



# CIVIL LAW

*of*

THE

REPUBLIC

*of*

AFGHANISTAN

TRANSLATION

PRODUCED

*by*

*Afghanistan*

*Legal Education*

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## Acknowledgments

Stanford Law School's Afghanistan Legal Education Project (ALEP) was launched in the fall of 2007 as a student-initiated program dedicated to helping Afghan universities train the next generation of Afghan lawyers. ALEP's mandate is to research, write, and publish high-quality, original legal textbooks, and to build an equally high-quality law curriculum at the American University of Afghanistan (AUAF).

During the process of researching and writing its sixth textbook, *An Introduction to the Law of Obligations of Afghanistan*, ALEP discovered the palpable need for a professional, credible and reliable English translation of the Afghan Civil Code. ALEP mobilized its resources to create a translation of the highest quality for use by Afghan and international government officials, universities, legal organizations, private lawyers, and the public.

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*Erik Jensen, Faculty Advisor, ALEP*

*Palo Alto, California, September 2014*

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# Civil Code of the Republic of Afghanistan

## Introductory Title

### Chapter 1 — Application of the Law

#### Section 1 — Law and Rights

##### Topic 1 — Scope of Application of the Law

###### Article 1:

- (1) Ijtihad shall not be permissible in the cases where provisions of law exist. Provisions of this Law shall be applicable based on its words and spirit.
- (2) In cases no provision of law exists, courts shall decide in accordance with general principles of Hanafi Jurisprudence of Islamic Sharia in order to secure justice in the best possible way.

###### Article 2:

Where neither do provisions of law exist, nor any ruling is found among principles of Hanafi Jurisprudence of Islamic Sharia, courts shall decide according to common custom, provided that the custom does not contradict provisions of law or principles of justice.

###### Article 3:

- (1) Whatever is proven by time remains valid until a contrary reason is found.
- (2) No provision of law shall be abrogated or amended except by a subsequent law expressly ordering to those effects.

##### Topic 2 — Exercise of Rights

###### Article 4:

A person who resorts to obtain a right before its due time, he shall be condemned to deprivation of that right.

###### Article 5:

State of emergency does not invalidate rights of another.

###### Article 6:

Loss shall not be compensated by reciprocal same action.

###### Article 7:

Repelling evils have priority over securing benefit.

**Article 8:**

Legal permission negates responsibility. One who exercises his rights within legal limits is not liable for ensuing damages.

**Article 9:**

- (1) A person who transgresses his rights shall be responsible.
- (2) Transgression of rights occurs in the following cases:
  - 1 – Actions against custom.
  - 2 – Having the intention to infringe rights of another.
  - 3 – Triviality of interest of the person as compared with the harm inflicted on another.
  - 4 – Impermissibility of the interest.

## **Section 2—Application of Law with Respect to Time**

**Article 10:**

- (1) Provisions of law shall be applicable upon promulgation.
- (2) Provisions of law shall not be retroactive, except in cases explicitly stated in the law or cases wherein the provisions relate to the public order.

**Article 11:**

- (1) Provisions on capacity apply to all persons qualified under this Law.
- (2) If, according to provisions of a new law, a person is recognized to have incomplete capacity, the new provisions shall not affect his previous legal actions.

**Article 12:**

The new provisions on lapse of time are applicable immediately after their validation. All cases whose time lapse is not, according to the old law, completed shall be subject to provisions of the new law.

**Article 13:**

If provisions of the new law have lessened, as compared with the old law, the time lapse, this time shall be subject to provisions of the new law, even though it was commenced before enforcement of the new law.

**Article 14:**

With regard to the evidence that have already been accumulated, provisions of that laws apply which was applicable at the time of accumulation or at the time they had to be accumulated.

**Article 15:**

Date shall be calculated in accordance with Hejri Shamsi (Islamic solar) calendar.

## Section 3—Application of Law with Respect to Place

### Article 16:

Regarding assessment of legal relation, in a case of conflict of laws, provisions of Afghanistan Law apply.

### Article 17:

With regard to registration of civil status and capacity of persons, laws of the State of their nationality shall apply. If a party to financial transactions concluded and implemented in Afghanistan is a foreign national without full legal capacity, while such incompleteness of capacity is due to a reason that cannot be detected, he shall be recognized as having full capacity.

### Article 18:

Regarding foreign legal persons such as companies, associations, organizations and the like, the law of the State in which their central administration is located shall apply. If principal activities of these persons are carried out in Afghanistan, the law of Afghanistan shall apply.

### Article 19:

With respect to substantive conditions of validity of marriage, laws of the State of each spouse shall apply; and with regards to formal conditions of marriage, legal provisions of the country in which the marriage is taken place shall be observed.

### Article 20:

- (1) With respect to effects of marriage, including financial affairs, the law of the State of the husband at the time of the marriage contract shall apply.
- (2) With respect to divorce, laws of the State of the husband at the time of the divorce shall apply.
- (3) With respect to separation and discharge, the law of the State of the husband at the time of filing the suit shall apply.

### Article 21:

In cases stated in Articles (19 and 20) of this Law, if one of the spouses at the time of marriage is Afghan only legal provisions of Afghanistan shall apply, except for capacity condition.

### Article 22:

With regard to issues of childhood, guardianship, and other obligations of fathers and children, provisions of the law of the State of the father shall apply.

### Article 23:

With regard to persons who lack capacity, persons with incomplete capacity, and absent persons, provisions of the law of their country of citizenship shall apply. Regarding appointment of administrator, executor or legal guardian and the like, provisions of laws relevant to these subjects and laws enacted in order to protect the mentioned persons may be applied.

**Article 24:**

With regard to obligating to provide alimony, legal provisions of the State of the obligated person shall apply.

**Article 25:**

(1) With respect to substantive provisions on inheritance, will, and other actions taking effect after death, provisions of the law of the State of testator, executor or the person who has taken the action at the time of death shall apply.

(2) With respect to formal provisions on will, provisions of the law of the testator at the time of making the will, or provisions of the law of the place wherein the will was completed shall apply.

Similarly, this rule shall apply to formal provisions on other actions taken effect after death.

**Article 26:**

With respect to possession, ownership and other real rights, the law of the place wherein the real estate is located shall apply, and with regard to movables, the law of the place wherein the movables were present at the time of occurrence of events resulting in acquisition or loss of the right shall apply.

**Article 27:**

With respect to obligations arising from contracts, the law of the State wherein parties to the contract reside shall apply. If they do not reside in the same State, the law of the State wherein the contract is completed shall apply, provided that the parties have not agreed on the applicable law or it is not clear from the indications that the parties have intended that another law applies. With respect to contracts concluded on real estate, the law of place wherein it is located shall apply.

**Article 28:**

With respect to formal conditions of contracts, provisions of law of the State wherein the contract is completed shall apply.

**Article 29:**

(1) With respect to non-contractual obligations, provisions of the law of the State wherein events creating the obligations have occurred shall apply.

(2) If the obligation is caused by an event that occurred outside Afghanistan wherein it is considered illegal but legal in Afghanistan, the provisions of the first Item of this Article shall not apply.

**Article 30:**

Regarding specialized rules and all affairs relating to procedure, provisions of the law of the State wherein the lawsuit is filed or the procedure has started shall apply.

**Article 31:**

Provisions stated in the previous Articles of this Section shall be effective when there is no other provision contrary to them in the specialized law or the international treaty that is enforceable in Afghanistan.

**Article 32:**

Where there is no provision regarding conflict of laws in the previous Articles of this Law, rules of private international law shall apply.



**Article 33:**

The applicable law to persons with unknown citizenship shall be determined by the court.

**Article 34:**

In cases where application of provisions of a foreign law is specified, those substantive provisions of the mentioned law that are not related to private international law shall apply. If plurality of religions exists in the law of the State whose provisions are applicable, provisions of that religion applies that the law of the mentioned State has determined.

**Article 35:**

Provisions of foreign law, in the manner specified in the previous Articles of this Section, are applicable to the extent that it does not contradict public order or common morality in Afghanistan.

## **Chapter 2—Persons**

### **Section 1—Real Person**

#### **Topic 1—General Provisions**

**Article 36:**

- (1) Personality of human commences with his full birth alive and ends with death.
- (2) Fetus has the rights specified by the law.

**Article 37:**

Registration of the dates of birth and death shall be done by the relevant official registers. If documents of registration of birth or death do not exist or are mistakenly registered, proof of birth and death by evidence shall be provided in the way specified by the law.

**Article 38:**

Every person can choose a family name in addition to his name. Family name shall be bestowed on children. If a person transfers another person's family name to himself and this action inflicts damage on the first person, the damaged person may, in addition to prohibition, claim compensation from the transgressor.

**Article 39:**

Age of majority is complete 18 Shamsi (Islamic solar calendar) years. The major person, while being sane in concluding contracts, is recognized to have complete legal capacity.

**Article 40:**

If a person who lacks discretion due to minority of age, mental retardation or insanity, cannot conclude legal transactions. Persons under the age of 7 years old are considered as lacking discretion.

**Article 41:**

A person with discretion who has not attained the age of majority or has attained the age of majority but is prodigal or forgetful is considered as having incomplete capacity.

**Article 42:**

Persons with incomplete capacity or lacking are subject to provisions of executorship, guardianship, and administratorship according to conditions and rules laid down by this Law.

**Article 43:**

No one may renounce his legal capacity or modify its effects.

**Article 44:**

Liberty is a natural right of humans. No one can renounce it.

**Article 45:**

A person whose personal rights are infringed may, in addition to demanding cessation of the infringement, claim compensation in case any damage has been incurred.

## Topic 2 – Civil Status

**Article 46:**

Civil status of persons who attain eighteen years shall be recorded in special registration books in accordance with provisions stated in articles (47-48-49-50) of this Law.

**Article 47:**

- (1) Civil status of a person shall be interpolated in the special identity paper and, if request, shall be given to him. The identity paper includes name, pseudonym or family name, date and place of birth, occupation, nationality, domicile, and names of spouse and children with the date and place of their birth.
- (2) Change of the mentioned statuses, such as death, change of domicile or occupation, shall also be recorded in the identity paper.

**Article 48:**

Documents pertaining to marriage, divorce, confession of childhood and proof of lineage prepared by specialized authorities shall be registered in the books specified in Article (46) of this Law. The mentioned authorities have a duty to inform in writing the relevant office of the mentioned events so that it register them.

**Article 49:**

The prosecutor can acquire information regarding the process of registration of records and special books specified in Article (46) of this Law and, in case of observation of any violations or misadministration, take legal measures.

**Article 50:**

All statuses specified in Articles (46-47-48-49) of this Law interpolated in special registration books for civil status or identity of the population shall be authentic against others. Objections against such documents are not permissible, unless they are raised on the basis of forgery or duplicity of the documents.

### **Topic 3 – Domicile**

**Article 51:**

- (1) Domicile is the place wherein a person habitually resides, whether this domicile is permanent or temporary.
- (2) A person can have more than one domicile.

**Article 52:**

- (1) Domicile of a person with incomplete capacity, incapacitated, missing and absent is the domicile of their legal representative.
- (2) The persons with incomplete capacity who are permitted to do business may be recognized to have special domicile for making the permitted transactions and actions.

