A person may not secure his debt by mortgage unless he is entitled to dispose of the immovable for consideration.
- (3) A person may secure the debt of another by mortgage where he is entitled to dispose of the immovable gratuitously.

Art. 3050. — *Sanction.*

- (1) A mortgage shall be of no effect where it is created by a person who is not entitled to dispose of the immovable as provided in Art. 3049.
- (2) It shall not become valid where the mortgagor subsequently acquires the right to dispose of the immovable.
- (3) A mortgage shall be of no effect where it relates to future immovables.

Art. 3051. — *Ownership evidenced by title deed.*

- (1) A mortgage shall be valid where it is created by a person who is the owner of the immovable under a title deed issued to him by the competent authorities.
- (2) It shall be valid notwithstanding that the title deed was issued on the basis of an act which is invalidated, unless the person who avails himself of the mortgage is shown to be in bad faith.
- (3) In such cases, the owner who discharged the mortgage shall be compensated by an insurance fund created, in accordance with administrative regulations, by means of the fees charged on delivery of title deeds.

Art. 3052. — *Registration necessary.*

A mortgage, however created, shall not produce any effects except from the day when it is entered in the registers of immovable property at the place where the immovable mortgaged is situate.

Art. 3053. — *Manner of making registration.*

- (1) The keeper of the registers of immovable property required to make an entry relating to a mortgage shall make such entry in the manner provided by the Title of this Code relating to "Registers of immovable property" (Art. 1587-1601).
- (2) The provisions of the same Title shall apply as regards the correction and alteration of entries (Art. 1621-1627).

Art. 3054. — *Costs of registration.*

- (1) The costs of registration shall be borne by the debtor.
- (2) Whosoever has caused a mortgage to be registered for useful purposes and has advanced the costs of registration shall be refunded by the debtor.

Art. 3055. — *Reduction of claim.*

- (1) Where the debtor has discharged one fourth of the debt, he may apply for the entry to be corrected accordingly.
- (2) The creditor shall give his consent to the correction.
- (3) The fact that part of the debt has been discharged shall not enable the debtor to require that part of the immovable mortgaged be released.

Art. 3056. — *Increase of claim.*

- (1) The amount of the claim as specified in the original entry may not be increased by way of a correction made to such entry.

- (2) A new entry shall be required to secure such part of the claim as is not covered by the original entry.

Art. 3057. — *Time for making entry.*

- (1) An entry relating to a mortgage shall be of no effect where it is made after a third party who is not liable for the payment of the debt has acquired the immovable and registered his rights in the registers of immovable property.
- (2) An entry relating to an immovable shall be of no effect where it is made after an action for the attachment of the immovable has been brought and entered in the registers of immovable property or after the mortgagor has been declared bankrupt.

Art. 3058. — *Effect of registration.*

- (1) The registration of a mortgage shall be effective for ten years from the day when the entry was made.
- (2) The effect of such registration shall continue where, prior to the expiry of the period of ten years, a new entry is made with a view to renewing the first registration.
- (3) In such case, the first registration shall be effective for ten years from the day when the new entry was made.

Section 2. Effect of mortgage

Art. 3059. — *Principle.*

- (1) Where the immovable mortgaged is attached by the creditors of the mortgagor, the mortgagee may demand to be paid, out of the proceeds of the sale of the immovable, in priority to any other creditor.
- (2) Where the immovable has been sold by the mortgagor, the mortgagee may attach it in the hands of the purchaser whose rights have been registered subsequently to the registration of the mortgage.
- (3) The mortgagee shall in addition have all the rights of an ordinary creditor.

Art. 3060. — *Prohibited provisions.*

- (1) Any provision whereby the creditor may, after the debt has become due, appropriate or sell the immovable without due regard for the conditions prescribed by law shall be of no effect, notwithstanding that such provision was made after the creation of the mortgage.
- (2) Provisions may however be made to the effect that the mortgagor shall, after the debt has become due, transfer the ownership of the immovable to the mortgagee.

Art. 3061. — *Legal proceedings. — 1. Jurisdiction.*

Any action relating to the registration of a mortgage or the sale of the mortgaged immovable shall fall within the exclusive jurisdiction of the court of the place where such immovable is situate.

Art. 3062. — *2. Address for service.*

- (1) The mortgagor and the mortgagee shall, on the request of any interested party, specify an address for service at the place where the sittings of the court having jurisdiction are held.
- (2) Where they fail to specify such address within one month from having been required to do so, the court shall specify the place where service shall validly be made.

Art. 3063. — *3. Curator.*

The court may, on the application of any interested party, appoint a curator to a creditor whose name or domicile is unknown, where the personal appearance of such creditor is required by law and urgent decisions are to be made.

Paragraph 1. — *Preferential rights of mortgagee*

A — *Property to which such rights extend*

Art. 3064. — *Intrinsic elements and accessories. — 1. Principle.*

- (1) The mortgage shall charge the mortgaged immovable together with its intrinsic elements and accessories.
- (2) Any object expressly specified as an accessory in the act creating the mortgage shall be deemed to be an accessory.
- (3) Evidence may be adduced to rebut the presumption laid down in sub-art. (2).

Art. 3065. — *2. Rights of third parties.*

- (1) The mortgagee may not enforce his rights on such intrinsic elements or accessories of the mortgaged immovable as have been separated therefrom and transferred to a third party.
- (2) In such case, he may only exercise the rights vested in him by Art. 3073, 3074 and 3107 of this Code.

Art. 3066. — *Improvements and buildings. — 1. Principle.*

The mortgage shall apply to any improvement made on the mortgaged immovable and to the buildings, plantations and crops made on such immovable.

Art. 3067. — 2. *Prior rights of contractors and suppliers.*

- (1) The contractors who built the buildings or made the improvements mentioned in Art. 3066 and the suppliers who supplied the materials, plants, seeds or fertilizers used in the improvements, buildings, plantations or crops shall have priority over mortgagees on such part of the proceeds of the sale of the mortgaged immovable as is necessary to cover the costs of the improvements, buildings, plantations or crops made by them.
- (2) In cases of dispute, the court shall settle the amount to be paid in priority.
- (3) Where appropriate, the court shall settle how such amount shall be distributed among contractors and suppliers.

Art. 3068. — *Rent.*

- (1) Where the mortgaged immovable is leased, the mortgage shall apply to the rent having run from the day when the immovable was attached.
- (2) The lessees and farmer-tenants may not validly pay the rent to the owner of the mortgaged immovable after they have been notified of the attachment of the immovable.

Art. 3069. — *Indemnities charged by mortgage. — 1. Principle.*

- (1) The mortgage shall apply to any insurance compensation or compensation for damages which may be due in cases of loss or deterioration of the immovable.
- (2) The mortgage shall also apply to the compensation due to the owner whose immovable is expropriated.

Art. 3070. — 2. *Consent of creditors to payment.*

- (1) Insurance or expropriation compensation and compensation for damages may not be paid to the mortgagor unless all the mortgagees who have a registered claim on the immovable agree to such payment.
- (2) The mortgagor to whom such compensation is due shall inform all registered creditors of the amount of and reason for compensation and of the name and address of the person liable to pay it.
- (3) The creditors shall be deemed to agree to the compensation being paid to the debtor where they fail to declare their objection to the payment within thirty days from having received information as provided in sub-art. (2).

Art. 3071. — 3. *Rights of mortgagor.*

- (1) The mortgagor may demand that any compensation not exceeding one thousand Ethiopian dollars be paid to him.

- (2) He may demand that any compensation be paid to him where he undertakes to use it to rebuild or repair the immovable and offers to furnish sureties or securities sufficient to guarantee that he will comply with his undertaking.
- (3) He may in any case require that compensation be paid into the hands of a trustee appointed by the court.

Art. 3072. — *Mortgage of bare ownership.*

A mortgage charging the bare ownership of an immovable shall, upon the extinction of the usufruct, extend to the full ownership of such immovable.

Art. 3073. — *Reduction in value of immovable.* — 1. *Due to mortgagor.*

- (1) Where the mortgagor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may demand new securities.
- (2) Where the mortgagor fails to furnish such securities within the period of time reasonably fixed to him by the mortgagee, the mortgagee may demand that an adequate part of the debt be discharged.

Art. 3074. — 2. *Due to third party acquiring the immovable.*

The mortgagee may exercise against the mortgagor the rights mentioned in Art. 3073 where the value of the immovable mortgaged is reduced or endangered by a third party who has acquired such immovable from the mortgagor.

Art. 3075. — 3. *Other cases.*

The mortgagee may not demand new securities nor that part of the debt be discharged where the actual or possible reduction in the value of the immovable mortgaged is due to causes other than those specified in Art. 3073 and 3074.

B — *Priority of mortgages*

Art. 3076. — *Capital of claim.*

The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of the registered amount of claim.

Art. 3077. — *Interest.*

- (1) The mortgage shall secure the payment to the mortgagee, in priority to other creditors, of interest on the claim at the rate fixed in the registration of the mortgage.
- (2) The mortgage shall secure the preferential payment of interest to an amount not exceeding two years interest.

- (3) It may not be specified in the registration of the mortgage that the mortgage shall secure the payment of interest for a longer period of time.

Art. 3078. — *Necessary expenses and insurance premiums.*

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the necessary expenses made by him for the preservation of the mortgaged immovable and of the insurance premiums due by the owner and which have been paid by the mortgagee.

Art. 3079. — *Costs of attachment proceedings.*

The mortgage shall secure the repayment to the mortgagee, in priority to other creditors, of the normal costs arising from proceedings instituted by him for the attachment of the immovable.

Art. 3080. — *Legal interest.*

- (1) Interest at the rate provided by law shall run on the sums specified in Art. 3076-3079 from the day when the immovable was attached.
- (2) The mortgage shall secure the payment of such interest until the immovable is sold by auction following attachment.

C — *Plurality of mortgages*

Art. 3081. — *Principle.*

- (1) Where several creditors have a registered claim on the same immovable, they shall rank according to the date on which they have registered their claim.
- (2) No regard shall be had to the date on which the claims became certain or exigible.

Art. 3082. — *Creditors registered on the same day.*

Creditors whose claims have been registered on the same day shall rank equally and be paid in proportion to the amount of their claims.

Art. 3083. — *Subrogation.*

- (1) Any mortgagee may pay a creditor having priority with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- (2) The creditor who has paid shall be subrogated to the rights of the creditor whom he has paid.

Paragraph 2. — Right to follow immovable

A — General provisions

Art. 3084. — Right to transfer ownership of mortgaged immovable.

- (1) He whose immovable is mortgaged shall retain the right to transfer the ownership thereof.
- (2) Any provision to the contrary shall be of no effect.

Art. 3085. — Right of mortgagee.

The mortgagee who has registered his mortgage prior to the registration of the deed evidencing the transfer may attach the immovable in the hands of the person who acquired it.

Art. 3086. — Effect on original debtor.

- (1) The transfer of the immovable mortgaged shall bring no change in the obligations of the original debtor.
- (2) The original debtor shall however be released where the person who acquired the immovable has undertaken to pay the debt, unless the mortgagee informed the original debtor in writing that he would continue to hold him liable.
- (3) Such information shall, under pain of loss of right, be given within one year from the mortgagee having been informed of the agreement made between the original debtor and the person who acquired the immovable.

Art. 3087. — Indivisibility of mortgage.

- (1) A mortgage is indivisible.
- (2) Where part of the immovable mortgaged is alienated or such immovable is divided, each part shall secure the full payment of the debt.

Art. 3088. — Creation of rights in rem on immovable mortgaged.

- (1) He whose immovable is mortgaged shall retain the right to charge it with an usufruct, servitudes, mortgages or other rights in rem.
- (2) Any provision to the contrary shall be of no effect.

Art. 3089. — Rights of creditor.

- (1) Registered rights in rem on an immovable mortgaged shall not affect the mortgagee where such rights have been registered after the mortgagee has registered his mortgage.
- (2) The mortgagee may cause the immovable to be sold as though such rights had not been created.

- (3) Where the immovable is attached, the beneficiary of the right in rem may demand that the value of such right be paid to him in priority to creditors whose mortgage has been registered subsequently to his own right being registered.

B — Position of person acquiring the immovable

Art. 3090. — Attachment of immovable. — 1. Assimilation to suretyship.

He who acquires an immovable mortgaged may, in his relations with the mortgagee, avail himself of the rights vested in the guarantor by the provisions of the Title of this Code relating to "Contracts in general".