**Article 53:**

The place wherein a person has business or vocation shall be considered as his domicile for administering the related activities.

**Article 54:**

- (1) A person may have optional domicile in order to perform a certain legal action.
- (2) The domicile chosen for performing a certain legal transaction shall be valid for all issues concerning the transaction including mandatory performances, unless the mentioned domicile has been explicitly determined for performing certain transactions.
- (3) Optional domicile may only be proved by documentary evidence.

### **Topic 4 – Nationality**

**Article 55:**

Afghan nationality shall be governed by a special law.

### **Topic 5 – Family**

**Article 56:**

A person's family consists of relatives gathered together on the basis of a common ascendant.

**Article 57:**

Direct relation is a relation between ascendant and descendant and indirect relation is a relation between persons who have a common ascendant without one being descendant of the other.

**Article 58:**

- (1) In calculating the degree of direct relation from descendant to ascendant, each descendant is considered one degree and the ascendant himself is not included in this calculation.
- (2) In calculating the degree of indirect relation from the descendant to common ascendant and vice versa, each descendant is considered one degree and the common ascendant is not included in this calculation.

**Article 59:**

Relatives of either of the spouses are considered to be relatives of the other spouse in the same line and of the same degree.

## **Topic 6 — Marriage**

**Article 60:**

Marriage is a contract that legalizes relationship between man and woman with the aim of forming a family, and establishes rights and duties of the parties.

**Article 61:**

- (1) Marriage contract shall be prepared and registered, in the official marriage deed, by the relevant office in three copies. The original copy shall be kept in the relevant office and one copy shall be given to each of the parties to the contract. The marriage contract, after registration in the special books, shall be notified to the office of registration of records stated in article (46) of this Law..
- (2) If registration of a marriage contract is not possible in this manner, it shall be registered in another way that is stipulated for registration of official documents.

**Article 62:**

Engagement shall be permissible with a woman who is not bound with another person by marriage or Edat (the period of waiting).

**Article 63:**

Implicit or explicit proposal to a woman at the time of Edat of a reversible or irreversible divorce shall not be permissible and explicit proposal to a woman at the time of Edat of death of her husband shall not be permissible.

**Article 64:**

Engagement is a promise for marriage. Each of the parties may renounce it.

**Article 65:**

If a the engaged parties give gifts to each other, the one who has gave the gift may, in case the other party renounces and the gifts exists, demand return of the gift itself or the price of the date of purchase.

If renouncement is made by the giver of the gift or if the gift has been destroyed or depreciated, the giver may not in any way demand the return.

**Article 66:**

Marriage contract shall be concluded with explicit offer and acceptance, in a single meeting, that denotes immediacy and permanency, without time limit.

**Article 67:**

Marriage shall not be concluded if subjected to an unrealized condition or a time in future.

**Article 68:**

If a condition is included in marriage contract that is against law and purposes of marriage, the contract shall be valid but the condition shall be void.

**Article 69:**

In swap marriage contracts, female shall not be swapped by the another female, and a customary dowry has to be fixed for each of the females.

**Article 70:**

Capacity to marry shall be complete when males attain 18 and females 16 years.

**Article 71:**

- (1) Marriage contract of a girl who has not attained the age mentioned in Article (70) of this Law may only be concluded by her competent father or competent court.
- (2) Marriage contract of minor girls under 15 years old are not permissible by no means.

**Article 72:**

- (1) It is permissible to appoint an agent for marriage contract.
- (2) The agent may not marry his principal to himself, unless this is explicitly stated in the agency contract.

**Article 73:**

In marriage contract, the agent may not appoint another person as agent, without delegation of the authority or permission by his principal.

**Article 74:**

The agent may not take any action beyond the limits of his agency. Any action beyond the limits of the agency contract is considered as an unauthorized action and shall be subject to permission by the principal.

**Article 75:**

The agent is neither responsible for delivery of the wife to the husband, nor to pay the dowry, unless he has guaranteed payment of the dowry. In this case, the agent may not claim the paid dowry from the husband, unless the guarantee has been permitted by the husband.

**Article 76:**

In case the parties to the marriage contract are under guardianship of a single person, based on their ascendancy, Sharia or agency, the guardian alone may offer and accept on behalf of both parties, provided that legal conditions of the contract are observed.

**Article 77:**

The following conditions are essential for validity and enforceability of marriage contracts:

- 1 – Performance of correct offer and acceptance by the parties their guardians or their agents.
- 2 – Presence of two competent witnesses.
- 3 – Absence of permanent or temporary legal impediment between the marrying male and female.

**Article 78:**

Judge shall be the guardian of persons without guardian.

**Article 79:**

The judge may not marry persons under his guardianship, under article (78) of this Law, to himself or to his ascendants or descendants.

**Article 80:**

Marriage contract of major and discerning girl without the agreement of her guardian shall be effective and binding.

**Article 81:**

Marriage of person with his/her ascendants, descendants, descendants of father and mother, and first category of descendants of ancestors shall be eternally forbidden.

**Article 82:**

Marriage of person with wife of his ascendants and wife of his descendants shall be eternally forbidden. Moreover, marriage of person with ascendants of his wife shall be eternally forbidden and his marriage with descendants of his wife, in case of consumption of marriage, shall be eternally forbidden.

**Article 83:**

Marriage of adulterer with ascendants and descendants of adulteress and also marriage of adulteress with ascendants and descendants of adulterer is forbidden. Marriage of ascendants and descendants of adulteress with ascendants and descendants of adulterer is excluded from this provision.

**Article 84:**

Prohibition of fosters is the same as prohibition of lineage parental, except for the following cases:

- 1 – Sister of foster son.
- 2 – Mother of foster sister or foster brother.
- 3 – Grandmother of foster son or foster daughter.
- 4 – Sister of foster brother.

**Article 85:**

In the following cases, temporary prohibition shall arise:

- 1 – Marrying with two women, whom if one of them were man their marriage would be forbidden.
- 2 – Three time divorcee before she marries another person.
- 3 – Married woman or woman in her divorce period of waiting.
- 4 – Woman who has been accused of adultery until she denies her husband's assertion.
- 5 – Woman who is not believer of one of the four books.

**Article 86:**

Marriage with more than one woman is permissible upon realization of the following circumstances:

- 1 – When there is no fear of injustice among the wives.
- 2 – When the person has sufficient financial ability to sustain alimony of the wives, such as food, clothing, residence and appropriate medical treatment.
- 3 – When there is a legitimate interest, such as infertility of the first wife or her having difficultly curable illnesses.

**Article 87:**

Woman whose husband has remarried contrary to the provisions of Article (86) of this Law may, according to provisions stated in Article (183) of this Law, demand divorce from the court on the basis of separation due to harm.

**Article 88:**

Woman may, while entering into marriage contract, stipulate the condition that if her husband marries another woman contrary to provisions of Article (86) of this Law, the power to divorce shall be transferred to her. This condition shall only be valid when interpolated in the marriage deed.

**Article 89:**

Person who conceals his married status during his marriage with more than one woman, based on provisions of Article (86) of this Law, and has not acquired explicit consent and agreement of the woman to whom he is newly being married regarding the situation, in this case, if the new wife does not consent to continue living with the husband, she may demand divorce from the court according to provisions stated in Article (183) of this Law, on the basis of separation due to harm.

## **Topic 7 – Effects of Marriage**

### **Subtopic 1 – General Provisions**

**Article 90:**

A valid and effective marriage contract shall have all its effects, such as provision of alimony to wife, inheritance rights, lineage proof and prohibition of marriage.

**Article 91:**

Regarding requirement of complete dowry, a full privacy between husband and wife is considered the same as consummation of marriage, even though the husband is sexually incompetent. Similarly, regarding proving lineage, alimony, and prohibition of marriage with sister of the wife, a full privacy between husband and wife is considered the same as consummation of a valid marriage.

**Article 92:**

- (1) Marriage of Muslim woman with non-Muslim man shall be void. Muslim man, however, may marry woman believing in one of the four books.
- (2) Marriage of a woman believing in one of the four books may be done by her guardian believing in her religion and witnessed by two persons of the same beliefs. In cases stated in this Article, children shall be considered of the father's religion.

**Article 93:**

Marrying a woman who believes in one of the four books, in addition to a Muslim wife, is permissible and vice versa.

**Article 94:**

If after an invalid marriage, before consummation and its preparations, the couple separate, this shall not cause prohibition of marriage.

**Article 95:**

None of the effects of a valid marriage shall apply to void marriage, even if it is consummated.

**Article 96:**

Marriage that has taken place with offer and acceptance, but some of its conditions are not completed is shall be considered as invalid and provisions of marriage shall not apply to it.

**Article 97:**

- (1) Invalid marriage before consummation is considered as a void marriage.
- (2) Consummation of an invalid marriage shall amount to the effectiveness of dowry, lineage, prohibition of marriage, divorce waiting period (Edat), separation and alimony.

## **Subtopic 2 — Dowry**

**Article 98:**

Complete dowry shall become effective with consummation of marriage, full privacy or death of one of the couple even before consummation or full privacy.

**Article 99:**

Wife is entitled to contractual dowry. If the dowry is not fixed in the marriage contract or if it is denied, a customary dowry shall be effective.



**Article 100:**

Anything that can be owned may be fixed as dowry.

**Article 101:**

- (1) Payment of all or part of the dowry may be fixed due upon the conclusion of marriage contract or deferred to a time in future.
- (2) If payment time is not explicitly stated, reference shall be made to the custom . In case of separation or death, the deferred dowry shall be paid in a short time, unless a certain period is specified in the contract.

**Article 102:**

- (1) Husband may increase the amount of dowry after conclusion of the contract.
- (2) In the above case, increase of dowry shall be subject to the following conditions:
  - 1 – The increased amount is defined.
  - 2 – Wife or her guardian accepts this increase.
  - 3 – The marriage relationship is still valid.

**Article 103:**

- (1) A pubescent wife who has attained the legal age of marriage may, if she is healthy and gives consent, acquit husband of all or part of the dowry fixed in cash.
- (2) Father of a wife who has not attained the age specified in Article (70) of this Law may not, in any way, acquit husband of payment of the dowry.

**Article 104:**

Wife who has authorized husband to fix the dowry but it is not fixed may, after conclusion of marriage contract and before consummation of marriage, demand determination of the dowry, and the husband is obligated to fix her dowry. In case of refusal, the wife may request the competent court to fix a customary dowry.

**Article 105:**

If separation takes place before consummation of marriage or full privacy, in case the dowry is contractually agreed, wife is entitled to half of it, and if it is not fixed, to half of the customary dowry.

**Article 106:**

If separation has taken place by wife, before consummation of marriage or full privacy, her dowry shall be completely nullified.

**Article 107:**

In case of separation of spouses before consummation of marriage or full privacy, wife is entitled to maintenance that is usual clothing and the like. In determining of this maintenance, husband's financial ability should be taken into account and, in no way, the price of maintenance may exceed that of the customary dowry.

**Article 108:**

- (1) If divorce takes place before consummation of marriage and dowry is contractually fixed or husband dies, wife shall not be entitled to maintenance.
- (2) In case divorce takes place after consummation of marriage, whether or not dowry is contractually fixed, wife shall be entitled to the maintenance.

**Article 109:**

If a person marries while having a terminal illness and fixes dowry more than the customary one, the excess shall be subject to provisions on will.

**Article 110:**

Dowry is the property of wife. She may exercise any proprietary possession on her dowry.

**Article 111:**

If wife donates all or part of her dowry to husband, before or after delivery of dowry, and divorce takes place before consummation of marriage, husband cannot demand half of the dowry.

**Article 112:**

If dowry is not cash money or fungible goods and wife donates all or half of it to husband, in case the divorce takes place before consummation of marriage, husband may not demand anything as dowry.

**Article 113:**

Father may not donate all or part of his daughter's dowry.

**Article 114:**

Wife should not be forced to transfer all or part of her dowry to husband or another person. In case wife dies before receiving all of dowry, her heirs may demand remaining part of the dowry from the husband and, in case of death of the husband, his heirs remaining part of the dowry, after deduction of the right of inheritance of wife.

### **Subtopic 3 — Residence**

**Article 115:**

Husband shall provide a suitable residence for wife, proportionate to his financial ability.

**Article 116:**

If a person is married to more than one woman, he may not force them against their will to dwell in a single residence.

## Subtopic 4 – Alimony

### Article 117:

- (1) Upon conclusion of a valid and effective marriage contract, husband shall have to pay alimony, even if wife dwells in her relatives' residence. If wife unrightfully refuses to dwell in husband's, husband shall not be obligated to pay alimony.
- (2) Wife has a right to refuse to go husband's residence when the husband has not prepared a suitable residence according to Articles (115 and 116) of this Law or if husband has not paid her due dowry.

### Article 118:

Alimony of wife includes food, clothing, residence and appropriate medical treatment proportionate to husband's financial ability.

### Article 119:

If husband refuses to provide alimony or his negligence is proven, the competent court shall compel him to provide alimony.

### Article 120:

Responsibility of providing alimony for wife shall not be extinguished upon imprisonment of husband, even though he is not able to provide it.

### Article 121:

If husband is absent, alimony of wife shall be provided out of his properties that could be considered as alimony and are accessible to her. Otherwise, the alimony of wife shall be provided out of his properties that are held by others as deposit or debt..

### Article 122:

In the following cases wife is not entitled to alimony:

- 1 – She leaves the residency without permission of husband or for non-permitted purposes.
- 2 – She does not fulfill her marital duties.
- 3 – There is impediment for her to dwell in husband's residence.

### Article 123:

Alimony of wife shall be provided proportionate to of husband's financial ability, provided that it is not less than the minimum need of wife.

### Article 124:

Increase and decrease of alimony shall be subject to husband's financial ability and local fluctuation of prices. Request for increase or decrease of alimony shall not be accepted before lapse of 6 months of the date it was fixed.

### Article 125:

If husband refuses to provide obligatory alimony, he shall be compelled to provide it since the date of refusal.

**Article 126:**

Divorcee is entitled to alimony since the date of divorce until the end of the waiting period (Edat).

**Article 127:**

Claim of divorcee for alimony of the waiting period that exceeds more than one year since the date of divorce, shall be rejected.

**Article 128:**

Obligatory alimony shall not extinguish except with provision or acquittal.

**Article 129:**

Acquittal of alimony before it is fixed shall be void, whether it is fixed by consent or by court. However, acquittal of alimony after it is fixed shall be valid only when the acquittal refers to the past alimony. Acquittal of alimony of coming day, week, month or year shall be valid only when the alimony is fixed on the basis of day, week, month and year.

**Article 130:**

Husband's debt of alimony to wife or debt wife's debt may be offset upon the request of either of them.

## **Topic 8 – Dissolution of Marriage**

### **Subtopic 1 – General Provisions**

**Article 131:**

A marriage contract shall be dissolved with rescission, divorce, divorce in exchange for property by wife (Khol') or separation according to provisions stated in this Law.

### **Subtopic 2 – Rescission**

**Article 132:**

Rescission is breach of marriage contract due to occurrence of disruptions during conclusion of the contract or after that, in such a way that it prevents continuation of marriage.

**Article 133:**

Cases mentioned in Article (132) of this Law that causes rescission of marriage are as follows:

- 1 – Disruptions at the time of conclusion of marriage contract arise from the following causes:
  - a – Lack of one of the validity conditions of marriage contract.
  - b – Option of discernment
  - c – Shortage of dowry compared to customary dowry.

- 2 – Disruptions after conclusion of marriage contract that prevents continuity of marriage derive from the following causes:
- a – Prohibition of marriage
  - b – Accusing wife of adultery (La'aan)
  - c – Refusal of wife believing in one of the four books to convert to Islam when her husband has converted to Islam.

**Article 134:**

- (1) Rescission of marriage contract in both cases mentioned in Article (133) of this Law shall happen upon final ruling by the competent court.
- (2) Rescission of marriage contract on the basis of the causes mentioned in the second Item of the mentioned Article shall also be permissible upon consent of the spouses, without a court ruling.

### **Subtopic 3 – Divorce**

**Article 135:**

- (1) Divorce is dissolution of valid marriage relationship between husband and wife at present or in the future, by words that explicitly denote occurrence of divorce.
- (2) Divorce shall be declared, according to provisions of this Law, by husband or by competent court upon wife's demand.

**Article 136:**

Divorce shall only be applied to wife validly married or in the waiting period of a reversible divorce.

**Article 137:**

Divorce may be conducted by a sane and pubescent husband, even if he is prodigal or has an illness that does not disrupt his sanity.

**Article 138:**

Divorce may not be conducted in the state of drunkenness.

**Article 139:**

- (1) Husband may divorce his wife orally or in writing. If he lacks these two means, divorce may take place through common signals that explicitly denote meaning of divorce.
- (2) Divorce shall take place by explicit words that conventionally denote meaning of divorce, even if person does not intend it.

**Article 140:**

Minor wife may not be divorced by husband or father of husband.

**Article 141:**

Divorce of the following persons is not valid:

- 1 – Insane, unless he has suspended divorce to a condition prior to insanity and the condition has materialized at the time insanity.
- 2 – Un-discerning.
- 3 – Under duress.
- 4 – Asleep
- 5 – Person whose sanity has been deranged as a result of old age or disease.
- 6 – Senseless person who has lost his discerning ability due to anger or other factors and cannot understand his own words.

**Article 142:**

Husband may divorce wife by legal agent or delegate the divorce power to wife herself.

**Article 143:**

Husband may not revoke the delegation of divorce power, unless wife has not accepted the delegated power.

**Article 144:**

Husband has a power to divorce wife for three times.

**Article 145:**

Divorce included with number, whether by words or signals, shall be considered as one divorce.

**Article 146:**

Divorce is in general reversible, and in the following cases is irreversible:

- 1 – The third divorce.
- 2 – Divorce before consummation of marriage.
- 3 – Divorce in exchange for consideration.
- 4 – Divorce recognized as irreversible in this Law.

**Article 147:**

Husband may not remarry his three time divorcee, unless the three time divorcee marries another person and after consummation of this marriage gets divorced and completes the divorce waiting period (Edat).

**Article 148:**

Any type of divorce before consummation of marriage, as well as, one or two reversible divorces in which reversion has not happened shall be called minor irreversible divorce.

**Article 149:**

Effects of marriage and power of husband shall not be eliminated with one or two reversible divorces until completion of the waiting period, they remain in force.

**Article 150:**

Suspending reversion to a future time or a condition is not permissible. Validity of reversion is not subject to presence of witnesses.

**Article 151:**

In reversible divorce, marriage relationship shall end with completion of the third menstruation, with which the right of husband to reverse shall extinguish.

**Article 152:**

A minor reversible divorce dissolves marriage contract and eliminates its effects. It immediately after occurrence eliminates power of husband and all of the marriage relationships, except the waiting period.

**Article 153:**

- (1) Minor irreversible divorce shall not forbid the divorcee to remarry the husband.
- (2) The husband may, in minor irreversible divorce and during the waiting period or after that, remarry his divorcee, provided that this marriage takes place upon consent of the wife and with a new contract and dowry.

**Article 154:**

If divorcee marries another person and is divorced after consummation of marriage, she may marry her previous husband. In this case, previous divorces shall have no effect and husband gains again power to three divorces.

**Article 155:**

If husband, at the time of terminal illness, irreversibly divorces wife, this divorce shall not affect inheritance rights of the divorcee provided that her waiting period does not end before death of the husband, and provided that the divorcee is not deprived of inheritance, between divorce and death of husband, due to another cause.

### **Subtopic 4 — Divorce in Exchange for Property (Khol`)**

**Article 156:**

- (1) Khol` (divorce in exchange for property) is dissolution of marriage contract in exchange for property that wife pays husband.
- (2) Khol` takes place with explicit words for it or with any other word that denotes the meaning of Khol`.

**Article 157:**

Khol` shall be valid when husband holds the power to divorce and wife is still subject to it.

**Article 158:**

Any property that has been accepted as dowry may also be accepted as the exchange property for Khol`.

**Article 159:**

Khol` of a wife who lacks capacity is permissible. But wife may not be forced to pay Khol` without the agreement of her property guardian.

**Article 160:**

Khol` is the same as irreversible divorce in that it is not subject to court ruling.

**Article 161:**

Either of spouses may withdraw his/her offer before acceptance of the other party.

**Article 162:**

If Khol` takes place in exchange for a certain property other than the dowry, wife shall be obligated to pay it. No other claim deriving from marriage rights, such as dowry or alimony of the past that owed to each other at the time of Khol`, may not be made.

**Article 163:**

If Khol` has been in exchange for all of the dowry, in case all or part of the dowry has already been delivered to wife, she shall be obligated to return the amount she received, otherwise, husband shall not have the obligation to pay the dowry, whether or not Khol` has taken place before or after marriage consummation.

**Article 164:**

If the exchanging is not determined at the time of Khol`, spouses shall be released from all marriage rights. Husband may not demand the return of whatever he delivered to wife or wife may not claim whatever husband owes her; whether or not Khol` has taken place before or after marriage consummation.

**Article 165:**

If the exchanging is rejected at the time of Khol`, the divorce shall be irreversible and it shall not extinguish marriage rights they hold against each other.

**Article 166:**

If husband receives un-rightfully the Khol` exchange, in case marriage has been invalid, Khol` shall not be valid. Wife may also demand the return of the exchanged property.

**Article 167:**

If Khol` exchange gets destroyed or taken due to an entitlement, before delivery to husband, wife shall be obligated to replace it or pay its price.



**Article 168:**

In Khol`, alimony of the waiting period after divorce shall not extinguish, unless spouses have explicitly agreed on its extinguishment at the time of Khol`.

**Article 169:**

If wife accepts fee of giving milk to or caring of and providing alimony to the child for a certain period of time as the Khol` exchange, she shall be obligated to perform this commitment.

**Article 170:**

If wife cannot fulfill completely her obligations of giving milk to or caring of and providing alimony to the child due to reasons such as marriage with another person, escape, her death or the child's death, husband may claim the remaining part of the fee for the period of giving milk and that of the alimony, unless they have agreed on non-claim at the time of Khol` in case of death of child or wife.