Art. 3091. — 2. Improvements or buildings.

- (1) He who has acquired an immovable mortgaged and has increased its value by making thereon improvements, buildings, plantations or crops, may require to be paid, out of the proceeds of the sale, an amount corresponding to the increase in the value of the immovable since the day when the transfer of ownership was registered.
- (2) Servitudes and other rights in rem which the person who acquired the immovable had on such immovable prior to acquiring it shall give rise to compensation, where they cannot revive.

Art. 3092. — 3. Loss or deterioration of immovable.

- (1) He who acquires an immovable mortgaged shall not be liable to the mortgagee for the loss or deterioration of the immovable.
- (2) He shall however be liable where such loss or deterioration is due to his fault or negligence and occurs after he has been informed that proceedings have been instituted for the attachment of the immovable.

Art. 3093. — 4. Fruits.

- (1) He who acquires an immovable mortgaged shall not account for the fruits he has collected prior to attachment.
- (2) He shall cease to be the owner of such fruits on the day when the immovable is attached in his hands.

Art. 3094. — 5. Action for warranty.

- (1) Where the immovable is attached in the hands of the person who acquired it, such person may bring an action for warranty against the person from whom he acquired the immovable.
- (2) He may bring such action notwithstanding that he acquired the immovable gratuitously.
- (3) An action for warranty may not be brought where it is expressly prohibited in writing by the deed evidencing the transfer of ownership.

Art. 3095. — 6. Subrogation.

- (1) Where the immovable is attached in the hands of the person who acquired it, such person shall be subrogated to the rights of the mortgagee.
- (2) He may not avail himself of such subrogation to the detriment of third parties who have acquired for consideration, from the debtor or guarantor, an immovable intended to secure the debt.

Art. 3096. — 7. Appointment of curator.

- (1) He who acquired the immovable may, where he is not personally liable for the payment of the debt under the mortgage, demand that proceedings for attachment instituted against him be discontinued.
- (2) In such case, he may appoint or cause to be appointed by the court a curator against whom the proceedings shall be continued.
- (3) The curator shall reside or specify an address for service at the place where the sittings of the court of competent jurisdiction are held.

Art. 3097. — Voluntary discharge of debt.

- (1) He who acquires an immovable mortgaged may pay a creditor having a registered claim on such immovable with the consent of such creditor or, where the immovable is attached on the latter's request, without such consent.
- (2) In such case, he shall be subrogated to the rights of such creditor and merger may not be raised against him.

Art. 3098. — Redemption of mortgage. — 1. When possible.

He who acquires an immovable mortgaged may redeem the mortgage where he is not personally liable for the payment of the debt under the mortgage.

Art. 3099. — 2. Offer to redeem.

He who intends to redeem the mortgage shall serve on the registered creditors and on the person from whom he acquired the immovable a document specifying:

- (a) the nature and date of the title by virtue of which he acquired the immovable and the date on which he registered his rights; and
- (b) any particulars necessary for identifying the immovable, such as the place where such immovable is situate and its number in the cadastral survey plan; and
- (c) the price he paid for the immovable or its estimate value, where he acquired it gratuitously; and
- (d) an offer to pay such price or value; and

- (e) a list of the mortgages registered on the immovable together with the name of the registered creditors, the amount of the claims and the date of registration of the mortgages; and
- (f) his address for service at the place where the sittings of the court of competent jurisdiction are held.

Art. 3100. — 3. Offer may not be withdrawn.

- (1) He who offered to redeem the mortgage shall be bound by his offer for a period of sixty days.
- (2) He may not withdraw his offer during this period unless all the persons to whom such offer was made agree to the withdrawal.

Art. 3101. — 4. Offer accepted.

- (1) The creditors shall be deemed to accept the offer where they do not reject it within sixty days from the day when it was made.
- (2) The amount offered shall in such case be distributed among the creditors according to their rank.

Art. 3102. — 5. Offer rejected.

- (1) Where a creditor refuses the offer, the immovable shall be sold by public auction.
- (2) The creditors who have refused the offer shall advance the costs of such sale by auction.

Art. 3103. — 6. Costs of sale by auction.

- (1) The costs of the sale shall be borne by the purchaser, where the immovable is sold at a price exceeding by ten per cent the price offered under Art. 3099.
- (2) In other cases, such costs shall be borne by the creditors who rejected the offer of redemption.

Art. 3104. — 7. Time for making offer.

No offer to redeem the mortgage may be made after proceedings for attachment have been instituted and an entry to this effect has been made in the registers of immovable property.

C — Special provisions applicable to guarantor

Art. 3105. — Presumption.

He who has mortgaged his immovable to secure the debt of another person shall be presumed not to have bound himself on his other property.

Art. 3106. — Position of guarantor.

Without prejudice to the provisions of Art. 3107 and 3108, the guarantor shall be assimilated to the person who acquires an immovable mortgaged.

Art. 3107. — *Loss or deterioration of immovable.*

- (1) Where the guarantor intentionally or by negligence reduces or endangers the value of the immovable mortgaged, the mortgagee may require him to produce new securities.
- (2) The mortgagee shall have the same right where the value of the immovable is intentionally or negligently reduced or endangered by a third party who acquired the immovable from the guarantor.

Art. 3108. — *Other differences.*

- (1) Where the immovable is attached in his hands, the guarantor may not bring an action against the person from whom he acquired the immovable.
- (2) He may not require that proceedings for attachment instituted against him be discontinued.
- (3) He may not offer to redeem the mortgage.

Section 3. Extinction of mortgage

Art. 3109. — *Principle.*

- (1) A mortgage shall be extinguished where the registration of the mortgage is cancelled in the registers of immovable property.
- (2) The registration shall be cancelled in accordance with the provisions of the Title of this Code relating to "Registers of Immovable Property" (Art. 1630-1636).

Art. 3110. — *Grounds for cancellation.*

Any interested party may require the registration to be cancelled where:

- (a) the claim secured by the mortgage is extinguished; or
- (b) the mortgagee has renounced his mortgage; or
- (c) the immovable mortgaged has been sold by auction and the proceeds of the sale have been distributed among the creditors; or
- (d) the amount accepted by the creditors in cases of an offer of redemption has been distributed among the creditors.

Art. 3111. — *Mortgage of usufruct.*

- (1) Any interested party may require the cancellation of the registration of the mortgage of an usufruct, where such usufruct is extinguished.
- (2) The usufructuary may not renounce the usufruct to the detriment of the mortgagee.

Art. 3112. — *Renunciation of mortgage.*

- (1) Where the creditor renounces his mortgage, such renunciation shall be of no effect unless it is made expressly and in writing.

- (2) Unless otherwise agreed, such renunciation shall not imply that the mortgagee renounces his claim.

Art. 3113. — *Creditor making subrogation impossible.*

Where the mortgage applies to an immovable which is not the property of the debtor, the cancellation of the registration may be sought where the creditor makes it impossible for the owner of such immovable to be subrogated to the rights of the creditor.

Art. 3114. — *Conditions for cancelling registration.*

- (1) No registration shall be cancelled unless the court so orders.
- (2) The court shall order cancellation where the creditor agrees in writing to the cancellation.
- (3) The creditor shall be liable where he refuses without good cause to agree to the cancellation.

Art. 3115. — *Effect of cancellation.*

- (1) Where the registration is cancelled, such cancellation shall benefit the creditors having registered their claims after the entry which is cancelled.
- (2) The owner may not create a new mortgage to replace the mortgage the registration of which has been cancelled.

Art. 3116. — *Cancellation made without good cause.*

- (1) Where a registration has been cancelled, such registration shall in no case revive, notwithstanding that the cancellation was made without good cause.
- (2) The mortgage which has been cancelled without good cause shall be registered again and shall be effective from the day of the new registration.
- (3) Nothing shall affect the liability of the person who caused the registration to be cancelled without good cause.

Section 4. Antichresis

Art. 3117. — *Definition.*

A contract of antichresis is a contract whereby the debtor undertakes to deliver an immovable to his creditor as a security for the performance of his obligations.

Art. 3118. — *Creation of antichresis. — 1. Principle.*

Without prejudice to the provisions of Art. 3119, the provisions of this Title relating to the creation of mortgages shall apply to contracts of antichresis.

Art. 3119. — 2. *Special rules.*

- (1) Antichresis may be created by contract only.
- (2) It may not be created to guarantee a claim embodied in an instrument
to order or to bearer.
- (3) It may not be created by the bare owner of an immovable.

Art. 3120. — *Relations between parties.*

Without prejudice to the provisions of the following Articles, the provisions of this Code regarding the relations between the lessor and lessee or farmer-tenant shall apply to the relations between the parties under a contract of antichresis.

Art. 3121. — *Delivery of immovable.*

- (1) The person having created the antichresis shall deliver the immovable and its accessories to the creditor or such other person as has been specified in the contract.
- (2) The antichresis shall have the same effects as a mortgage until such delivery has taken place or after the immovable has been returned to the person having created the antichresis.

Art. 3122. — *Warranty against defects.*

- (1) The immovable shall be delivered in its condition as on the day of the making of the contract.
- (2) The person having created the antichresis shall give no warranty against the defects of such immovable.
- (3) He shall only be liable, where he knew of them at the time of the contract and failed to mention them, for such defects of the immovable as seriously endanger the life or health of the possessor of the immovable, of persons living with him or of his employees.

Art. 3123. — *Repairs.*

The person having created the antichresis may not be compelled to make repairs on the immovable.

Art. 3124. — *Interest on claim.*

- (1) The creditor under the contract of antichresis shall pay no rent to the person having created the antichresis.
- (2) The use the creditor makes of the immovable and the fruits and profits he derives therefrom shall replace interest on the claim.
- (3) Any provision whereby the creditor is entitled to interest in addition to such use, fruits and profits shall be of no effect.

Art. 3125. — *No duty to furnish premises.*

The creditor shall be under no obligation to furnish the premises.

Art. 3126. — *Contract relating to land.*

Unless otherwise agreed, where land is given as a security under a contract of antichresis, the creditor shall have the direction of the works.

Art. 3127. — *Assignment of right.*

The creditor may not lease the immovable nor assign his right to a third party without the consent of the person having created the antichresis.

Art. 3128. — *Unilateral termination of antichresis.*

- (1) The creditor may at any time renounce his right of antichresis.
- (2) Unless otherwise agreed, the creditor may at any time terminate the antichresis by performing the obligation secured by the antichresis.

Art. 3129. — *Relations between creditor and third parties.*

The provisions of this Title relating to the registration and effect of mortgages shall apply to contracts of antichresis.

Art. 3130. — *Extinction of antichresis.*

The provisions of this Title relating to the extinction and striking out of mortgages shall apply to contracts of antichresis.

TITLE XIX

ADMINISTRATIVE CONTRACTS

Chapter 1. General provisions

Art. 3131. — *Rules applicable to contracts of administrative authorities.*

- (1) Contracts concluded by the State or other administrative authorities shall be governed by the provisions of this Code which relate to contracts in general or special contracts.
- (2) The provisions of this Title shall supplement or replace such provisions where the contract is in the nature of an administrative contract.

Art. 3132. — *Administrative contracts.*

A contract shall be deemed to be an administrative contract where:

- (a) it is expressly qualified as such by the law or by the parties; or
- (b) it is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service; or

- (c) it contains one or more provisions which could only have been inspired by urgent considerations of general interest extraneous to relations between private individuals.

Art. 3133. — *Application to certain business organisations.*

Business organisations which appeal to public savings or place their shares with the public may be compelled by the competent authorities to comply, in the conclusion of their contracts, with the procedures and formalities prescribed by law for administrative authorities.

Section 1. Formation of contracts

Paragraph 1. — Consent

Art. 3134. — *Form of acceptance.*

- (1) Unless otherwise provided by administrative laws or regulations, the conclusion of a contract by the administrative authorities implies an express manifestation of will on their part.
- (2) Where an authority competent to approve a contract keeps silent, such silence shall not, in the absence of a formal provision, be deemed to amount to approval.
- (3) The provisions of sub-art. (1) and (2) shall apply to the prorogation of, or modifications to, a contract.

Art. 3135. — *General conditions applicable to administrative contracts.* — 1. *Drawing up.*

Model specifications, general clauses and conditions and common directives may be drawn up by each interested administrative authority and may be declared to be applicable by Legal Notice published in the *Negarit Gazeta*.