**Article 171:**

If giving milk to the child is determined as the Khol` exchange before the child's birth and thereafter it is proven that there was no pregnancy or it was aborted or the child dies before completion of two years of milk-feeding, husband may claim an amount equivalent to the fee of whole period of milk-giving or the remaining period thereof.

**Article 172:**

Wife may determine caring of child until the age of puberty as the Khol` exchange when the child is female. If the wife marries another person during this period, father of the child may get custody of the child and claim an amount equivalent to the fee of caring or the remaining period thereof, even if they had already agreed on the child custody by the mother.

**Article 173:**

- (1) If, at the time of Khol`, it is stipulated that the child stays with husband during the custodial period, the Khol` contract shall be valid but the stipulation shall be void. Wife may keep with herself the child until the end of custodial period, provided that this right has not been extinguished due to another reason.
- (2) In case the child is poor, father shall be responsible for the custodial fee and alimony of the child.

**Article 174:**

Husband may not offset wife's debt to himself by his debt deriving from the child alimony. If alimony of the child is determined as the Khol` exchange while wife is insolvent, husband shall be responsible for the alimony of the child. In case wife becomes solvent, husband may claim the paid sums against her.

**Article 175:**

- (1) If wife concludes Khol` contract with husband at the time of terminal illness, Khol` shall be valid and result in irreversible divorce. If wife dies during the waiting period, husband shall be entitled to the least of one of right of inheritance, the Khol` property or one-third of the inheritance. In case she dies after completion of the period of waiting, husband shall be entitled to the lesser of one-third of inheritance or the Khol` exchange.
- (2) If wife recovers, husband shall be entitled to all of the determined Khol` exchange.

## Subtopic 5 — Separation

### Part 1 — Separation Due to Defect

#### Article 176:

Wife may request separation if husband is affected with an illness that is incurable or takes a long time to be cured, in such a way that common life with husband is not possible without a large harm.

#### Article 177:

If wife is aware of the defects mentioned in Article (176) while concluding the contract or before that or in case the defects occur after the contract and she explicitly or implicitly consents to them, she may not demand separation.

#### Article 178:

Defects mentioned in Article (176) of this Law shall be established by expert opinion.

#### Article 179:

If the established defect is of the incurable kind, the court shall issue the separation verdict without delay. In case the defect is curable but needs a long time for being cured, the court shall postpone the demand of separation for a period of not more than one year.

#### Article 180:

Separation due to defect is considered as irreversible divorce.

#### Article 181:

Separation due to defect shall not result in eternal prohibition. The spouses may remarry after separation, whether within the period of waiting or thereafter.

#### Article 182:

If one of the spouses, due to whose defect the separation has occurred, dies, the other one shall not inherit from the deceased.

### Part 2 — Separation Due to Harm

#### Article 183:

If wife claims such a harm that makes common life between similar spouses impossible, she may demand separation from court.

#### Article 184:

- (1) If the claimed harm is proven and reconciliation of the spouses is impossible, the court shall issue a verdict for separation.
- (2) Separation is considered as irreversible divorce.

**Article 185:**

If the claimed harm is not proven and wife insists on her claim, the court shall appoint two persons as arbiters in order to reconcile the spouses.

**Article 186:**

- (1) Arbiters must be just persons. One of them must be from husband's relatives and the other from wife's relatives. If relatives of the spouses are not present, the arbiters shall be appointed from among persons who sufficiently know the situation of the spouses and are able to reconcile them .
- (2) Arbiters must take oath in the court that they carry out their duty in a just and trustful manner.

**Article 187:**

Persons who are appointed as arbiters must identify causes of the dispute and methods of reconciliation, and endeavor to reconcile them.

**Article 188:**

- (1) If arbiters do not succeed in reconciling the spouses and if source of dispute is husband or both of the spouses or if the source is not known at all, the court shall decide on their separation.
- (2) If wife is the source of dispute, arbiters shall decide for separation in exchange for all or part of the dowry.

**Article 189:**

- (1) If opinions of persons appointed as arbiters differ, they shall be compelled by court to review their opinions.
- (2) In case of continuity of difference, the court shall appoint other persons as arbiters according to Article (186) of this Law.

**Article 190:**

Arbiters shall present their decisions to court and court shall issue its verdict on this basis.

### **Part 3 — Separation Due to Alimony Nonpayment**

**Article 191:**

If husband refuses to provide alimony while he does not apparently own property but his inability to provide alimony is not also proved, wife may demand separation.

**Article 192:**

If husband proves his inability to provide alimony, court shall give him a reasonable moratorium of no more than three months. In case he does not acquire ability to provide the alimony yet, court shall decide for separation of the spouses.

**Article 193:**

Separation of spouses by court verdict, due to alimony nonpayment, is considered as reversible divorce. Husband may return to his wife during the period of waiting, provided that the husband proves his financial ability and readiness to provide alimony.

## **Part 4 – Separation Due to Absence**

### **Article 194:**

If husband has been absent for a period of three years or more without reasonable excuse and wife incurs loss due to his absence, she may demand separation from the court, even if the husband owns property out of which wife's alimony can be provided.

### **Article 195:**

- (1) In case of absence of husband, the court, after hearing the demand of separation by wife, shall notify in writing the husband of the issue and determine a period within which the husband returns to the family residence or asks wife to come to his residence.
- (2) If the absent husband, notwithstanding the court's notification, remains absent without a reasonable excuse or if delivery of the notification to him is basically impossible, in such circumstances, the court shall issue a verdict for the separation of the spouses.

### **Article 196:**

If husband is sentenced, according to a final ruling of court, to 10 years of imprisonment or more, wife may demand separation after 5 years, even if the imprisoned husband is able to provide alimony.

### **Article 197:**

- (1) Separation due to absence is considered as reversible divorce.
- (2) If absent husband becomes present or imprisoned husband is released, he may return to wife before completion of the waiting period (Edat).

## **Topic 9 -- Effects of Dissolution of Marriage**

### **Subtopic 1 – Waiting Period (Edat):**

#### **Article 198:**

Waiting period is a specific period with expiration of which all effects of marriage shall cease to exist.

#### **Article 199:**

- (1) No one may marry the wife in waiting period except the husband.
- (2) Waiting period is mandatory on wife in the following cases:
  - 1 – When separation of spouses has occurred under a valid or invalid marriage after consummation of marriage or full privacy, or under a valid marriage after full or partial privacy, no matter whether this separation has taken place on the basis of reversible, minor irreversible or major irrevocable divorce.

- 2 – In case separation is occurred due to La'aan (accusation of adultery by husband without providing four witnesses), defect, incompleteness of dowry, option of puberty an discernment, rescission, abandonment in an invalid marriage or doubtful sexual intercourse.

**Article 200:**

If husband dies under a valid marriage, before or after consummation of marriage, the waiting period shall be mandatory on wife.

**Article 201:**

- (1) Waiting period in divorce and all types of rescission of valid marriage for a woman with whom real or legal sexual intercourse has taken place and is not pregnant shall be three complete menstruation.
- (2) The menstruation during which divorce or separation takes place shall not be counted in the waiting period.

**Article 202:**

Waiting period for married menopausal woman or married pubescent woman who does not menstruate yet shall be three complete months.

**Article 203:**

If teenager and menopausal women start waiting period on the monthly basis and menstruate before completion of the three months, their waiting period shall be three complete menstruations.

**Article 204:**

- (1) Waiting period of a wife who is usually in continuous purity (does not menstruate) shall be one complete year, provided that she does not menstruate during this period. In the event of menstruation within the first year, the waiting period shall be completed with completion of the second year within which she does not menstruate.
- (2) If she menstruates in the second year too, the waiting period shall be completed in the third year immediately after seeing discharge of blood or at the end of the third year, even though no blood is seen.

**Article 205:**

Waiting period of a wife usually in continuous metrorrhagia who has forgotten her monthly menstruation cycles shall be complete seven months after occurrence of divorce or rescission.

**Article 206:**

Waiting period of pregnant woman shall end with complete birth of fetus, provided that formation of organs of the baby is wholly or partially apparent.

**Article 207:**

Waiting period of death is four months and ten days, unless the wife is pregnant. In this case, provisions of Article (206) of this Law shall apply.

**Article 208:**

If husband dies before completion of divorce waiting period of wife, the divorce waiting period shall be completely annulled and death waiting period shall start according to Article (207) of this Law, whether the divorce had taken place while husband was healthy or he was terminally ill.

**Article 209:**

If husband, while terminally ill, irreversibly divorces wife without her consent and he dies during the divorce waiting period, the wife shall be entitled to inheritance and complete the longer of divorce and death waiting periods.

**Article 210:**

If husband divorces his wife by minor irrevocable method and remarries her during her divorce waiting period and divorces her again, the wife shall be entitled to complete dowry and should complete the new divorce waiting period, even if this divorce took place before consummation of marriage.

**Article 211:**

Period of waiting shall start immediately after divorce, death, rescission, separation or abandonment in invalid marriage.

## **Subtopic 2 — Alimony of the Waiting Period**

**Article 212:**

Any kind of separation that takes place by the husband, be it divorce or rescission, shall not extinguish alimony of wife during her waiting period, even though the divorce is not occurred due to husband's fault. Husband shall have to pay alimony of in the following cases:

- 1 – Divorcee in the waiting period of reversible, minor irreversible or major irreversible divorce, whether or not she is pregnant.
- 2 – Wives in waiting period due to La`aan (being accused by husband of committing adultery without providing four witnesses), Eilaa (when husband swears that he will have no sexual intercourse or sexual relations with his wife for 4 months or more), and divorced in exchange for property (Khol'), unless she has acquitted husband from providing alimony.
- 3 – Wives in the waiting period of separation due to refusal of husband to convert to Islam.
- 4 – Wives in waiting period deriving from rescission of the marriage contract by husband on the basis of puberty and discerning options.
- 5 – Wives in waiting period of separation due to husband's apostasy or his commission of actions that result in prohibition of marriage.

**Article 213:**

Alimony of woman in waiting period who has rescinded the marriage contract on the basis of puberty option, incompleteness of dowry or disability of husband shall not extinguish, provided that she is not in fault in the mentioned case.

**Article 214:**

Any separation that occurs due to fault of wife and based on her demand shall result in extinguishment of her alimony during the waiting period. In this case, the wife shall not be re-entitled to alimony even if the cause of separation is eliminated before completion of the waiting period.

**Article 215:**

In case of death of husband, wife shall not be entitled to alimony, whether or not she is pregnant.

**Article 216:**

If the alimony of wife during her waiting period is not fixed by herself and she does not demand it until the end of the waiting period, the alimony of the waiting period shall extinguish.

## **Topic 10 — Rights of Children**

### **Subtopic 1 — Parentage**

#### **Part 1 — Proof of Parentage in Valid Marriage**

**Article 217:**

The minimum period of pregnancy shall be 6 months and the maximum 1 year.

**Article 218:**

In valid marriage, child of the wife shall have lineage to her husband, provided that it is proved that the minimum period of pregnancy has been passed in the marriage contract and there has been sexual intercourse and full privacy between the spouses.

**Article 219:**

If wife gives birth within a period of less than six months since the date of marriage contract, such a child shall not be attributed to her husband, unless the husband claims lineage of the child to himself through a way other than adultery.