Art. 3136. — 2. *Definition.*

- (1) Model specifications shall constitute standard specifications, formulated in advance and in a general way by the administrative authority, for the concession of public services.
- (2) General clauses and conditions shall fix the provisions applicable to all or some of the contracts concluded by a specified administrative authority.
- (3) Common directives shall fix the technical provisions applicable to all contracts relating to a given kind of works or supplies.

Art. 3137. — *Effect of specifications, clauses, conditions and directives.* — 1. *Conclusion of contract.*

The provisions of general clauses and conditions concerning the manner in which a contract is to be concluded by the administrative authority may

be invoked by the candidates to the contract and in particular by the tenderers in the case of allocation of contracts by tender.

Art. 3138. — 2. *Contents of contract.*

- (1) The provisions of model specifications, general clauses and conditions or common directives, concerning the interpretation, contents and execution of a contract shall not apply to a specified contract unless such contract expressly makes reference thereto.
- (2) Specifications specially relating to a concession or to a given contract may derogate such provisions.

Art. 3139. — *Modification to specifications, etc.*

- (1) Where the rights and obligations of the parties are determined by reference to specifications, general clauses and conditions or common directives, such specifications, clauses, conditions and directives shall be considered such as they existed at the time when the contract was concluded.
- (2) The rights and obligations of the contracting parties shall not be affected by modifications subsequently made to such specifications, clauses, conditions and directives.

Art. 3140. — *Opening of credits in favour of administrative authority.*

- (1) The opening of credit accounts authorised by the budgetary authorities in favour of an administrative body shall not in itself give private individuals the right to use the credits which have been opened.
- (2) The authorisation given to an administrative authority to incur an expense shall not amount to an authorisation to contract, where this is necessary for concluding a contract.

Art. 3141. — *Contractual freedom of administrative authorities.*

- (1) The authorisation given to an administrative authority to conclude a contract shall not compel such authority to conclude such contract.
- (2) It shall only give the right of doing so to such authority.

Art. 3142. — *Lack of credit.*

A contract concluded by an administrative authority shall be valid notwithstanding that such authority has not received the necessary credits for the performance of the contract.

Art. 3143. — *Absence of authorisation.*

- (1) A contract concluded by an administrative authority shall be of no effect where the authority which has concluded it has not received the necessary authorisation prescribed by administrative laws or regulations.

- (2) Those provisions in the Title of this Code relating to "Contracts in general" which apply to nullity on the ground of the object of the contract being unlawful shall apply to such nullity.

Art. 3144. — *Approval of contract.*

- (1) Where the conclusion of the contract is subjected to the necessity of a further approval, the contract shall not be complete until such approval is given.
- (2) The administrative authority which has concluded the contract shall perform all the acts necessary to obtain such approval.
- (3) It may do nothing which might hinder or imperil such approval.

Art. 3145. — *Late approval.*

The party contracting with an administrative authority may release himself from the contract by giving notice to such authority, where the contract concluded is not approved within six months or such other period as has been fixed by the parties.

Art. 3146. — *Liability in case of non-conclusion of contract.*

- (1) Where the administrative authorities do not conclude a contract, they shall indemnify the person who has incurred expenses in view of the conclusion of such contract, where such expenses have been incurred through the fault of the administrative authority, by reason of the attitude taken by the latter in the course of the precontractual negotiations.
- (2) The administrative authorities shall, even in the absence of fault, indemnify the person who, as a consequence of negotiations with such authorities, has made studies, drawn up plans, initiated works or incurred expenses, where such expenses or disbursements have been made with the consent of the administrative authorities and the latter have derived a benefit therefrom.

Paragraph 2. — Procedure for the allocation of contracts by tender

Art. 3147. — *Use of such procedure.*

- (1) Administrative contracts may be concluded by the procedure of allocation by tender.
- (2) They shall be concluded by such procedure, under pain of nullity, whenever the law imposes such obligation.

Art. 3148. — *Notice of allocation by tender. — 1. Principle.*

The allocation which is to take place shall be notified to the public in the manner prescribed by administrative regulations or, in default of such regulations, in the manner which appears the most appropriate.

Art. 3149. — 2. Contents.

The notice of allocation shall show:

- (a) the place where the specifications may be consulted; and
- (b) the authorities who are to proceed to the allocation; and
- (c) the time prescribed for sending in the tenders; and
- (d) the place, day and hour fixed for the allocation; and
- (e) the amount of security or the other guarantees required from the tenderers.

Art. 3150. — 3. Time.

The notice of allocation shall be published, except in cases of urgency, not less than one month before the expiration of the time prescribed for sending in the tenders.

Art. 3151. — 4. Effect.

As from the publication of the notice, no modification may be made to the specifications unless a new publication is made.

Art. 3152. — Specifications.

- (1) The specifications of the allocation shall contain an indication of the conditions required from tenderers.
- (2) The administrative authorities may impose in such specifications all the conditions relating to technical and professional qualifications which they consider desirable.
- (3) They shall specify, where appropriate, the qualifications which are required for admission to tender and the eliminating tests to which the projects or samples submitted will be subjected.

Art. 3153. — Documents to be submitted.

The contractors or suppliers who intend to present themselves as tenderers shall deposit in the place indicated and within the time specified by the specifications a declaration of their intention to tender and their tender.

Art. 3154. — Declaration of intention to tender.

- (1) The declaration of intention to tender shall indicate the name, first names, qualification and address of the candidate.
- (2) References and, if this is required by the specifications, a regular act of suretyship shall be annexed thereto.

Art. 3155. — Tender. — 1. Contents and forms.

- (1) The tender shall contain an offer of the price and the undertakings of the candidate.
- (2) It shall be deposited in a sealed envelope according to the conditions fixed in the specifications.

Art. 3156. — *Duty to maintain it.*

- (1) The tenderer may not withdraw or modify his tender until the allocation has been declared.
- (2) However, he may expressly limit in his tender the period for which he binds himself.

Art. 3157. — *Office of allocations.*

The constitution of the office of allocations shall be fixed by administrative regulations and such internal regulations as are particular to the various administrative authorities.

Art. 3158. — *Publicity of allocations.*

The proceedings of allocation shall be held in public.

Art. 3159. — *Admission of candidates.* — 1. *Duties of office.*

- (1) The office of allocations shall firstly take cognizance of the declarations of intention to tender.
- (2) It shall verify whether these have been regularly deposited and whether the tenderers fulfil the conditions required for admission to the allocation.

Art. 3160. — 2. *Discretionary power.*

- (1) The office shall admit to the allocation such tenders only as are made by contractors or suppliers who present all the desirable financial and professional guarantees.
- (2) Unless otherwise provided in the specifications, it shall not be bound to hear the candidates whom it turns down.
- (3) It shall not be bound to give reasons for its decision.

Art. 3161. — 3. *Irrevocable character of decision taken.*

From the moment that the envelopes containing the tenders have been unsealed, the decision to admit to the allocation a contractor or supplier may no longer be altered.

Art. 3162. — *Reading of tenders.*

- (1) The envelopes containing the tenders shall be opened in public.
- (2) The tenders shall be read out.

Art. 3163. — *Minute of allocation.*

The results of the allocation shall be reduced to a minute which shall state all the circumstances of the allocation.

Art. 3164. — *Designation of provisional tenderer. — 1. Principle.*

- (1) The office of allocations shall declare the tenderer who has made the tender which is most advantageous for the administrative authorities to be provisionally the successful tenderer.
- (2) For this purpose, the office shall take into account the price offered and all the modalities of the tender in conformity with the specifications.

Art. 3165. — *2. Exception.*

- (1) The office need not designate any provisional successful tenderer where the regulations of the allocation prescribe that the administrative authorities do not intend to negotiate beyond a certain price.
- (2) Such price shall not be brought to the knowledge of the tenderers.

Art. 3166. — *3. Where several tenders are equal.*

- (1) Where several tenderers have made equivalent tenders between which it is not possible for the office of allocations to choose, regulations of allocations may provide that the assignment of the contract shall be decided by ballot between such tenderers.
- (2) In default of such provision, a new allocation shall take place.

Art. 3167. — *4. Effects.*

- (1) The designation of a provisional successful tenderer by the office shall not conclude the contract.
- (2) It shall have as its effect the designation of the only tenderer with whom the contract may be concluded.
- (3) It shall release the other tenderers from the obligations arising out of their tender.

Art. 3168. — *Approval by administrative authorities.*

- (1) The administrative authorities who have caused the allocation to be made may in their discretion approve or refuse to approve the result thereof.
- (2) The contract shall be complete where such approval is given.

Art. 3169. — *Additional clauses.*

- (1) Contracts made by the allocation may be subjected to additional clauses agreed on by the parties.
- (2) They may also, on their expiry, be maintained in effect or renewed by mutual agreement.

Paragraph 3. — Cause

Art. 3170. — *Absence of cause.*

A contract shall be null on the ground of lack of cause where, at the time when it is made, the contract makes it impossible to attain the result desired by the administrative authorities and known to the other contracting party.

Art. 3171. — *Unlawful cause.*

- (1) A contract shall be null on the ground of unlawful cause where it is made by the administrative authorities with an unlawful object in view.
- (2) The provisions of sub-art. (1) shall apply in particular where the contract is made by the administrative authorities with a view to procuring advantages of a pecuniary nature to the other contracting party and not for a reason of general interest.

Section 2. Effect of Contracts

Paragraph 1. — Normal performance of contracts

Art. 3172. — *Contents of contract.*

- (1) The contracting parties shall perform their obligations in the manner provided in the contract.
- (2) They shall perform them in a correct manner, deemed to be satisfactory according to the rules of art prevailing at the time and in the kind of activity concerned.
- (3) They shall perform them diligently.

Art. 3173. — *Manner of performing obligations.*

- (1) Unless otherwise agreed, the party having contracted with the administrative authorities may choose the suppliers for the purpose of buying materials and things necessary for the performance of his obligations.
- (2) Unless otherwise agreed, he may choose the workmen or employees to perform such obligations under his responsibility.

Art. 3174. — *Time.* — 1. *Principle.*

- (1) Each contracting party shall perform his obligations within the time fixed by the contract.
- (2) Failing a specific provision in the contract, each contracting party shall perform his obligations within a reasonable time.

Art. 3175. — 2. Prerogatives of administrative authorities.

The administrative authorities may not impose unilaterally on the other contracting party a time which has not been agreed upon for the performance of his obligations unless they may under the contract fix such time by means of requisition orders.

Art. 3176. — Payment of price.

The price due by the administrative authorities shall be paid in accordance with the rules of finance laws and of public accountancy.

Art. 3177. — *Exceptio non adimpleti contractus*.

- (1) The non-performance by the administrative authorities of their obligations shall not entitle the other party to fail to perform his obligations unless it makes impossible the performance of such obligations.
- (2) In other cases, the other party may not avail himself of the failure by administrative authorities to perform their contractual obligations in order to suspend the performance of the contract.

Art. 3178. — Set-off.

Set-off may not be invoked by a person contracting with the administrative authorities except in the case of debts other than fiscal debts.

Paragraph 2. — Revision of contracts

A — Prerogatives of administrative authorities

Art. 3179. — Principle. -

The administrative authorities may, notwithstanding that the contract makes no provision to this effect, unilaterally impose on the person contracting with them certain modifications of the contract, where a change of circumstances justifies such modifications in the general interest.

Art. 3180. — Termination of contract.

The administrative authorities may terminate the contract, notwithstanding that the other party has committed no fault, where the contract has become useless to the public service or unsuitable for its requirements.

Art. 3181. — Compensation.

- (1) The party who has contracted with the administrative authorities shall be entitled to compensation equal to the loss sustained by him by reason of the modification or termination of the contract.
- (2) In fixing such compensation, regard shall be had to all the benefits which the party could legitimately expect to derive from the contract.

- (3) The court may, however, limit the amount of compensation in so far as it refers to loss of profit, where it appears that the modification or termination of the contract is due to extraneous causes and not to a fault of the administrative authorities which have concluded the contract.

Art. 3182. — *Termination at the request of other party.*

- (1) The party who has contracted with the administrative authorities may require the termination of the contract where an intervention by the administrative authorities has as its effect to upset the general economy of the contract.
- (2) The court shall determine whether, having regard to the nature of the contract, the importance of the modifications made thereto by the administrative authorities exceeds or not what could be expected on the making of the contract.
- (3) Unless otherwise expressly agreed, the party may not of his own motion declare the termination of the contract.

B — *Unforeseen circumstances*

Art. 3183. — *Principle.*

- (1) Where circumstances which could not be foreseen on the making of the contract upset the balance of the contract, the party contracting with the administrative authorities shall perform his obligations where such performance remains materially possible.
- (2) Such person may, however, require that the administrative authorities with which he has contracted assist him in overcoming the supervening difficulties by sharing in the loss arising from such circumstances.

Art. 3184. — *Upsetting of contract.*

The balance of the contract shall be deemed to be upset where new circumstances impose on the party contracting with the administrative authorities additional obligations which certainly surpass the extreme limits which could be expected by the parties on the making of the contract.

Art. 3185. — *Unforeseeable events.*

- (1) An event shall be deemed to be unforeseeable where it could not reasonably be envisaged by the parties on the making of the contract.
- (2) An event shall not be deemed to be unforeseeable where it is due to the act of the person who avails himself thereof.
- (3) The fact that an event was not foreseen may be invoked by reason of unforeseeable consequences or an unforeseeable extension of events which had already happened on the making of the contract.

Art. 3186. — *Provisions for the variation or revision of prices.*

The existence in the contract of a provision relating to the variation or revision of prices shall not prevent compensation being due where:

- (a) such provision has not been enforced; or
- (b) it appears that the enforcement of such provision is not sufficient to remedy the effects of the economic upsetting of the contract, as in the case where there are fluctuations affecting elements other than those which have been chosen as an index in the variation clause.

Art. 3187. — *Loss necessary.*

No compensation may be claimed where circumstances have only reduced or taken away the benefits, without bringing about a loss for the party.

Art. 3188. — *Amount of compensation.*

- (1) The compensation granted shall leave at the charge of the party a part of the loss arising from the circumstances.
- (2) To this effect, regard shall be had to the efforts made by the party to overcome his difficulties, the general position of the enterprise and all other equitable elements.

Art. 3189. — *Cessation of events being considered as unforeseen.*

- (1) The state of being unforeseen shall cease where the balance of the contract is re-established.
- (2) Where the unbalancing of the contract appears to be definitive, each contracting party may require the court to ascertain the situation thus created.
- (3) Failing amicable agreement on the revision of the contract, the court shall declare the cancellation of the contract.

C — *Acts of Government*

Art. 3190. — *General measures. — 1. Affecting substance of contract.*

- (1) Laws, regulations, orders and other measures of general application, made by the public authorities, which directly modify the provisions of the contract or prevent the enforcement of some provisions of the contract or prematurely put an end to the performance of the contract shall enable the party having contracted with the administrative authorities to claim compensation.
- (2) Such compensation may not be refused unless the measure of general application has specified that no compensation shall be paid.

Art. 3191. — *2. Making the performance of the contract more onerous.*

- (1) Measures of general application taken by the public authorities shall not create any right to compensation where, without affecting the

substance of the contract, they only modify the conditions of its performance and render such performance more difficult or more onerous.

- (2) Compensation shall however be due where the measure made or the contract itself provides that there shall be a right to compensation.

Art. 3192. — *Particular measures. — 1. Taken by contracting authorities.*

- (1) Particular measures taken by the contracting public authority shall create a right to compensation in favour of the person contracting with such authority, where they affect the substance of the contract or render the performance of the contract more difficult or more onerous.
- (2) No compensation shall however be due where the measure taken is merely the ascertainment or the inevitable consequence of economic facts extraneous to the parties.

Art. 3193. — *2. Taken by another authority.*

- (1) No compensation shall be due where the act which is the cause of the damage emanates from an authority other than that which has concluded the contract.
- (2) In such case, nothing shall affect the rules relating to unforeseen circumstances or to the responsibility of public authorities.

Paragraph 3. — *Non-performance of contracts*

Art. 3194. — *Compulsory performance of contracts.*

- (1) The court may not order the administrative authorities to perform their obligation.
- (2) It may, however, make an order for the payment of damages unless the administrative authorities prefer to perform their obligations.
- (3) Unless otherwise provided by law, it may also cancel such measures as have been taken by the administrative authorities in violation of their contractual undertakings.

Art. 3195. — *Requisitioning powers.*

- (1) The right of requisition may not be used by the administrative authorities for the purpose of ensuring the performance of a contract concluded by them.
- (2) The personnel of the public services may, however, be requisitioned to put an end to a strike.

Art. 3196. — *Interest for delay.*

Interest for delay shall be due to as of right by administrative authorities without their having to be placed in default, where:

- (a) within fifteen days after the time laid down in the contract, such authorities have not taken the steps necessary to effect the ascertainment giving a right to a payment to the other party; or

- (b) within three months from the ascertainment, such authorities have not taken steps to make the orders for payments due by them.

Art. 3197. — *Clause of non-responsibility.*

Notwithstanding any stipulation to the contrary, the party contracting with the administrative authorities may claim from the latter interest for delay or compensation in the case of a delay in effecting payment due to him, where:

- (a) the delay exceeds six months; or
- (b) it is due to the contracting administrative authority's intention to cause harm or to its gross negligence or grave fault.

Art. 3198. — *Lapse of notice placing party in default.*

- (1) Where, after having placed the other party in default, the administrative authorities have begun negotiations with him with a view to resuming the contract on other bases, the notice placing in default shall lapse and need be renewed.
- (2) The fact that the administrative authorities have allowed a long period to elapse after the notice without applying any sanction or have continued to have commercial relations with the other party shall not necessarily imply a tacit waiving of the right to apply sanctions and shall not make a new notice necessary.

Art. 3199. — *Delay of suppliers.*

- (1) The contractant may not raise force majeure on the ground of the delay or default of his own suppliers.
- (2) He may not raise that the delay or default of his suppliers constitutes a case of force majeure releasing him from his liability for the non-performance of the contract.

Art. 3200. — *Preferential rights.*

- (1) The administrative authorities may not themselves decide that the other party is liable to a penalty by reason of the non-performance of the contract.
- (2) Nor may they fix the amount of compensation due by the other party by reason of the non-performance or delay in the performance of his obligations.
- (3) The court may order the administrative authorities to pay compensation for the damage caused to the other party in consequence of sanctions which such authorities have applied contrary to the law.

Paragraph 4. — Assignment of contracts and sub-contracts

Art. 3201. — *Definitions.*

- (1) An assignment is an act whereby the party having contracted with the administrative authorities substitutes a third party for himself for the total performance of the contract.
- (2) A sub-contract is a contract whereby the party having contracted with the administrative authorities substitutes a third party for himself for the performance by the latter of a part only or of an item of the contract.

Art. 3202. — *Administrative authorisation necessary.*

- (1) Assignments and sub-contracts concluded by the party having contracted with the administrative authorities shall be previously authorised by such authorities.
- (2) Unless otherwise provided in the contract, the authority competent to authorise the assignment or sub-contract is the authority competent to conclude the contract.

Art. 3203. — *Obligations and rights of administrative authorities.*

- (1) The administrative authorities shall within a reasonable time answer a request for the making of an assignment or the grant of a sub-contract.
- (2) Where the assignment or sub-contract has been concluded by a grantee of a public service, the administrative authorities may refuse their authorisation only on grounds of technical or financial incapacity of the new grantee who is proposed.
- (3) In other cases, the administrative authorities shall have a discretionary power to approve or refuse to approve the assignment or sub-contract.

Art. 3204. — *Sanctions.*

- (1) An unauthorised assignment or sub-contract shall not affect the administrative authorities.
- (2) It shall constitute a contractual fault justifying the cancellation of the contract through the fault of the party having contracted with the administrative authorities.

Art. 3205. — *Effect of authorisation. — 1. Assignment.*

- (1) The approval given by the administrative authorities to the assignment of a contract shall have the effect of substituting the assignee for the original contractant.

- (2) Unless otherwise agreed, the original contractant shall cease to be liable for the performance of the contract.
- (3) His securities may be retained by the administrative authorities only to the extent that there are litigations between them and him.

Art. 3206. — *Sub-contract.*

- (1) The approval given by the administrative authorities to the sub-contract shall not affect the contractual bond between the administrative authorities and their contracting party.
- (2) The original party shall remain liable for the works done and supplies made by the sub-contractor as though they had been done or made by himself.
- (3) The approval of the sub-contractor by the administrative authorities shall however imply the exoneration of the contractant from the penalties for delay, where such delay is attributable to the sub-contractor.

Chapter 2. Concession of public service

Art. 3207. — *Definition.*

- (1) Any activity which a public community has decided to perform for the reason that it has deemed it to be necessary in the general interest and considered that private initiative was inadequate for carrying it out shall constitute a public service.
- (2) The concession of a public service is the contract whereby a person, the grantee, binds himself in favour of an administrative authority to run a public service getting a remuneration therefor by means of fees received on the use thereof.

Art. 3208. — *Right of control of administrative authorities. — 1. Principle.*

- (1) The administrative authority responsible for the good running of the public service may at any time supervise the performance of the contract.
- (2) The grantee shall render an account of his management to such authority and give it the necessary facilities for exercising its control.

Art. 3209. — *2. Regulations.*

- (1) The control of the grantee shall be organised in accordance with the provisions of regulations and with the contractual provisions made by the parties.
- (2) The provisions of the following Articles shall apply in addition, notwithstanding any stipulation to the contrary.

Art. 3210. — 3. *Limits of control.*

- (1) The control of the concession may not be such as to alter the nature of such concession and to transform it in fact in a direct exploitation by the administrative authorities.
- (2) The administrative authorities may not subject a whole section of the activity of the grantee to a system of preliminary approvals.
- (3) Unless otherwise provided, the grantee may freely determine the manner in which he will perform the contract.

Art. 3211. — 4. *Interpretation of contracts.*

- (1) The provisions of the contract may not be interpreted as being an obstacle to the application of new regulations concerning the control of the management and the regulation of public order.
- (2) The administrative authority, however, may not give the force of regulations to measures intended to control and to ensure the performance of his contractual obligations by the grantee.

Art. 3212. — *Contractual modification of prices or tariffs.* — 1. *Principle.*

Provisions may be made in the contract to the effect that the prices or tariffs mentioned in the contract shall be modified, should a specified economic change take place.

Art. 3213. — 2. *Variation clauses.*

- (1) The concession may provide that the change shall take place automatically in accordance with and in proportion to variations occurring in the prices of certain materials, commodities or services.
- (2) Where the bases for the fixing of the new prices or tariffs automatically follow the application of a variation formula, in case of contestation the court shall fix the new tariffs and prices resulting from the application of the variation clause.

Art. 3214. — 3. *Revision clauses.*

- (1) The contract may confine itself to stipulating that the prices and the tariffs shall be revised where economic circumstances change considerably, without establishing precisely the bases of such revision.
- (2) In such case, where the conditions mentioned in the contract have taken place, the parties shall negotiate the adoption of an additional clause to the contract.
- (3) In default of agreement between them, the court may fix a tariff which ensures an equitable remuneration to the grantee.

Art. 3215. — 4. *Cluses when to be enforced.*

- (1) Unless otherwise provided, the grantee may invoke the variation clauses and those relating to the revision of prices and tariffs as from the date of the tender.
- (2) He may not invoke such clauses on account of variations which take place after the expiry of the normal time laid down for the performance of his obligations under the contract unless an extension of such time has been expressly granted to him by the administrative authorities.

Art. 3216. — *Unilateral modifications of contract.* — 1. *Principle.*

- (1) The administrative authorities having granted the concession may, during the currency thereof, impose on the grantee all the obligations which they think fit for the proper operation or improvement of the service granted.
- (2) They may impose on the grantee modifications of the organisation of the service provided in the act of concession or in the specifications.
- (3) Any stipulation to the contrary shall be of no effect.

Art. 3217. — 2. *Cluses which may be modified.*

- (1) Only the clauses concerning the service and its operation may be modified.
- (2) The administrative authorities may in particular increase or reduce the extent of the service to be operated by the grantee or impose upon him an extension of the service.

Art. 3218. — 3. *Limits of modifications.*

- (1) The administrative authorities may not impose such modifications in the organisation of the service as would actually modify the nature or object of the contract.
- (2) In particular, they may not substitute a management under state control for the concession.
- (3) Nor may they order the grantee to manage a service different to that which has been granted, or to manage a really new service or a service which obviously surpasses the potentialities of the grantee.