#### **Part 2 — Proof of Parentage after Separation or Death of Husband**

**Article 220:**

If woman in divorce or death waiting period gives birth more than one year after the divorce or death of husband, her claim of lineage of the child to the husband shall not be heard, unless husband, in case of divorce, or his heirs, in case of death, claim child's lineage to themselves.

**Article 221:**

If divorcee or widow confesses that her waiting period has been completed, lineage of her child to husband shall be proven if she has given birth within less than six months since her confession or within less than one year since her divorce or death of husband.

## **Part 3 — Proof of Parentage in Invalid Marriage and Doubtful Sexual Intercourse**

### **Article 222:**

- (1) In an invalid marriage, child of wife shall have lineage to husband when child is born at least after six months since the date of sexual intercourse.
- (2) In the event of abandonment or separation, child shall have lineage to husband if child is born within a maximum period of 1 year since those events.

### **Article 223:**

In case parentage is proven, even in invalid marriage or doubtful sexual intercourse, its effects, such as alimony, inheritance, prohibition of marriage and the like, shall ensue.

## **Part 4 — Confession of Parentage**

### **Article 224:**

Proof of parentage by confession of childhood, even at the time of terminal illness, may be accepted if:

- 1 – Confessor has completed such an age that child can have lineage to confessor.
- 2 – Child's lineage is unknown.
- 3 – The discerning child confirms the claim of confessor.

### **Article 225:**

Parentage may be proved by confession of wife or wife in waiting period (Edat) provided that husband confirms her confession or she presents substantiating evidence.

### **Article 226:**

Person whose parentage is unknown and confesses that someone is his/her father or mother, the parentage shall be proved if:

- 1 – Confessor is at such an age that he/she can be a child of the claimed father/mother.
- 2 – The claimed father/mother confirms the confession.

In this case, mutual rights of parent and child shall be proved.

### **Article 227:**

Confession of having lineage to another person beyond childhood, fatherhood and motherhood has no effect, unless it is verified.

### **Article 228:**

Adoption of a person whose lineage is known shall not have the effects resulting from proof of parentage, such as alimony, custodial remuneration, inheritance, prohibition of marriage and prohibition of marriage with divorcee.

## **Subtopic 2 — Fosterage**



**Article 229:**

Payment of remuneration for giving milk to child (by someone other than the mother) shall be undertaken by the person who is responsible for child's alimony. The remuneration shall be paid in exchange for feeding the child.

**Article 230:**

Mother is not entitled to remuneration for giving milk to child as long as she is married to husband or is in waiting period of reversible divorce.

**Article 231:**

If mother gives milk to child during or after the waiting period of irreversible divorce, she shall be entitled to remuneration.

**Article 232:**

Mother is not entitled to remuneration for giving milk to child for more than two years.

**Article 233:**

If another woman other than the mother accepts to give milk to child for free or for an amount less than what the mother demands, the mother shall not be entitled to remuneration for giving milk.

**Article 234:**

Remuneration fixed for giving milk shall not extinguish with the death of father. It shall be paid, like other debts, from the bequest.

**Article 235:**

Woman who gives milk to a child of less than two years age shall be considered as the child's fosterage mother and person due to whose sexual intercourse milk is produced shall be considered as the child's fosterage father, and provisions of Article (84) of this Law shall apply to them.

### **Subtopic 3 – Custody**

**Article 236:**

- (1) Custody is caring and nurturing of child during the period in which child needs care and nurture of woman.
- (2) Custody is the right of persons specified on the basis of this Law.

**Article 237:**

Lineage mother has a priority right of care and nurture of child, during marriage and after separation, provided that she meets capacity conditions for custody.

**Article 238:**

Woman who takes custody of child must be sane, mature, and trustworthy so that no fear of losing the child due to her recklessness exists. She must have the ability to care and nurture the child.

**Article 239:**

Women who have the right of custody are as follows in order of the degree of entitlement:

- 1 – Mother, mother of the mother or the upper in this line.
- 2 – Mother of father.
- 3 – Full sister.
- 4 – Akhyafi half-sister (from the same mother but a different father).
- 5 – `Alati half-sister (from the same father but a different mother).
- 6 – Daughter of full sister.
- 7 – Daughter of Akhyafi half sister.
- 8 – Daughter of `Alati half sister.
- 9 – Full sister of mother
- 10 – Akhyafi half sister of mother.
- 11 – `Alati half sister of mother.
- 12 – Full sister of the mother of the father.
- 13 – Akhyafi half sister of the mother of the father.
- 14 – `Alati half sister of the mother of the father.
- 15 – Sister of father of the mother.
- 16 – Sister of father of the father.

**Article 240:**

If persons mentioned in Article (239) of this Law do not exist or if they do not meet the conditions of capacity of custody, the right of custody shall transfer to distant relatives of the child in order of inheritance categories.

**Article 241:**

If persons mentioned in Articles (239 and 240) of this Law do not exist or if they do not conditions of capacity of custody, the child shall be given to custody of the closet relative in order to entitlement, for care and nurture, to the following persons:

- 1 – Father of mother.
- 2 – Akhyafi half brother.
- 3 – Son of Akhyafi half brother.
- 4 – Akhyafi half brother of father.
- 5 – Full brother of mother.
- 6 – `Alati half brother of mother.
- 7 – Akhyafi half brother of mother.

In case the child is male, daughter of brother of father, daughter of sister of father, daughter of brother of mother and daughter of sister of mother shall not have a right of custody. Also, in case the child is female, son of brother of father, son of sister of father, son of brother of mother and son of sister of mother shall not have a right of custody.

**Article 242:**

If there is more than one person with the right of custody, the court may choose the one who is considered to be more in the interest of the child.

**Article 243:**

If the right of custody extinguishes due a legal cause, the right shall be restored with elimination of the mentioned cause.

**Article 244:**

Remuneration of custody shall be different from remuneration of fosterage and alimony, and the child's father shall be responsible for its payment. In case the child owns personal property, the remuneration shall be paid from child's property, unless the father pays it gratis.

**Article 245:**

- (1) So long as mother is married or in waiting period of reversible divorce shall not be entitled to remuneration of custody.
- (2) In case she is waiting period of irreversible divorce or she marries a person who comes under "prohibited" category to marry for the child, or is waiting period of divorce by this person, she shall be entitled to custody remuneration.

**Article 246:**

If the person who is responsible for payment of custody remuneration is insolvent and one of the relatives of takes the custody gratis, the custodier has the option to accept the custody pro bono or leave the custody to the person who accepts the custody gratis.

**Article 247:**

If the person who is responsible for payment of custody remuneration is wealthy and if child owns property as well, the child shall be delivered to mother in exchange for a customary remuneration, even if this remuneration is paid from the child's property.

**Article 248:**

If wife becomes disobedient while child is over 5 years old, the court may deliver child to any of the parents whose custody is more to the interest of the child.

**Article 249:**

Period of custody of son ends with 7 years of age and that of daughter finishes with 9 years of age.

**Article 250:**

Court may renew the period of custody stated in Article (249) of this Law, provided that the renewed period does not exceed two years.

**Article 251:**

If it is proved that the person who has custody of the child, even if he is the child's father, shall not result in the interest of the child, the court may deliver the child to the second person entitled to custody, in the priority list, for care and nurture.

**Article 252:**

As long as mother is married or in waiting period, she may not take child for a trip without the father's permission.

**Article 253:**

Custodier other than the mother may not take the child for a trip without the guardian's permission.

**Article 254:**

During the custody period, father of the child may not take the child for a trip without the custodier's permission.

**Article 255:**

Alimony of a woman who does not have husband and is not able to maintain her living herself shall be paid by her forbidden guardian (the guardian who is prohibited to marry her) as long as the woman lives in the residence of the mentioned forbidden guardian.

## **Subtopic 4 — Providing Alimony**

### **Part 1 — Alimony of Children**

**Article 256:**

Father shall have to provide all kinds of alimony of a minor son until he acquires ability to work and those of a minor daughter until her age of marriage.

**Article 257:**

Father shall have to provide alimony of adult son who is not able to work and is poor and also that of adult daughter who is poor until her marriage.

**Article 258:**

- (1) Alimony of working son or daughter shall be paid from their income. In case the income does not suffice the deficit shall be provided by the father.
- (2) If the income of working children exceeds their alimony expenses, the extra amount shall be saved by the father and returned to them after the puberty.

**Article 259:**

If father is not able to provide alimony of his children and is also unable to work, the duty to provide alimony for children shall transfer to the guardian next to the father.

**Article 260:**

If father is insolvent and is not unable to work, his duty to provide alimony of children does not extinguish. In this case, the guardian next to the father who has to provide the alimony shall claim the alimony expenses from the father when he is solvent.

**Article 261:**

Alimony of a child whose father does not exist and the child does not own any specific property while relatives of the child consist of ascendants and distant relatives, shall be provided in the following order:

- 1 – If only ascendants or distant relatives are heirs of the child, the ascendants shall be obligated to pay alimony of the child, whether or not they the ascendants inherit from the child.
- 2 – If ascendants and distant relatives are jointly heirs of the child, the alimony shall be provided by both proportionate to their portions of inheritance.

**Article 262:**

Father shall not be obligated to provide alimony of wife of his son, unless he has already undertaken to provide it. In this case, father shall claim expenses of the alimony he provided when the son becomes solvent.

**Article 263:**

Spouses may conclude a settlement regarding expenses of alimony of their children. If the settlement is concluded for an amount less than necessary alimony, father shall be responsible to complete the alimony and in case the settlement is concluded for an amount more than necessary alimony while the extra amount is too large, father shall not be obligated to pay the extra amount.

**Part 2 – Alimony of Fathers and Relatives**

**Article 264:**

Providing alimony of insolvent parents, forefathers and foremothers, whether or not they are able to work, shall be the responsibility of the child who is solvent, whether or not the child is male or female, or minor or major.

**Article 265:**

Alimony of poor person who is not able to work due to physical, mental or nervous illness shall be provided by solvent relatives proportionate to their portions of inheritance.

**Article 266:**

Except for alimony of ascendants and descendants, provision of alimony shall extinguish with difference in religion.

**Article 267:**

Alimony of relatives shall become binding since the date of claim.

**Subtopic 5 – Administration of Properties**

**Part 1 – Guardianship**

**Article 268:**

- (1) Guardianship of properties of children with incomplete capacity, in the first place, shall rest with their father and, in the second place, with their full grandfather, provided that the father has not appointed an executor.
- (2) In this case, the guardian or the executor may not relinquish the administration of the properties without permission of the competent court.

**Article 269:**

Guardian may exercise rights of guardianship when he has complete capacity to exercise the same rights regarding his own properties.

**Article 270:**

In order for guardian to administer and supervise properties of the persons under his guardianship, he may take actions according to provisions of this Law.

**Article 271:**

If a property is granted to person with incomplete capacity and it is stipulated that the mentioned property must not be placed under guardianship of the guardian, such property shall be exceptionally taken out of guardianship of the guardian.

**Article 272:**

Guardian may not grant properties of persons under his guardianship to any person without permission of the competent court.