Art. 3219. — 4. *Cluses which may not be modified.*

- (1) The administrative authorities may not unilaterally modify the financial benefits which the concession ensures to the grantee.
- (2) In particular, they may not cause prejudice to any privilege of exclusivity accorded to the grantee.

- (3) They may, however, unilaterally impose on the grantee a modification of the tariffs, provided that they compensate the grantee for the loss which such modifications may cause to him.

Art. 3220. — 5. Compensation due to grantee.

- (1) Where the administrative authorities exercise their right of unilateral modification, the grantee shall be entitled to compensation for the loss sustained by him through such modification.
- (2) The compensation due to him shall be equal to the increase of the charge imposed upon him by the administrative authorities.

Art. 3221. — Relations with users. — 1. Fixing of tariffs.

Where the concession authorises the grantee to collect fees from the users within the limits of a maximum tariff fixed by the act of concession, the grantee may freely fix the fees within the limits of such maximum.

Art. 3222. — 2. Modification of tariffs.

Where the conditions or tariffs fixed by the authorities are modified, the new conditions or tariffs shall apply immediately, but without retroactive effect, to the contracts which are still in force between the grantee and the users.

Art. 3223. — 3. Concession binding.

The grantee may not, by a particular agreement concluded with a user, depart from the general rules of the service fixed by the act of concession or by the specifications.

Art. 3224. — 4. Equality of users.

- (1) Neither the administrative authorities nor the grantee may adopt measures discriminating between the users and destroy the equality of treatment of the latter.
- (2) The tariffs of service may not contain differentiation between categories of users unless such differentiations are in respect of different conditions of users in relation to the public service.
- (3) Industrial and commercial public services shall observe such principle notwithstanding that the law prescribes that they are run according to the rules of private law.

Art. 3225. — 5. Relations between users and grantee.

- (1) Mistakes or irregularities committed in giving effect to the conditions or to the tariffs shall be made good.
- (2) An action of a user to claim the restitution of a sum collected unduly by the grantee shall be instituted within one year from the day of the payment unduly made.

- (3) An action of the grantee to claim a supplement of the price shall be instituted within one year from the day when the incorrect payment has been made.

Art. 3226. — 6. *Users not represented by administrative authorities*

The administrative authorities may not claim compensation from the grantee by reason of the loss caused by him to the users of the service by the non-observance on his part of the provisions of the concession.

Art. 3227. — *Duration of concession.*

- (1) The duration of the concession shall be fixed by the contract.
- (2) It may not exceed sixty years.
- (3) Unless otherwise expressly provided, the concession shall be deemed to have been made for a period of seven years.

Art. 3228. — *Extension of concession.*

- (1) Unless otherwise expressly provided, the concession shall be extended by a tacit renewal where the intention to terminate it has not been signified by one of the parties to the other two years before the date when, according to the contract, it is to come to an end.
- (2) In such case, the concession shall be extended for a period of seven years or for such shorter period as the parties may have originally fixed.

Art. 3229. — *Winding up of concession. — 1. Principle.*

- (1) The termination of the concession of a public service shall entail its winding up and the settlement of accounts between the grantee and the authorities.
- (2) The winding up shall be made in accordance with the stipulations of the specifications.
- (3) Failing such stipulations, it shall be made in accordance with the provisions of the following Articles.

Art. 3230. — 2. *Obligations of grantee.*

- (1) The grantee shall give the authorities all the information necessary to facilitate the taking back and exploitation of the concession.
- (2) He shall deliver to the authorities in a good condition all the works and materials of the concession which are to be returned gratuitously to the authorities or which such authorities are entitled to take back against compensation.

Art. 3231. — 3. *Things to be returned.*

- (1) The authorities shall take back without paying compensation the immovable property included in the concession.

- (2) They shall take back without paying compensation the movable property the return of which to the authorities without compensation has been expressly provided in the specifications.

Art. 3232. — 4. *Things which may be taken back.*

- (1) The authorities may take back against compensation any other thing used in the exploitation of the concession.
- (2) The authorities shall not be bound to take back the things used in the exploitation of the concession unless such obligation has been imposed upon them by the specifications.

Art. 3233. — 5. *Amount of compensation.*

- (1) In case of contestation, the amount of compensation provided in Art. 3232 shall be fixed by arbitrators appointed by the parties or, failing such, by the court.
- (2) Where the grantee or the authorities establish the price which the property has cost, the compensation shall be fixed on the basis of such price from which a deduction shall, where appropriate, be made in respect of depreciation due to deterioration or to wear and tear.
- (3) Where the price which the property has cost cannot be established, the compensation shall be fixed having regard to the value of the things at the time when they are taken back.

Art. 3234. — 6. *Contracts.*

- (1) The grantee shall inform the authorities of all the contracts which are in course and which concern the concession.
- (2) The authorities shall take the place of the grantee in all such contracts unless, within one month from having been informed of the existence of a contract, they inform the grantee and the party who has contracted with the latter of their intention to repudiate it.
- (3) Unless otherwise expressly provided in the contract, the grantee shall not be liable to a contracting party for such repudiation.

Art. 3235. — 7. *Securities.*

After the accounts have been settled between the authorities and the grantee, the securities given by the latter shall be returned to him and the sureties which he has given be released.

Art. 3236. — *Redemption of concession.* — 1. *Principle.*

- (1) The redemption of the concession is the decision whereby the administrative authorities put an end to the concession before the expiration of its time notwithstanding that the grantee has committed no fault.

- (2) The administrative authorities may at any time redeem the concession for the purpose of abolishing or reorganising the public service.
- (3) They may not redeem it in order to replace the grantee by another grantee.

Art. 3237. — 2. Effect.

- (1) A concession which is redeemed shall be wound up in accordance with the provisions of the preceding Articles.
- (2) The grantee shall be compensated for all the loss caused to him by the redemption and in particular for the loss which is caused to him by the making over to the authorities of property which he has not yet had the time to amortise.
- (3) An equitable compensation may be granted to him having regard to the profit which he could reasonably have expected and of which he has been deprived by the redemption.

Art. 3238. — Loss of right of grantee. — 1. When ordered.

- (1) The loss of right of the grantee may be ordered where he has committed a fault of a special gravity.
- (2) The loss of right may only be ordered by the court, unless an express stipulation to the contrary in the act of concession has given such right to the administrative authorities.

Art. 3239. — 2. Effect.

- (1) The loss of right shall entail a definitive cancellation of the contract.
- (2) The grantee who has lost his right shall bear the onerous consequences of the transactions having the object of ensuring the continuation of the public service.

Art. 3240. — 3. Rights of grantee having lost his right.

- (1) The concession shall be allocated by tender at the risk of the grantee who has lost his right.
- (2) The grantee who has lost his right shall receive from the new grantee the price fixed by the allocation, which sum shall take the place of all his rights on the concession.

Art. 3241. — Sequestration. — 1. Conditions.

- (1) A sequestration may be ordered in the case of total or partial interruption of the service due to the default, incompetence or incapacity of the grantee.
- (2) In the absence of any fault of the grantee, it may also be ordered from the time when it appears that the grantee is unable to operate the service.

Art. 3242. — 2. Effect.

- (1) The sequestration shall temporarily deprive the grantee of the exercise of the rights which he held under the concession.
- (2) Where the sequestration is ordered as a sanction of a default due to the fault of the grantee, the service shall be managed, at the expense and risk of the grantee, by the authorities or by a manager appointed by them.
- (3) In other cases, the expenses of the sequestration shall be borne by the authorities.

Art. 3243. — Power of the court.

- (1) The court may cancel the sanctions of coercion or dissolution, such as measures of sequestration, state control, loss of right or termination, taken by the administrative authorities against the grantee of the public service.
- (2) It may order the authorities to pay compensation for the damage caused to the grantee in consequence of sanctions applied by such authorities contrary to the law.

Chapter 3. Contract of public works

Art. 3244. — Definition.

- (1) A contract of public works is a contract whereby a person, the contractor, binds himself in favour of an administrative authority to construct, maintain or repair a public work in consideration of a price.
- (2) Where the contract only relates to the supply of materials for the purpose of carrying out a public work and the supplier himself takes no part in the carrying out of the work, the contract shall not be one of public works but one of supplies.

Art. 3245. — Industrial contracts.

- (1) The provisions of this Chapter relating to contracts of public works shall apply to industrial contracts concluded by the administrative authorities.
- (2) An industrial contract is a contract concerning supplies which, both by the complexity of their manufacture and by their specialised character, are indicated for the needs of the administrative authorities.

Section 1. Formation of contract

Art. 3246. — Competition. — 1. Principle.

The administrative authorities may put up for competition the working out of a project of a work among skilled persons or among specialised undertakings.

Art. 3247. — 2. *Fixing of conditions.*

- (1) The administrative authorities shall fix freely the time within which the competitors shall send in their projects, the conditions of form and of substance to which such projects shall conform and all other conditions of the competition.
- (2) The administrative authorities shall also determine, as they think fit, by whom and in which manner the competitions shall be judged and ranked.
- (3) They shall choose freely the persons whom they admit to take part in the competition, without having to give a reason for their choice.

Art. 3248. — 3. *Administrative authorities bound thereby.*

The administrative authorities shall be strictly bound to respect the rules of the competition made by them.

Art. 3249. — 4. *Conclusion of contract.*

After the competition, they shall be free to allot the contract to whom they think fit, unless they have expressly undertaken to choose the competitor who is ranked first.

Section 2. Normal performance of contract

Paragraph 1. — Direction of work

Art. 3250. — *Right of administrative authorities.*

- (1) The administrative authorities may supervise the performance of the works.
- (2) They may also prescribe to the contractor the manner of performance of this work.
- (3) The provisions of the following Articles shall regulate the right of supervision and of direction of the administrative authorities, without prejudice to any stipulation to the contrary in the contract.

Art. 3251. — *Right of supervision.*

- (1) The representatives of the administrative authorities may at any time enter the yards and require of the contractor the information necessary for their control.
- (2) The contractor shall observe the regulations made by the administrative authorities in order to ensure good order and security in the yards.
- (3) Any stipulation to the contrary shall be of no effect.

Art. 3252. — *Direction of works.*

- (1) The administrative authorities shall regulate, by means of requisition orders, the development of the works and prescribe to the contractor the manner of performance of such works.
- (2) The contractor shall comply with the plans and models given to him by the administrative authorities in the execution of the specification.

Art. 3253. — *Rhythm of works.*

- (1) Unless otherwise provided in the contract, the administrative authorities may fix at one and the same time the general period and the periods for the performance of each part of the work or only the special periods for each part.
- (2) Where the contract fixes only the general period within which the whole of the works are to be performed, the administrative authorities shall specify the time at which the works shall begin.
- (3) They shall regulate the order of sequence and the rhythm of the works within the general period laid down in the contract.

Art. 3254. — *Starting point of periods.*

- (1) Periods shall run from the date of notification of the contract.
- (2) Where the beginning of the performance of the obligations of the contractor is made dependent on a decision of the administrative authorities or on a material action on the part of the latter, the periods shall run from the completion of such acts.

Art. 3255. — *Personnel of the undertaking and materials.*

- (1) The administrative authorities shall decide on the extent of the means to be employed both as regards personnel and material.
- (2) They shall supervise the personnel and may require that employees be changed or dismissed.
- (3) They shall control the quality of the materials used and may refuse them.

Art. 3256. — *Defective work.*

In the course of the performance of the contract, the administrative authorities may require the demolition and the reconstruction of any defective work at the expense of the contractor.

Art. 3257. — *Written or verbal orders.*

- (1) The contractor shall carry out such requisition orders only as are given to him in writing.

- (2) Orders given verbally shall not bind him unless they are given within the limits of the execution of the specification without causing any change thereto or the contract has expressly imposed upon the contractor the obligation to conform thereto.

Art. 3258. — *Appeal of contractor.*

The contractor may not appeal against a requisition order unless he has refused to sign it or he has signed it with a reservation.

Art. 3259. — *Right of contractor to compensation.*

- (1) The normal exercise of the powers of control of the administrative authorities, within the limits prescribed in the contract, shall not give right to any compensation.
- (2) The contractor shall be entitled to compensation where the administrative authorities have through their fault caused him damage either by making abusive requirements or by postponing the performance of the contract, in violation of the contract.
- (3) The administrative authorities shall pay compensation to the contractor for the expenses and for the damage caused to him, notwithstanding that no fault or abuse has been committed, where the normal conditions of the performance of the contract have been aggravated.

Art. 3260. — *Liability of contractor.*

- (1) The control of the administrative authorities shall not relieve the contractor of his liability.
- (2) The liability of the contractor shall cease where he has merely carried out requisition orders with which he is bound to comply.
- (3) Such liability shall remain within the measure of initiative which he could retain under the supervision of the administrative authorities.

Paragraph 2. — *Payment of price*

Art. 3261. — *Remuneration of contractor. — 1. Contract with a fixed price.*

The remuneration due to the contractor may be fixed by way of a lump sum.

Art. 3262. — *2. Contract with series of prices.*

The contract may be restricted to fixing the different prices respectively applicable to each kind of work included in the contract, without determining precisely at the time of its conclusion the extent of the work to be performed.

Art. 3263. — 3. *Contract according to specification or by units of measures.*

The contract may determine at one and the same time the quantities of the works to be performed and the series of prices applicable to each kind of works.

Art. 3264. — 4. *Contract by controlled expenses.*

The contract may provide that the contractor shall merely be reimbursed of his main expenses duly controlled, and that he shall partake of the total increases so as to cover his other expenses and ensure for himself a suitable margin of profit.

Art. 3265. — 5. *Contract by order.*

- (1) Where circumstances so require, the contract may be restricted to establishing a provisional price corresponding to essential services or to technical phases in the performance of the contract.
- (2) In such case, an additional clause shall be made in order to fix the final price or the exact conditions for determining such price, before the expiration of the first third part of the time for the performance of the contract.
- (3) In default of agreement between the contracting parties, the price shall be fixed by the administrative authorities within three months, without prejudice to the right of the contractor to appeal to the court.

Art. 3266. — 6. *Supplementary services.*

- (1) The contractor may be compelled by virtue of requisition orders of the administrative authorities to perform services not originally mentioned in the contract.
- (2) The additional clause fixing the price of supplementary services shall be made within six months.
- (3) In default of agreement between the contracting parties, the price shall be fixed by the administrative authorities within three months without prejudice to the right of the contractor to appeal to the court.

Art. 3267. — *Price how paid.*

The administrative authorities may not introduce in any specification or in any contract a clause of deferred payment other than a payment by bills of exchange or by annual instalments.

Art. 3268. — *Time of payment.*

- (1) Where the ascertainment of the services performed constitutes a preliminary condition for the determination of the price, such ascertainment shall be made within the periods specified in the contract.

- (2) The default of an ascertainment fifteen days after the expiration of the period shall automatically create a right to interest for delay, where it is attributable to the administrative authorities.

Art. 3269. — *Right to receive instalments.*

The contractor may demand the payment of instalment where:

- (a) he has deposited in the yard, factory or workshop materials or supplies belonging to him in full ownership and intended to be used in the performance of the contract; or
- (b) he has paid wages in respect of labour employed by him exclusively in the performance of the contract.

Art. 3270. — *Payment of instalments.*

- (1) At the end of each month there shall be drawn up, at the request of the contractor and in order to serve as a basis for the payment of instalments, a provisional calculation of the works performed and expenses made by the contractor.
- (2) Unless otherwise provided in the contract, instalments shall be paid every three months.
- (3) The amount of the instalments shall be equal to the value of the materials or supplies or to that of the wages mentioned in Art. 3269.

Art. 3271. — *Sums advanced by administrative authorities.*

- (1) The contractor may receive sums in advance from the administrative authorities in respect of the contract only after having named a guarantor or given other securities guaranteeing the reimbursement of at least half the sums advanced.
- (2) The sums advanced shall be reimbursed at the rate fixed by the contract, by deducting them from the sums subsequently due to the contractor by way of instalments or in settlement.

Art. 3272. — *Final calculations.*

- (1) Final calculations constitute a means of settlement of accounts which determine the amount due by the administrative authorities and thenceforth bind the parties in an irrevocable manner.
- (2) In order to produce their juridical effects, they need be accepted by the contractor.
- (3) Final calculations may, in accordance with the provisions of the contract, be made before the completion of the works, when determinate periods have passed or a specified part of the works has been performed.

Art. 3273. — *Revision of approved accounts.*

- (1) The accounts approved by the parties may not be revised, except in case of material errors, omissions or items entered falsely or twice.
- (2) The omissions or material errors mentioned in sub-art. (1) are only those the correction of which does not require any measurement or discussion of the price or of the clauses of the contract.

Paragraph 3. — Acceptance of works

Art. 3274. — *Provisional acceptance.* — 1. *Nature.*

- (1) A provisional acceptance is a joint ascertainment of the works made immediately after the completion of the works.
- (2) A provisional acceptance shall result from the effective taking of possession, where this has been made under reservation.

Art. 3275. — 2. *Effect.*

- (1) A provisional acceptance shall not exonerate the contractor from any defect which may appear after it is made.
- (2) It shall amount to a tacit acceptance of the modifications which the contractor may have made in the project.
- (3) It shall mark the beginning of the period of warranty at the expiration of which the final acceptance shall be made.

Art. 3276. — 3. *Risks of loss or deterioration.*

- (1) Destructions or damage resulting from force majeure shall be borne by the contractor so long as the works have not been provisionally accepted by the administrative authorities.
- (2) The general clauses and conditions may derogate such rule.
- (3) In such case, they shall fix the amount of the right to compensation of the contractor as well as the conditions regarding the form and time of his claim.

Art. 3277. — *Period of warranty.* — 1. *Nature.*

- (1) The period of warranty is a period during which the administrative authorities have the possibility of controlling the proper performance of the works before their final acceptance.
- (2) Its duration shall be fixed by the contract.

Art. 3278. — 2. *Effect.*

- (1) During the period of warranty, the contractor shall maintain the works.
- (2) He shall be liable for defects and shall repair them when he receives from the administrative authorities a requisition order to this effect.

Art. 3279. — *Final acceptance. — 1. Nature.*

- (1) The final acceptance is the act whereby the administrative authorities definitively appropriate the works after having ascertained that the contractor has performed his obligations in their entirety.
- (2) It shall be made jointly and a record shall be drawn up.

Art. 3280. — *2. Default of administrative authorities.*

- (1) In the case of default on the part of the administrative authorities, the contractor may require the court to ascertain that the works are in a condition to be accepted.
- (2) In such case, the final acceptance shall be deemed to have taken place on the expiration of the period of warranty or, failing such period, on the day fixed by the court.

Art. 3281. — *3. Effect.*

- (1) The final acceptance shall release the contractor from his obligation to maintain the works.
- (2) The contractor shall be entitled to the payment of the balance of the price and to the reimbursement of the amount retained as guarantee and of the security.

Art. 3282. — *Warranty in respect of defects of construction.*

- (1) Unless otherwise provided, the contractor shall be liable to the administrative authorities for the defects of construction of the works during ten years from the day on which they have entered into possession of the works.
- (2) The warranty shall not be due, however, in respect of the defects which were apparent at the time of the final acceptance of the works.
- (3) The warranty shall apply to such defects only as prevent the works from being used for the purpose mentioned in the contract or as render such use more onerous or less profitable.

Section 3. Rescission of contract

Art. 3283. — *Unilateral modification of contract. — 1. Right of administrative authorities.*

- (1) During the currency of the contract of public works, the administrative authorities may, notwithstanding any stipulation to the contrary, impose unilaterally upon the contractor changes in the original conditions of the contract as indicated in the specifications.
- (2) Such changes may affect only the provisions which concern the arrangement of the public works.
- (3) They may not affect the financial conditions of the contract.

Art. 3284. — 2. *New works.*

- (1) The administrative authorities may, against payment of an additional remuneration, require the contractor to perform works which were not mentioned in the contract.
- (2) They may not, however, require him to perform a work which by its object would be totally different to the work mentioned in the contract or which would have no relation to such work.
- (3) Nor may they require him to perform a work under conditions entirely different to those which have been mentioned in the contract.

Art. 3285. — *Rights of contractor.*

- (1) Unless otherwise provided in the contract, the contractor may cancel the contract where the increase or reduction of the works as a whole required by the administrative authorities involves a variation of more than one-sixth of the cost mentioned in the contract.
- (2) In the case of reduction of the works as a whole, he shall be entitled to a compensation equal to the loss suffered by him and profit of which he is deprived by reason of the variation of the contract.
- (3) The court may limit the amount of compensation for deprivation of profit where it appears that the variation is due to extraneous circumstances and not to the default of the authorities having made the contract.

Art. 3286. — *Unforeseen difficulties. — 1. Principle.*

- (1) Where, in the performance of his contract, the contractor encounters material difficulties of an absolutely abnormal nature, unforeseeable at the time of the conclusion of the contract, he may require that the contract be revised.
- (2) The administrative authorities with whom he has contracted shall in such case assume at their charge a part of the exceptional expenses due to such unforeseen difficulties, unless they prefer to cancel the contract.
- (3) The provisions of this Title relating to cases of unforeseen events shall apply in such case (Art. 3183-3189).

Art. 3287. — 2. *Duty to consult administrative authorities.*

- (1) Where the difficulty compels the contractor to perform a supplementary work not mentioned in the contract, the contractor may initiate such work only after having obtained a requisition order from the administrative authorities enjoining him to perform such work.

- (2) However, where the work is absolutely necessary for the performance of the contract and it is of an urgent nature, the contractor may and shall initiate it even in the absence of a requisition order.
- (3) In such case, he shall be entitled to compensation in accordance with the provisions of this Code relating to the voluntary management of another person's affairs (Art. 2257-2265).

Section 4. Non-performance of contract

Art. 3288. — *Placing under State control.* — 1. *Conditions.*

- (1) A declaration to the effect that a contract of public works shall come under State control may be made where the contractor fails to perform his obligations.
- (2) Notwithstanding any provision to the contrary, the administrative authorities may declare the placing under State control not less than ten days after having summoned the contractor to perform his obligations.
- (3) The placing under State control may affect only a part of the works, where the undertaking permits a partial control.

Art. 3289. — 2. *Effect.*

- (1) In the case of the placing under State control, the contractor shall be temporarily deprived of his contract.
- (2) The control shall be carried out at the expense and risk of the contractor.

Art. 3290. — 3. *Cessation.*

The contractor may be relieved of State control where he shows that he has the necessary means to resume the works and to carry them out to completion.

Art. 3291. — *Re-allocation.*

- (1) Where the contract has expressly foreseen the possibility, the contract of public works which has been cancelled may be re-allocated by auction by the administrative authorities or entrusted by them by agreement to a new contractor.
- (2) In such case, the contractor who has been dispossessed shall bear the consequences which the transaction and the new contract cause to the administrative authorities.

Art. 3292. — *Power of the court.*

- (1) The court may not cancel the sanctions of coercion or of dissolution applied by the administrative authorities against the other party to a contract of public works.

- (2) In such contracts, it may only investigate whether the sanctions have been applied under conditions of such nature as to create a right of compensation in favour of the other party.

Section 5. Assignment of or giving of the contract in security

Art. 3293. — *Giving of contract in security.*

Public contracts may be given in security by the contractor or by the sub-contractors approved by the administrative authorities.

Art. 3294. — *Assignment of contract.*

In the case of a regular assignment of the contract, the assignee shall be the only person entitled to receive the price.

Art. 3295. — *Rights of sub-contractor.*

- (1) The sub-contractor who has been expressly approved by the administrative authorities may receive directly from the administrative authorities the payment for the works performed by him where the holder of the contract has agreed thereto and the contract has specifically indicated the nature and value of the works to be performed by the sub-contractor.
- (2) The records ascertaining the works performed by the sub-contractor shall be accepted by the holder of the contract.
- (3) The direct payment to the sub-contractor may not be made where the holder of the contract has given the contract in security.

Art. 3296. — *Prohibition of sums paid in advance.*

The sub-contractor may in no case receive advances.

Chapter 4. Contract of supplies

Art. 3297. — *Performance of contract.*

- (1) The supplier shall have the initiative and choice as regards the manner of performing the contract.
- (2) He may apply to whom he thinks fit for the purchase of the materials and articles required for the performance of his obligations.

Art. 3298. — *Risks.*

- (1) The supplier shall bear the risks of the loss of the thing which supervenes through force majeure until the acceptance of the thing by the administrative authorities.
- (2) The administrative authorities shall be bound by the liability of a depositary during the time between the date of the deposit of the supplies in their warehouse and that on which a final decision is taken as to the acceptance or rejection thereof.

Art. 3299. — *Acceptance of merchandise.*

The acceptance of merchandise shall take place in the manner and at the time specified in the contract.