**Article 273:**

- (1) Guardian may not, without permission of the competent court, take such action over the immovable properties of persons under his guardianship that it is to the interest of himself, his wife, his guardian or his relatives up to the fourth category.
- (2) Guardian may not also mortgage immovable properties of the persons under his guardianship in exchange for his own debt.

**Article 274:**

Father may not, without permission of the competent court, take actions over the immovable properties, firm, financial bonds and documents and securities of persons under his guardianship that value more than twenty thousand Afghanis. In such cases, the court shall refrain from issuing permission if the father's action over properties of persons under his guardianship will cause destruction of or damage to more than one fifth of the price of the mentioned property.

**Article 275:**

If testator of a person with incomplete capacity makes a will that the guardian may not take action over the bequest, the guardian may not take action over the mentioned properties without permission and supervision of the competent court.

**Article 276:**

Guardian may not take the following possessory actions over properties of the persons under his guardianship without permission of the competent court:

- 1 – To lend and borrow.
- 2 – To lease for a period that shall continue after the majority age
- 3 – To continue the business that belongs to the person with incomplete capacity
- 4 – To accept donation or will that requires certain undertakings

**Article 277:**

- (1) When minor attains 16 years of age, the guardian may, with permission of the competent court, give him access to a certain amount of money for doing business.
- (2) Permission to do business, absolute or restricted, shall not extinguish with the death or removal of the guardian.

**Article 278:**

Actions of authorized minor, within the limits of permission by the competent court, shall be considered the same as actions of person who has attained the age of majority.

**Article 279:**

Father may conclude a contract under the name of the person under his guardianship on his own account or that of another person, unless the Law has required the contrary.

**Article 280:**

Grandfather may not, without permission of the competent court, take action or make settlement over properties of the person under his guardianship that results in loss or waive or decrease the sureties.

**Article 281:**

Guardian shall have to prepare a complete list of properties belonging to the person under his guardianship, within two months since the commencement of guardianship or since the date the person under guardianship has gained properties, and submit it to the relevant office of the competent court.

**Article 282:**

Guardian may provide his own or another person's alimony from the property of the person under his guardianship, provided that their alimony has to be legally paid from this property.

**Article 283:**

As soon as the person under guardianship attains 18 years, guardianship of guardian shall end, unless the competent court orders its continuation on the basis of one of the causes of incapacity.

**Article 284:**

If misadministration of guardian inflicts loss on properties of the person under guardianship, the court may divest the guardian from guardianship or limit his powers.

**Article 285:**

If guardian is recognized as absent or is sentenced to more than one year imprisonment, the court shall issue a verdict to suspend his guardianship.

**Article 286:**

If guardianship of the guardian is divested, limited or suspended according to Articles (284 and 285) of this Law, the right of guardianship may be restored by the order of the competent court whenever the causes of them are eliminated.

**Article 287:**

Father shall be responsible for damages, caused by his gross mistakes, to properties of the person under his guardianship. Responsibility of grandfather in this respect shall be the same as that of executor.

**Article 288:**

Guardian or his heirs shall have to deliver properties of the person under guardianship to him as soon as he attains the age of majority. And in case they have taken actions on properties, they shall have to pay him the current price of the properties.

## **Part 2 — Executorship**

### **1 — Appointment of Executor**

**Article 289:**

Executor must be a just and capable person, have complete capacity and have the same religion as that of the person under his executorship.

**Article 290:**

Following persons may not be appointed as executor:

- 1 – Person who has been convicted of a crime against public mores or chastity by a final ruling of court.
- 2 – Person who has a bad reputation or does not hold legitimate source of income for a living.
- 3 – Person who has been condemned to bankruptcy by a final ruling of court and whose prestige has not been reinstated.
- 4 – Person who has already been removed from guardianship or executorship of another person by a final ruling court.
- 5 – Person who has been deprived in writing of the right of executorship by his father or his grandfather before their death.
- 6 – Person who himself or one of his ascendants, descendants or his wife has a legal dispute with the person with incomplete capacity, or there is such a familial conflict that harms the interest of the person with incomplete capacity.

### **2 — Optional Executor**



**Article 291:**

- (1) Father may appoint an executor for his children with incomplete capacity or for the healthy fetus in womb. Also granter may appoint an in the case mentioned in article (271) of this Law.
- (2) Appointment of executor in such cases shall take place with an official or customary letter of executorship that is written and signed by father or granter, or their signatures or fingerprints on such documents are certified.

**Article 292:**

Father and granter may revoke the appointment of executor.

**Article 293:**

Person who has accepted executorship during the lifetime of testator may not relinquish it, unless he has already made relinquishment of executorship conditional to his own choice.

**Article 294:**

Rejection of executorship must take place during the lifetime of testator and testator must be notified of it.

**Article 295:**

Person who has rejected executorship according to provisions stated in Article (294) of this Law, may not accept it after the death of testator.

**Article 296:**

Appointment of executor shall be considered enforceable if it is approved by the competent court.

3 – Judicial Executor

**Article 297:**

If there is no voluntary executor for person with incomplete capacity or healthy fetus in womb, the court shall appoint an executor. Executorship for the fetus in womb shall also be effective after the birth, unless the court has appointed a new executor in his place.

**Article 298:**

- (1) If necessary, court may appoint more than one executor for person with incomplete capacity. In case of multiplicity of executors, they may not individually take action over properties of the person under their executorship, unless such an action is absolutely in the interest of person with incomplete capacity.
- (2) In case of difference of opinion among the executors, the court's decision shall be implemented.

**Article 299:**

Court shall appoint a special and temporary executor in the following cases:

- 1 – In case interest of person with incomplete capacity conflicts with interest of executor, his spouse or one of his ascendants or descendants, or if it conflicts with interest of persons whose legal representative is the executor.

- 2 – In case a property has been granted to person with incomplete capacity and it is stipulated this property should not be placed under guardianship of guardian.
- 3 – In case implementation of the executorship requires particular characteristics that the permanent executor lacks.

**Article 300:**

Court shall appoint a temporary executor in the following cases:

- 1 – In case the court has halted guardianship of a guardian and the person with incomplete capacity does not have another guardian.
- 2 – In case executorship has been halted based on executor's own request.
- 3 – In case temporary factors have prevented implementation of executorship.

**Article 301:**

Court may appoint a litigation executor for person with incomplete capacity, even if person with incomplete capacity does not own any property.

**Article 302:**

Executor may, in all cases that he has authority to implement executorship, appoint another person as agent, the agent shall be considered removed with death of the testator or the person under executorship.

**Article 303:**

Duties of persons specified Articles (299, 300 and 301) of this Law, who are appointed as executors, shall end when the subject of executorship is completed or the determined period of executorship has expired.

4 – Obligations of Executor

**Article 304:**

Executor may not take the following actions over properties of person under executorship without the permission of the competent court:

- 1 – Buying and selling, barter, partnership, mortgage, lending and any other action that transfers ownership or grants property rights.
- 2 – Assignment of a debt that another person owes to person with incomplete capacity or acceptance of assignment of debt against him.
- 3 – Placing properties for the purposes of making profit and settlement of respective accounts, or borrowing under the name of person with incomplete capacity.
- 4 – Leasing real estates of person with incomplete capacity for a period of more than three years if the real estate is agricultural land, and for a period of more than one year if real estate is building.
- 5 – Leasing real estates of person with incomplete capacity for a period that will last for one year after person with incomplete capacity attains the age of majority.
- 6 – Accepting or rejecting conditional grants.

- 7 – Providing alimony of persons whose alimony is the responsibility of person with incomplete capacity, unless the binding alimony is proven by final ruling of court.
- 8 – Compromise and arbitration.
- 9 – Performing pledges proved on inheritance of person with incomplete capacity or on himself, unless final ruling, in this regard, is issued by court.
- 10 – Filing lawsuits, unless its delay can inflict harm or loss to rights of person with incomplete capacity.
- 11 – Relinquishing rights of lawsuits or accepting those court rulings that are usually objectionable or relinquishing such objections after filing them and filing unusual objection against rulings of court.
- 12 – Forsaking sureties or decreasing them that will result in loss of person with incomplete capacity.
- 13 – Leasing properties of person with incomplete capacity for himself, his spouse or one of his relatives up to the fourth category, or for a person whose agent is the executor.
- 14 – Paying expenses of marriage of person with incomplete capacity
- 15 – Paying educational expenses or payment of such expenses that person with incomplete capacity needs them for performing a certain vocation.

**Article 305:**

- (1) Executor shall have to deposit in court escrow account or in the bank designated by court all cash incomes of person under his executorship after deduction of expenses of alimony and miscellaneous expenses determined by the court, under the name of person with incomplete capacity.
- (2) Likewise, executor must deposit in trust all of the things such as securities, jewelry, expensive stones and the like that court sees necessary. Executor has to take these action within 15 days since the date of delivery of incomes and the mentioned properties.
- (3) Executor may not withdraw the things deposited in the bank without permission of court.

**Article 306:**

Executor shall have to notify court of cases filed against person with incomplete capacity along with measures taken on them and follow court's orders in this respect.

**Article 307:**

Executor shall have to submit to court annual financial statement attached with relevant documents before the start of new year.

**Article 308:**

If wealth of person under executorship is not more than ten thousand Afghanis, court may exempt executor from preparation and submission of annual financial statement to court.

**Article 309:**

If another person is appointed in place of executor, executor shall have to prepare a statement regarding properties of person under his executorship within thirty days since the date of end of his executorship and submit it to the court.

**Article 310:**

Performing executorship shall be pro bono. Court may exceptionally order payment of fee or reward in exchange for executor's certain action based on his request, but fee payment for the period before the request shall not be permissible in any way.

5 – End of Executorship

**Article 311:**

Duty of executor shall end in the following cases:

- 1 – Death of person with incomplete capacity.
- 2 – When person with incomplete capacity attains the age of 18, unless before attaining that age the court has ordered continuation of the executorship or at the mentioned age person under executorship has incomplete capacity or is insane.
- 3 – Restoration of guardianship of guardian.
- 4 – Termination of action for implementation of which special executor was appointed.
- 5 – Removal of executor or acceptance of his resignation.
- 6 – Executor's lack of legal capacity or his absence or death.

**Article 312:**

Executor shall be removed in the following cases:

- 1 – When one of causes of deprivation of executorship specified in Articles (289-290) of this Law arises.
- 2 – When executor commits negligence or misadministration in administering properties of person with incomplete capacity, or if executor is not removed, interest of person with incomplete capacity shall be in danger.

**Article 313:**

Executor shall have to deliver, within 30 days since the end of executorship, properties under his administration with its statement and relevant documents to his successor or to person under executorship himself if he has attained the age of majority or to heirs of person with incomplete capacity in case of death, and after delivery, submit the statement and receipt of properties to the relevant department of court.

**Article 314:**

If executor dies or becomes incapable or is recognized as absent, his heirs or his successor shall have to deliver the properties and submit the statement.

**Article 315:**

Court may, upon executor's request, authorize delivery of all or part of properties of person under executorship to himself for administration, if he has attained the age of 16. In case of rejection of the request, executor may not resubmit his request to the court before lapse of one year since its final order.

**Article 316:**

Committing or acquitting by person with incomplete capacity who has attained the age of majority, to the interest of executor, shall be valid if executor has already prepared and submitted presented the final statement of properties of person under executorship.