Art. 3300. — *Postponement of acceptance.*

- (1) The administrative authorities may postpone the acceptance where the supplies are defective.
- (2) In such case, they shall inform the supplier of the time within which he shall remedy the defects of the supplies.

Art. 3301. — *Rejection of merchandise.*

The administrative authorities shall reject the supplies which are not in conformity with the contract where such defect takes away the utility which such supplies have for the administrative authorities and the supplier is unable or refuses to remedy such defect within the required time.

Art. 3302. — *Expenses of verification of merchandise.*

- (1) The expenses of the verification of the merchandise shall be borne by the supplier as regards the operations effected in his establishment and by the administrative authorities as regards other operations.
- (2) The supplier may be present at the verifications.
- (3) He shall be informed of the time chosen for such operations and be admitted to put forward his remarks.

Art. 3303. — *Liability of-supplier.*

- (1) The exercise of supervision on the part of the administrative authorities shall not affect the liability of the supplier.
- (2) It shall not restrict the right of the administrative authorities to reject the supplies which are recognised to be defective at the time of acceptance or to cause to be repaired during the period of warranty the parts which are recognised to be defective.

Art. 3304. — *Performance by reason of default.*

- (1) In the case of a contract of supplies, the performance by reason of default may be ordered where the supplier fails to carry out an urgent delivery or a contract has been cancelled.
- (2) The administrative authorities shall take the place of the defaulting supplier in purchasing the supplies from another supplier or in manufacturing them themselves.
- (3) Nothing shall affect the right of the administrative authorities to claim damages from the defaulting supplier.

Art. 3305. — *Power of the court.*

- (1) The court may not cancel the sanctions of coercion or of dissolution applied by the administrative authorities against the other party to a contract of supplies.
- (2) In such contracts, it may only investigate whether the sanctions have been applied under conditions of such nature as to create a right to compensation in favour of the supplier.
- (3) Nothing shall affect the provision of Art. 3306.

Art. 3306. — *Preliminary claim to the administrative authorities.*

- (1) The supplier shall firstly make his claim to the administrative authority in the cases and within the measure in which the contract imposes upon him such preliminary procedure.
- (2) A recourse to the judicial authorities which is not preceded by the obligatory claim to the administrative authorities shall not be admissible.
- (3) Where the contract prescribed a period for the claim to the administrative authorities and the supplier has failed to make such claim in due time, such claim shall be barred and the recourse to the judicial authorities shall not be admissible.

TITLE XX

COMPROMISE AND ARBITRAL SUBMISSION

Chapter I. Compromise

Section I. Compromise in General

Art. 3307. — *Definition.*

A compromise is a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future.

Art. 3308. — *Conditions as to form.*

- (1) A compromise may be made to create, to modify or to extinguish legal obligations.
- (2) The forms required by law for the creation, modification or extinction of these obligations without consideration shall be complied with.

Art. 3309. — *Interpretation. — 1. Principle.*

The terms of the compromise entailing renunciation shall be interpreted restrictively.

Art. 3310. — 2. Application.

- (1) Renunciation by one party of all his rights, actions and claims shall entail the extinction of such rights, actions and claims only in respect of which the compromise has been reached.
- (2) Where a person who has made a compromise on a right which he possessed in his own right acquires subsequently a similar right through another person, he shall in no way be bound in respect of the newly-acquired right by the previous compromise.

Art. 3311. — Relative effect.

A compromise made by one interested party shall not be binding on the other interested parties and may not be set up by them.

Art. 3312. — Mistake of right.

- (1) As between the parties, the compromise shall have the force of *res judicata* without appeal.
- (2) It may not be contested on the ground of a mistake made by one or both of the parties concerning the rights on which they have compromised.

Art. 3313. — Fundamental mistake. — 1. Void or false documents.

- (1) A compromise may be invalidated on the ground of mistake where the instrument for the performance of which it is made is void.
- (2) It may also be invalidated where the agreement of one or both of the parties was due to the existence of a document which is shown to be false.
- (3) The compromise shall be valid in either case where, at the time of the contract, the parties had in view the possibility that the instrument might be void or the document false.

Art. 3314. — 2. Unknown judgment.

- (1) A compromise may be invalidated where the dispute which it was intended to terminate has been settled by a judgment having the force of *res judicata* of which one or both of the parties were unaware.
- (2) Where an appeal lies from the judgment of which one or both of the parties are unaware, the compromise shall remain valid.

Art. 3315. — 3. Compromise effecting general settlement.

- (1) Where the parties have reached a general settlement on all the matters they may have had in common, the compromise may not be invalidated on the ground that documents unknown to one or both of the parties at the time of the contract, have subsequently been discovered.

- (2) The compromise may however be invalidated in such a case where the documents in question were wilfully withheld by one of the parties at the time of the contract.

Art. 3316. — *Illicit object.*

A compromise relating a contract the object of which is contrary to the law or to public morality shall be of no effect.

Art. 3317. — *Warranties due by parties.*

- (1) The compromise shall have a declaratory effect as regards the rights which one of the parties renounces therein.
- (2) The conditions and forms required by law for the transfer of the right renounced shall be complied with.
- (3) The parties to the compromise shall not give each other any warranties concerning these rights, save that of their personal act and such other warranty as may have been expressly stipulated.

Section 2. Conciliation

Art. 3318. — *Appointment of conciliator.*

- (1) The parties may entrust a third party with the mission of bringing them together and, if possible, negotiating a settlement between them.
- (2) The conciliator may be appointed, at the request of the parties, by an institution or by a third party.
- (3) The person appointed conciliator shall be free to accept or to refuse his appointment.

Art. 3319. — *Duties of parties.*

- (1) The parties shall provide the conciliator with all the information necessary for the performance of his duties.
- (2) They shall refrain from any act that would make the conciliator's task more difficult or impossible.

Art. 3320. — *Duties of conciliator.*

- (1) Before expressing his findings, the conciliator shall give the parties an opportunity of fully stating their views.
- (2) He shall draw up the terms of a compromise or, if none can be reached, a memorandum of non-conciliation.
- (3) He shall communicate these documents to the parties.

Art. 3321. — *Time-limit.*

- (1) The conciliator shall carry out his duties within the period of time laid down in the contract or, in the absence of any such limit, within six months from the date of his appointment.

- (2) During this period, the parties may perform such acts as are necessary to preserve their rights.
- (3) They may not bring their dispute before the court prior to the expiration of this period unless the conciliator has drawn up a memorandum of non-conciliation.

Art. 3322. — *Powers of conciliator.*

- (1) The conciliator's powers shall be interpreted restrictively.
- (2) The parties shall not be bound by the terms of the compromise drawn up by the conciliator unless they have expressly undertaken in writing to confirm them.

Art. 3323. — *Conciliator's expenses and remuneration.*

- (1) The conciliator shall be refunded any reasonable expenses he has incurred in the discharge of his duties.
- (2) He shall not be entitled to remuneration unless otherwise expressly agreed.

Art. 3324. — *Application of rules regarding compromise.*

The provisions of Section 1 of this Chapter shall in addition apply to a compromise reached through conciliation.

Chapter 2. Arbitral submission

Art. 3325. — *Definition.*

- (1) The arbitral submission is the contract whereby the parties to a dispute entrust its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law.
- (2) The arbitrator may be instructed only to establish a point of fact without deciding on the legal consequences flowing therefrom.

Art. 3326. — *Capacity and form. — 1. Principle.*

- (1) The capacity to dispose of a right without consideration shall be required for the submission to arbitration of a dispute concerning such right.
- (2) The arbitral submission shall be drawn up in the form required by law for disposing without consideration of the right to which it relates.

Art. 3327. — *2. Exception.*

- (1) The provisions of Art. 3326 shall not apply where this Code expressly provides for arbitration.
- (2) The arbitral submission may in such case be made by the tutor in the name of a minor or interdicted person.
- (3) It shall be subject to no special form.

Art. 3328. — *Object of contract and arbitration clause.*

- (1) The dispute referred to arbitration may be an existing dispute.
- (2) The parties to a contract may also submit to arbitration disputes which may arise out of the contract in the future.
- (3) An arbitral submission relating to future disputes shall not be valid unless it concerns disputes which flow from a contract or other specific legal obligation.

Art. 3329. — *Interpretation.*

The provisions of the arbitral submission relating to the jurisdiction of the arbitrators shall be interpreted restrictively.

Art. 3330. — *Scope of jurisdiction.*

- (1) The arbitral submission may authorise the arbitrator to decide difficulties arising out of the interpretation of the submission itself.
- (2) It may in particular authorise the arbitrator to decide disputes relating to his own jurisdiction.
- (3) The arbitrator may in no case be required to decide whether the arbitral submission is or is not valid.

Art. 3331. — *Appointment of arbitrator. — 1. By the parties.*

- (1) The arbitrator may be appointed either in the arbitral submission or subsequently.
- (2) The submission may provide that there shall be one arbitrator or several arbitrators.
- (3) Where the submission fails to specify the number of arbitrators or the manner in which they shall be appointed, each party shall appoint one arbitrator.

Art. 3332. — *2. By the arbitrators or by the court.*

- (1) Unless otherwise provided, where there is an even number of arbitrators they shall, before assuming their functions, appoint another arbitrator who shall as of right preside the arbitration tribunal.
- (2) Where their number is odd, the arbitrators shall appoint the president of the arbitration tribunal from among themselves.
- (3) Failing agreement between the arbitrators, the appointments provided in sub-art. (1) and (2) shall be made by the court at the request of one of the parties.

Art. 3333. — *3. Procedure for appointment.*

- (1) Where necessary, the party availing himself of the arbitral submission shall specify the dispute he wishes to raise and appoint an arbitrator.

- (2) Notice thereof shall be given to the other party and, where appropriate, to the person entrusted with the appointment of an arbitrator under the arbitral submission.

Art. 3334. — 4. *Time-limit.*

- (1) Where the other party or the person required to appoint an arbitrator fails to do so within thirty days, the court shall appoint such arbitrator.
- (2) The time-limit shall run from the day when the notice provided in Art. 3333 (2) reached its destination.
- (3) Modifications to these rules may be provided in the arbitral submission.

Art. 3335. — 5. *Equality of parties.*

The arbitral submission shall not be valid where it places one of the parties in a privileged position as regards the appointment of the arbitrator.

Art. 3336. — *Default of arbitrator.* — 1. *Replacement.*

- (1) Where an arbitrator refuses his appointment, dies, becomes incapable or resigns, he shall be replaced by the procedure prescribed for his appointment, in accordance with the provisions of the preceding Articles.
- (2) Where an arbitrator is disqualified or removed, the new arbitrator shall be appointed by the court.
- (3) The provisions of this Article may be modified by agreement between the parties.

Art. 3337. — 2. *Lapse of submission.*

- (1) Where the arbitrator has been named in the arbitral submission and the parties do not agree on who is to replace him, the arbitral submission shall lapse.
- (2) However, it shall remain valid in respect of a future dispute where, at the time when it arises, the impediment of the arbitrator has ceased.
- (3) The provisions of this Article may be modified by agreement between the parties.

Art. 3338. — *Death of party.*

The death of one of the parties shall not terminate the functions of the arbitrator he has appointed, unless otherwise provided by the parties.

Art. 3339. — Functions of arbitrator.

- (1) Any person may be appointed as an arbitrator.
- (2) No regard shall be had to the nationality of the arbitrator.
- (3) The person appointed as an arbitrator shall be free to accept or to refuse his appointment.

Art. 3340. — Disqualification of arbitrator. — 1. Grounds.

- (1) An arbitrator may be disqualified where he is not of age or where he has been convicted by a court, is of unsound mind, ill or absent or is for any other reason unable to discharge his functions properly or within a reasonable time.
- (2) The arbitrator appointed by agreement between the parties or by a third party may be disqualified where there are any circumstances capable of casting doubt upon his impartiality or independence.
- (3) The president of the arbitration tribunal may be disqualified for the same reason.

Art. 3341. — 2. Demurrer.

Unless otherwise provided, a party may seek the disqualification of the arbitrator appointed by himself only for a reason arising subsequently to such appointment, or for one of which he can show that he had knowledge only after the appointment.

Art. 3342. — 3. Procedure.

- (1) An application for disqualification shall be made to the arbitration tribunal by a party before the giving of the award and as soon as such party knew of the grounds for disqualification.
- (2) The parties may stipulate that the application for disqualification be made to another authority.
- (3) Where the application for disqualification is dismissed, this decision may be appealed against in court within ten days.

Art. 3343. — Removal of arbitrator.

Where an arbitrator, having accepted his appointment, unduly delays the discharge of his duties, the authority agreed upon by the parties or, in the absence of such agreement, the court, may remove the arbitrator on the application of either party.

Art. 3344. — Penalty for non-performance.

- (1) Where a party to an arbitral submission brings before the court a dispute covered by the submission, refuses to perform the acts required for setting the arbitration in motion or claims that he is not

bound by the arbitral submission, the other party may in his discretion demand the performance of the arbitral submission or consider it to have lapsed in respect of the dispute in question.

- (2) The fact that a party to an arbitral submission applies to the court to preserve his rights from extinction shall not entail the lapsing of the submission.

Art. 3345. — *Reference to Civil Procedure Code.*

- (1) The procedure to be followed by the arbitration tribunal shall be as prescribed by the Code of civil procedure.
- (2) The same shall apply to matters arising out of the execution of the award or to appeals against such award.

Art. 3346. — *Arbitral code.*

As used in this Chapter, the terms "arbitral submission" or "stipulation of the parties" include the provisions of the arbitral code to which the parties may have referred.

TITLE XXI

PROVISIONS DEALING WITH LAW REPEALED BY THIS CODE

Chapter 1. General provisions

Art. 3347. — *Repeals.*

- (1) Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.
- (2) In particular the following laws are hereby repealed:
 - (a) The law on prescription of 29th February, 1948; and
 - (b) The law on loans of 1923.

Art. 3348. — *Rights acquired under repealed legislation.*

- (1) Unless otherwise expressly provided, legal situations created prior to the coming into force of this Code shall remain valid notwithstanding that this Code modifies the conditions on which such situations may be created.
- (2) Unless otherwise expressly provided, this Code shall not affect the consequences having arisen out of such legal situations prior to the coming into force of this Code.

Art. 3349. — *Legal situations not finally created.*

- (1) Unless otherwise expressly provided, where the conditions for the creation of a legal situation may or need be present at various times,

the provisions of this Code shall only apply to such conditions as are not yet finally fulfilled on the coming into force of this Code.

- (2) Such conditions shall be governed by such further requirements for the creation of a legal situation as are laid down in this Code.

Art. 3350. — *Law modifying a period of time.*

- (1) Where periods of time have expired prior to the coming into force of this Code, nothing in this Code shall revive them.
- (2) Where periods of time have been extended by this Code, the provisions of this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.
- (3) Where periods of time have been shortened by this Code, the periods provided by the law repealed by this Code shall apply and the period which has run prior to the coming into force of this Code shall be deducted.

Art. 3351. — *Effect of existing legal situations.*

- (1) Unless otherwise expressly provided, the provisions of this Code which specify the effects of extra-contractual legal situations shall forthwith apply to legal situations created prior to the coming into force of this Code.
- (2) Contracts existing on the coming into force of this Code shall be governed by the provisions of the law under which they have been made, unless the contract is voidable on the ground of mistake, fraud, duress or as being unconscionable in such cases and within such time as are provided in this Code.

Chapter 2. Special provisions

Art. 3352. — *Restrictions to capacity.*

Agreements relating to capacity made prior to the coming into force of this Code shall be subject to the provisions of Art. 195.

Art. 3353. — *Protection of incapable persons.*

Guardians, tutors, co-tutors and assistant tutors appointed prior to the coming into force of this Code shall be deemed to have been appointed under this Code notwithstanding that they are not eligible for appointment under this Code. They shall carry out the duties prescribed by this Code.

Art. 3354. — *Successions.* — 1. *Successions opened prior to coming into force of this Code.*

Successions opened prior to the coming into force of this Code shall continue in accordance with the provisions of the law repealed by this Code.

Art. 3355. — 2. *Wills made prior to coming into force of this Code.*

Wills made prior to the coming into force of this Code shall be valid where:

- (a) they were valid under legislation repealed by this Code; or
- (b) they comply with the requirements of this Code.

Art. 3356. — *Publishing contracts.*

The author may not terminate a publishing contract made prior to the coming into force of this Code earlier than two years after the coming into force of this Code.

Art. 3357. — *Reckoning time of service.*

In applying the relevant provisions of this Code, the time spent by the employee in the service of the employer or undertaking prior to the coming into force of this Code shall be taken into consideration where the rights of the employee depend on the time spent by him in the service of the employer or undertaking.

TITLE XXII

TRANSITORY PROVISIONS

Chapter 1. Rules relating to persons and successions

Art. 3358. — *Assumption of family name.* — 1. *Persons born prior to the coming into force of this Code.*

- (1) No person born prior to the coming into force of this Code shall be required to assume a family name.
- (2) Where a person born prior to the coming into force of this Code wishes to assume a family name, he shall assume as a family name his patronymic:

Provided that, where there are two or more generations alive on the coming into force of this Code, he who wishes to assume a family name shall assume as a family name the patronymic of the senior male ascendant alive.

- (3) A person who has been disowned or whose father is not known may assume as a family name the patronymic of his mother.

Art. 3359. — 2. *Persons born after the coming into force of this Code.*

- (1) Any child born after the coming into force of this Code shall be given a family name.
- (2) Where the child has no family name in pursuance of the provisions of the preceding Article, he shall assume as a family name his patronymic.

- (3) A child who has been disowned or whose father is not known shall assume as a family name the family name, if any, of his mother or the patronymic of his mother.

Art. 3360. — 3. Effect.

Any name assumed under the provisions of the two preceding Articles shall be the family name of all direct lineal descendants.

Art. 3361. — Registers of civil status.

- (1) Art. 48-55, 57-70, 72-77, 79-131 and 133-145 shall not come into force until a day to be notified by Order published in the *Negarit Gazeta*.
(2) Until the coming into force of the Articles specified in sub-art. (1), proof of birth, marriage and death shall be made by producing acts of notoriety drawn up in accordance with the provisions of Art. 146-153 of this Code by the persons specified in Art. 146 (1) or by such other persons appointed for the purpose by the Minister of Interior.
(3) Notwithstanding the provisions of sub-art. (1), the provisions of Art. 121-145 of this Code shall forthwith apply *mutatis mutandis* to acts of notoriety.

Art. 3362. — Offices of associations.

Until offices of associations have been organised under this Code, all powers and duties imposed thereon shall be exercised by the Minister of Interior.

Chapter 2. Rules relating to property and mortgage

Art. 3363. — Registers of immovable property.

- (1) Title X of this Code relating to registers of immovable property shall not come into force until a date to be fixed by Order published in the *Negarit Gazeta*.
(2) Until such date has been fixed, the provisions of the following Articles in this Chapter shall apply in lieu of the provisions of Title X.

Art. 3364. — Transfer or extinction of ownership.

The customary rules relating to the formalities to be complied with so that the transfer or extinction of the ownership of immovable property may be set up against third parties shall apply.

Art. 3365. — Easements and restrictions to ownership.

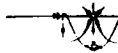
The customary rules relating to the formalities to be complied with so that easements, promises of sale, rights of pre-emption or provisions preventing attachment or assignment may be set up against third parties shall apply.

Art. 3366. — Duties of seller.

- (1) The seller of an immovable shall inform the purchaser of all restrictions to the ownership of such immovable which, under this Code, may not be set up against a third party unless they have been registered in the registers of immovable property.
- (2) The seller shall not be bound to inform the purchaser of the existence of such apparent easements as may apply to the immovable sold.
- (3) Whosoever has with regard to an immovable dealings which under this Code require to be registered in the registers of immovable property shall carry out the duties imposed on the seller by this Article.

Art. 3367. — Mortgages.

The customary rules to be complied with so that mortgages may be set up against third parties shall apply.



C O R R I G E N D A

Page 15, Art. 78 (2), line 2: Read "drawn up".

Page 36, Art. 207 (3), line 2: Read "appointed".

Page 42, Art. 242, line 1: Read "eldest".

Page 55, Art. 322, heading: Read "ad hoc".

Page 56, Art. 327 (1), line 2: Read "except".

Page 69, Art. 406 (1), line 1: Read "to defending".

Page 101, Art. 603: Read "(1) Marriages..... etc.

(2) The witnesses may or may not be related to the future spouses".

Page 108, Art. 643: Delete sub-art. (3).

Page 128, Art. 765: Read "(1) Where the child is born within 210 days from the conclusion of the marriage or the beginning of the irregular union, the husband or the man who lived with the mother may by contract assign the paternity of the child to a third party who declares that he is the father of the child.

(2) Where the child is born more than 210 days....
..... etc."

Page 132, Art. 794, line 1: Read "it is proved".

Art. 795: Read "(2) The mother of the child shall be heard."

Existing sub-art. (2) is to be read as sub-art. (3).

Page 135, Art. 812: Delete sub-art. (2).

Page 136, Art. 816 (3), line 1: Read "They may".

Page 143, Art. 865: Read "(1) A testamentary provision which fails..... etc.

(2) A provision in a will shall be of no effect where it cannot be enforced".

Art. 866: Delete sub-art. (2).

Page 146, Art. 883: Read "(1) The witnesses shall be of age and not interdicted".

Existing sub-art. (1) and (2) are to be read as sub-art. (2) and (3).

Page 147, Art. 889: Read "(1) A public or holograph will etc.

(2) The provision which contains such erasures, cancellation or words written over others shall alone be invalid where it can be isolated from the rest of the will, having regard to the testator's intention and all the circumstances".

Existing sub-art. (2) is to be read as sub-art. (3).

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Art. 890 (2): Read "~~shall not be~~".

Page 148, Art. 892: Read "(1) ~~An oral will~~ etc.

(2) The witnesses shall be of age and not interdicted".

Page 149, Art. 904: Read "(1) Notwithstanding any provision etc.

(2) The same shall apply where, after the date of the will, a descendant is born to the testator and such descendant, having been called to the succession by representation, accepts the succession".

Page 155, Art. 935: Delete and replace as follows:

"Unless otherwise provided in the will, the substituted legatee shall be called where the holder in tail cannot or does not want to accept what has been bequeathed to him".

Page 156, Art. 941: Delete sub-art. (2).

Page 157, Art. 945: Delete sub-art. (2).

Page 162, Art. 973: Add sub-art. (3) to be read as follows:

"An application for nullity shall only be entertained where it is made within three months from the declaration".

Page 174, Art. 1044: Add sub-art. (3) to be read as follows:

"Where the succession does not contain any thing of the same genus as the thing bequeathed, the legatee may in his discretion require the liquidator to give him any such thing of average quality or to pay him the value of the thing bequeathed".

Page 199, Art. 1195: Read "(1) The issue by etc.

(2) The manner in which title deeds are issued and time when such title deeds are to be renewed shall be prescribed by regulations.

(3) The fees to be charged on delivery to cover the expenses of the administrative authorities and to meet the liability of such authorities arising from delivery shall be prescribed by regulations".

Page 211, Art. 1274 (1), line 3: Read "agreement"

Art. 1277, heading; Read "agreement"

C O R R I G E N D A

Page 232, Art. 1414: Delete and replace as follows:

- “(1) Agreements under this Section shall not be enforced where they relate to property which is expropriated.
- (2) The beneficiary may not claim damages on the ground that the agreement could not be enforced as a result of expropriation”.

Page 234, Art. 1429: Add sub-art. (3) to be read as follows:

“Any such provision shall only be valid on the conditions laid down in the following Articles”.

Page 235, Art. 1432: Read “(1) A prohibitive etc.

- (2) Where the provision relates to an immovable which is not registered, such provision shall not affect third parties unless it is entered in the registry of the court of the place where the immovable is situate”.

Page 246, Art. 1495: Add sub-art. (3) to be read as follows:

“The creditors of the members of the community shall have no right on the property of the community”.

Page 248, Art. 1511: Read “(1) Decisions etc.

- (2) The charter of an official association may depart from the provisions of sub-art. (1) and provide that decisions shall be taken by a majority holding.
- (3) The charter may lay down special conditions of quorum and majority for the taking of special decisions”.

Page 266, Art. 1615: Add sub-art. (3) to be read as follows:

“The prescribed fee shall be charged in respect of deposit and preservation”.

Page 304: For “Chapter 5” read “Chapter 4”.

Page 354, Art. 2161: Delete sub-art. (3).

Page 439, Art. 2632 (3), line 2: Read “certain professions”.