**Article 317:**

- (1) Person with incomplete capacity who is permitted to administer properties shall have to submit an annual statement of properties to court. Court shall seek executor's opinion while examining the statement.
- (2) Also, court may order that the net annual profits of the permitted person to be deposited to the court's escrow account or to a saving account. In this case, the permitted person may not use it without court's permission.

**Article 318:**

If the person who is permitted to administer properties takes measures contrary to provisions of Article (317) of this Law or mismanages the properties or if such causes emerge indicating that continuation of measures by the permitted person cause damage to properties under his administration, court may, according to its own opinion or request of prosecutor or one of the interested persons, limit or divest the permission given to the permitted person after hearing his reasons.

**Part 3 — Incapacitation****Article 319:**

- (1) A pubescent person shall be condemned to incapacity due to insanity, losing discretion, prodigality or recklessness in administering properties. Incapacity shall continue until court orders its removal.
- (2) Court shall appoint a guardian for administration of properties of incapacitated person, according to provisions of this Law.

**Article 320:**

Expenses related to administration of incapacitated person shall have priority over other expenses.

**Article 321:**

- (1) If court condemns a person to incapacitation due to prodigality or recklessness, it may permit the incapacitated to administer part of the properties.
- (2) In the above case, provisions related to person with incomplete capacity who is permitted to administer properties shall apply.

**Article 322:**

Conditions stated in Articles (289-290) of this Law shall be applicable to guardian and other provisions on executor shall also be applicable to him.

**Part 4 — Absent and Missing**

**Article 323:**

If person with legal capacity has been absent for a period of one year or more, as a result of which his interests are affected, court may appoint an agent on his behalf in the following cases:

- 1 – In case he is missing and it is not known whether he is dead or alive.
- 2 – In case his residence or domicile outside Afghanistan is not known and administration of relevant affairs or supervision by the absent person over measures of his successor is impossible.

**Article 324:**

If absent person has already appointed a general and full agent for himself and the mentioned agent has all the relevant qualities of an executor, court shall confirm his agency, otherwise, it shall appoint another person as agent.

**Article 325:**

All provisions related to executor shall also be applicable to agent of absent person.

**Article 326:**

- (1) Person who has been missing for more than four years and most likely his death is presumed shall be recognized as dead by the ruling of the competent court. In other cases, determination of the period after which missing person shall be recognized as dead is entrusted to court.
- (2) Court shall use possible means to determine life or death of missing person.

**Article 327:**

If it is ruled, according to provisions of Article (326) of this Law, that missing person is dead, his wife shall have to pass the death waiting period and all of his inheritance shall be distributed among the heirs who are considered entitled to inheritance at the time of issuance of the ruling of death.

**Article 328:**

State of absence shall end when its causes are eliminated or absent person dies or he is recognized as dead by ruling of the competent court.

## **Part 5 – Judicial Assistance**

**Article 329:**

If person is deaf-mute or deaf-blind or blind-mute and is not able to correctly express his will, court may appoint judicial assistant for such a person in order to assist him in legal actions stated in Article (304) of this Law.

**Article 330:**

Provisions stated in Article (303) of this Law shall be applied to judicial assistant.

## **Part 6 – Supervision**

**Article 331:**

- (1) Court can appoint a person as supervisor in order to monitor measures taken by executor, guardian and agent of absent person. Supervisor shall have to notify, if necessary, court or relevant prosecutor of the situation.
- (2) Representative or agent shall have to answer to supervisor's questions regarding administration of properties and related documents and papers.
- (3) In case no representative or agent exists, supervisor shall request the relevant court to appoint a new representative or agent.
- (4) Until the time of appointment of representative or agent, supervisor shall perform those activities that their delay can cause harm.

**Article 332:**

Regarding appointment, removal, resignation, fee and responsibility of supervisor, provisions on representative or agent shall be applied.

**Article 333:**

As soon as causes of supervision cease to exist, the court shall end duties of supervisor.

## **Part 7 — Sanctions**

**Article 334:**

- (1) If executor is at fault in fulfilling duties he has to fulfill according to provisions of this Law or neglects to implement the order issued by court, court may, with due consideration of punishments stipulated in the Criminal Code, condemn executor to a pecuniary fine of no more than ten thousand Afghani, deprivation of the whole or part of fee and removal, or to one of them.
- (2) If executor compensates for activities that have entailed punishment without inflicting harm on person with incomplete capacity or presents court with convincing excuse, court may acquit him or decrease the punishment stipulated in this Article.

**Article 335:**

If agent disrupts performance of the duties that he is obligated to fulfill under provisions of this Law in consequence of which damage is inflicted on person with incomplete capacity, his liability to compensate shall be within the limits of liability of paid agent.

**Article 336:**

Provisions stated in Articles (334-335) of this Law shall be applied to guardian, judicial assistant, agent of absent, special executor and temporary executor.

## **Section 2 — Legal Persons**

### **Topic 1 — General Provisions**

**Article 337:**

Legal person is an abstract personality that has legal capacity and is established, for certain objectives, in the form of organization, company or association.

**Article 338:**

Legal person is of two kinds:

- 1 – Public legal person that includes government, its departments, sub-departments or its related branches, and public institutions.
- 2 – Private legal person that derives from will of private individuals and has been established in the form of associations, endowment, organizations, civil or commercial companies and the like, unless the law has categorized such persons as the public one.

**Article 339:**

All persons who have the essential conditions and elements of a legal person are recognized as legal persons by law.

**Article 340:**

Every legal person shall have a representative who embodies its will.

**Article 341:**

Legal person shall have all those rights that are determined by law, except those rights that are exclusive to real person.

**Article 342:**

(1) Legal person shall have the following characteristics:

- 1 – Independent financial rights and obligations
- 2 – Legal Capacity that is stipulated in its charter and law has recognized it as permissible
- 3 – Right to file a lawsuit or defend against claims
- 4 – Independent domicile, that is, the place wherein its central administration is located

(2) Central administration of companies whose principle center is located outside Afghanistan and their branches are legally permitted inside Afghanistan shall be, according to the Afghan law, the place in Afghanistan wherein administration of its activities is located.

## **Topic 2 – Endowment**

**Article 343:**

Endowment is retention of property from proprietary possession and devotion of its profits to charitable purposes.

**Article 344:**

Endowment has legal personality that is established by its charter.



**Article 345:**

In order to manage affairs of endowment, there exists a government office named Awqaf that administers and supervises incomes and expenditures of endowment in accordance with essential conditions of endowment specified in its charter, unless special laws have provided otherwise.

**Article 346:**

Endowment shall have independent financial rights and obligations and shall be obligated to pay the debts that are undertaken in accordance with the conditions of its charter.

**Article 347:**

Authenticity of endowment, reversion from it and any kind of change in expenses, essential conditions or swap of the endowed property shall be valid by endower when it is registered in the relevant books.

**Article 348:**

Measures mentioned in Article (347) of this Law shall be registered in the special books allocated for this purpose by the Office for Registration of Documents.

**Article 349:**

If a problem concerning validity of endowment document appears to the registrar, the issue shall be referred to the relevant court for resolution and decision.

**Article 350:**

Endowment that has not been created according to provisions stated in this Law shall not be recognized as valid.

**Article 351:**

Deprivation of the right to endowment or reversion from endowment shall be decided by the relevant court. The issue shall be served on persons whose deprivation or reversion from their right is decided so that they could present their argument to court.

**Article 352:**

If endowment document includes an illegal or void action or if endower lacks legal capacity, the Office for Registration of Documents shall not register such cases.

**Article 353:**

If endowment is established on an invalid condition, endowment shall be valid but the condition shall be invalid.

**Article 354:**

- (1) Permanent and temporary endowments are permissible
- (2) Endowment for mosques and public organizations may not be temporary.
- (3) Special endowment shall be temporary and shall not be permitted for more than two generations of the endower.

**Article 355:**

Endowment for charity affairs shall be permissible when they are recognized as charity according to provisions of Islam and the national interest.

**Article 356:**

- (1) Endowment of movable and immovable properties shall be permissible
- (2) Endowment of a part of common ownership in an immovable property shall not be permissible, unless it is divided and allocated.

**Article 357:**

Shares of companies that have permissible activities may be endowed.

**Article 358:**

Validity of statements of endower regarding the endowed property shall be based on word and spirit of statements.

**Article 359:**

- (1) Endower may not revert from all or part of public endowment, but he may stipulate conditions on purposes of its spending, at the time of registration of the endowment, within the limits of provisions of this Law.
- (2) Endower may not modify endowment of mosques and public institutions and whatever endowed for them.

**Article 360:**

Change in spending conditions of public endowment shall be, explicitly and according to provisions stated in this Law, made.

**Article 361:**

Endower may, at the time of registration of special endowment and within the limit of provisions of this Law, stipulate exercise of the following rights:

- 1 – Endow and deprive.
- 2 – Increase and decrease.
- 3 – Change.
- 4 – Exchange.

**Article 362:**

Exchange of endowed property shall be registered in the relevant registration book after approval of Awqaf Office.

**Article 363:**

Confession of endower or a third party regarding lineage of person, when there are indications that the confession is not true, shall not affect the endowee.

## Subtopic 1 – Entitlement in Endowment

### Article 364:

If, in endowment for relatives, the purpose is not specified or there is no object of expenditure or the expenditure is not seen necessary at all or endowment return exceeds the expenditure, all or the remaining part of the return, upon permission of court, shall be spent on children of parents and needy relatives of the endower proportionate to the need of each of them.

### Article 365:

- (1) Endower may not endow more than one-third of his property for non-heir persons or to some of his heirs or to charity affairs.
- (2) One-third property shall be calculated proportional to the person's wealth at his death time.

### Article 366:

- (1) Endower may endow all of his property for all of his heirs.
- (2) If endower does not have any heir at the time of death, he may endow his property for any charity cause that he wishes.

### Article 367:

- (1) Existing children, husband or wife and parents of endower, at the time of endower's death, shall be entitled to more than one-third of the property if their inheritance rights have not extinguished for certain reasons. Distribution of entitlements shall be based on provisions on inheritance and shall be transferred to their children in case of their death.
- (2) If one of the entitled persons has gratuitously received from the endower a property that is equivalent to his inheritance portion, his entitlement to the endowed property shall extinguish. If he has received less than his entitlement, he shall be entitled to the difference with due consideration of provisions of Article (368) of this Law.

### Article 368:

Endower may deliver his children's entitlement of the endowed property, who have died during endower's life to descendants of the deceased according to provisions of Article (367) of this Law, provided that the descendants are alive before the death of endower.

### Article 369:

The person who is, according to provisions of Article (367) of this Law, entitled to the endowed property may not be deprived of all or part of the entitlement or no such condition should be stipulated that causes extinguishment his right, except it is according to provisions specified by articles of this Law.

### Article 370:

The murder that deprives heirs from inheritance shall also deprive them of their entitlements to the endowed property.

### Article 371:

- (1) If endower deprives a person of endowment, who has a definitive right to endowment according to provisions of this Law, his specified share shall be given to him and the remainder shall be

distributed among other persons who have not been deprived of endowment, proportionate to their shares of endowment.

(2) Claim of fixed share shall be valid up to one year since the death of endower.

**Article 372:**

Beneficiary of endowment shall not be allowed to waive his entitlement or confess that all or part of it for a third party.

**Article 373:**

If endower specifies a condition that is against national interest, interest of endowment or interest of entitled persons, the endowment shall be valid, but the condition shall be void.

**Article 374:**

A building that has been endowed for residence may be used for other purposes or for residence if it is endowed for other purposes, provided that court has not ordered to the opposite.

**Article 375:**

- (1) If endowment is made for different categories, an ascendant shall not exclude descendants. If the ascendant dies, his entitlement shall transfer to his descendant.
- (2) Distribution of return of endowment shall not change due to elimination of one category. In this case, the shares shall transfer from one descendant to another descendant according to provisions stated in Clause (1) of this Article, unless non-change causes deprivation of one of the entitled persons of endowment.

**Article 376:**

- (1) If endowment is made for categories while there is no entitled person in one of the categories, the entitlement of endowment shall be transferred to the next category according to the provisions of this Law.
- (2) If persons of the former category become entitled afterwards, their rights shall be restored.

## **Subtopic 2 — Division of Endowment**

**Article 377:**

- (1) Endower must divide and determine the shares of entitled persons in the endowment deed. If the shares belongs to some of the entitled persons, according to conditions set out by endower, they may claim allocation of their shares.
- (2) If the endowed property is indivisible or its division may inflict general harm, demand of the endowed property shall be sold and its price shall be distributed, proportionate to the shares of each of the entitled persons.

**Article 378:**

Supervisor of public endowment may demand division of endowment and allocation of the share belonging to public endowment.

**Article 379:**

Division of endowment shall be performed on the basis of request submitted to court. The performed division shall not be revocable.

**Subtopic 3 — Administration of Endowment**

**Article 380:**

Endower shall, in the endowment deed, determine a person in order to oversee administrative affairs, put into work the endowed property and distribute its return among entitled persons, proportionate to their shares as stated in the endowment deed, and he shall determine limits of administrator's duties and powers along with a person who will supervise afterwards.

**Article 381:**

Supervisor may not, without court permission, request loan on the endowment account. Acceptance of ordinary commitments for the purposes of administration and working of the endowment shall be an exception to this rule.

**Article 382:**

If court divides the endowed property or if shares of the entitled persons to it have already been determined, each of the entitled persons shall, in case of having legal capacity, be determined as supervisors of his own share.

**Article 383:**

Supervision of public endowment shall be the duty of the Endowment Office (Awqaf). This Office shall take into possession, organize, and administer the endowed property in accordance with its charter.

**Article 384:**

Court may not appoint more than one supervisor for administration of the endowed property, unless there can be an interest in plurality of supervisor. In this case, court shall determine the authority of each of supervisors and may allocate part of the endowed property to each of them. Each of supervisors shall be independent in administering his specific part.

**Article 385:**

If one of entitled persons has the capacity to supervise endowment, another person may not be appointed as supervisor of endowment. If one of the entitled persons attains the capacity to supervise, court shall announce the end of guardianship of the supervisor who was previously appointed.

**Article 386:**

Supervisor shall be recognized as trustee of the endowed property and agent of persons entitled to endowment.

**Article 387:**

Supervisor shall have to spend all expenditures according to the court's instruction, unless the current custom is against it.

**Article 388:**

- (1) If harm is inflicted to the endowed property or its return due to gross negligence of supervisor, he shall be liable to compensate the inflicted loss.
- (2) If the inflicted loss is resulted from minor negligence of supervisor, he shall be considered responsible for compensation of the inflicted loss if he performs the supervision duty in exchange for fee.

**Article 389:**

- (1) If a case regarding endowment accounts is filed with court and supervisor is obligated to present documents, in case supervisor cannot present his documented accounts within the specified period or disobeys orders of court to settle accounts, court may sentence him to a fine of maximum five thousand Afghanis. In case of repetition, he may be sentenced to a fine up to ten thousand Afghanis.
- (2) Deprivation of supervisor of all or part of supervision fee shall also be permissible.

**Article 390:**

If supervisor provides reasonable excuses for the delay of accounts, court may acquit him or mitigate the punishment specified in Article (389) of this Law.

**Article 391:**

If, during hearing the claim on endowment, reasons for removing supervisor are found, court may rule his removal from supervision.

**Article 392:**

Court shall appoint another person as temporary supervisor until the ruling on endowment is finalized.

**Article 393:**

Supervisor's confession of another person's supervision shall not be valid.

**Article 394:**

Supervisor may, upon permission of court, annually deposit two percent of the endowed return in escrow account for maintenance and repair expenditures of the endowed property or spend and use it for purposes prescribed by court.

**Article 395:**

If supervisor or the entitled persons do not consider deposit of two percent of the endowed return, formed according to provisions of Article (394) of this Law, as useful, they may request court to amend or revoke it.

**Article 396:**

If more than the amount specified in Article (394) of this Law is necessary for maintenance and repair of the endowed property, supervisor shall request the court to increase the mentioned amount.

**Article 397:**

Court may, if necessary, sell a part of the endowed property for maintenance and repair of the endowed property.

**Subtopic 4 — Termination of Endowment**

**Article 398:**

Temporary endowment shall terminate with completion of the designated period or death of all beneficiary persons of endowment.

**Article 399:**

Endowment of each share shall terminate by death of its entitled person, even if it happens before completion of the designated period or death of remaining entitled persons of the category with whose death endowment terminates, provided that endower has not explicitly stipulated transfer of the share to remaining entitled persons. In such case, endowment shall terminate with the death of all entitled persons or completion of the designated period.

**Article 400:**

If endowment of all fixed shares terminates, ownership of the endowed property shall be transferred to the endower himself, if he is alive, otherwise, it shall be transferred to entitled persons. If entitled persons do not exist, ownership of the endowed property shall be transferred to persons who were recognized as heirs at the time of endower's death, otherwise, ownership shall belong to the government.

**Article 401:**

If endowment of all non-fixed shares terminates, ownership of the endowed property shall be transferred to endower, if he is alive, otherwise, it shall be transferred to persons who were recognized as heirs at the time of endower's death. If no heir exists, ownership of the endowed property shall belong to the government.

**Article 402:**

- (1) If the endowed property is destroyed in such a way that its reconstruction or conversion is not possible or useful, endowment shall terminate. Also, endowment of share of every entitled person whose share of return decreases to an insignificant amount shall terminate.
- (2) Termination of endowment shall take place on the basis of request of concerned persons and order of court. Ownership of the endowed property shall belong to endower himself, if he is alive, otherwise, it shall be transferred to the person who is considered as entitled at the time of termination of endowment.

**Topic 3 — Associations**

**Subtopic 1 – General Provisions**

**Article 403:**

- (1) Association is a group of real and legal persons that is formed for a definite or indefinite period with the purpose of achieving charity, social public welfare, scientific, literary, technical and artistic objectives in a non-profit form, according to provisions of this Law.
- (2) Competent government authorities shall grant permission for establishing associations mentioned in paragraph (1) of this Article.

These authorities shall monitor activities of associations in terms of their compliance with laws, regulations and charters.

**Article 404:**

Associations that act against provisions of law or public mores or take actions against the national interest and their own constituting principles shall be deemed void and have no effect.

**Article 405:**

- (1) Association shall have a charter that regulates its activities and is approved by its constituting members.
- (2) Charter of association shall include the following themes:
  - 1 – Title of association, objective and intention of constituting it and its headquarters. Headquarters of association may not be located outside Afghanistan.
  - 2 – Complete identities of constituting members.
  - 3 – Income of association, its circulation and actions on it.
  - 4 – Boards that represent association, their appointed members, their duties and procedure for their removal.
  - 5 – Rights and obligations of constituting members.
  - 6 – Method of supervision over properties of association.
  - 7 – Method of amending charter of association, adhesion, division and establishing agency.
  - 8 – Dissolution and administration of financial affairs of association and the authority to which properties shall be transferred.

**Article 406:**

- (1) Constituting members may not include such themes in charter of association that allow transfer of association's properties, after its dissolution, to themselves, their families or their heirs.
- (2) Shares of cooperative associations, donation funds, exchange funds and retirement funds shall be excluded from this provision.

**Article 407:**

Resigning from membership of association, based on decision of person or association, shall cause deprivation of properties of association, unless otherwise explicitly stated by law.



**Article 408:**

Association may not own real estate, unless such ownership is considered essential for implementation of fundamental activities of association. Educational and charity associations are excluded from this provision.

**Article 409:**

Legal personality of association shall be proved if its charter is prepared and published in accordance with provisions of this Law.

**Article 410:**

Proclamation of charter of association shall be completed after payment of designated fees and registration of association in relevant books and publishing the articles in the official gazette.

**Article 411:**

The competent authority shall proclaim charter of association within sixty days since the date request, otherwise association shall be legally recognized as proclaimed by completion of the sixty days. The mentioned authority shall have to proclaim charter in response to request of concerned persons, according to provisions of this Law, or reject the articles.

**Article 412:**

Amendment of charter of association shall be considered effective after proclamation in accordance with provisions of Articles (409-410-411).

**Article 413:**

Association shall have to observe the following:

- 1 – Maintaining books and documents of association in its headquarters.
- 2 – Registration of name, father's name, family name, age, national identity number, occupation and address of every member with the date of membership of association or their changes in special books.
- 3 – Registration of events and resolutions of the general assembly and executive assemblies in special books. Every member of association may acquire information about contents of meetings.
- 4 – Registration of expenditures, incomes, grants and their documents, in detail, in special books. The competent authority may acquire information about contents of these documents and meetings.
- 5 – Foreign persons may, in special cases and with permission of competent authorities, gain membership of cultural associations.

**Article 414:**

- (1) Association shall have to, with permission of the competent authority, deposit cash properties of association, under its name, in a bank or another place.
- (2) Association shall have to notify the competent authority of change of place of deposit within one week since the date of change.

**Article 415:**

Properties of association shall be spent to obtain designated objectives of association. Remaining amount may be used in secure areas, provided that it does not affect association's principal activities.

**Article 416:**

Association shall have an annual budget that is approved by general assembly. Budget of association shall be reported to the competent authority.

**Article 417:**

Association may not carry out activities beyond the limits stated in its charter.

**Article 418:**

Associations may not engage in financial profit sharing contract (Mozarebat)

**Article 419:**

- (1) Name of association, its proclamation number and limits of its activities shall be interpolated in all of its books, papers and publications.
- (2) No association may choose a name that belongs to another association, even if their areas of activities are common.

**Article 420:**

- (1) No association may be related, joined or annexed to another association, commission or club outside Afghanistan, without permission of the competent authority.
- (2) No association may obtain properties from person, association, commission or club located outside Afghanistan, except with permission of the competent authority.
- (3) No association may send anything to foreign persons or organizations without permission of the competent authority.

**Article 421:**

Grants may only be collected under the name and account of association according to regulations enacted by the government.

The competent authority may, as necessary, add special conditions for grants to every association.

**Article 422:**

- (1) Association must notify the competent authority of meeting and agenda of general assembly 15 days in advance. The competent authority may send a representative to participate in association's general assembly.
- (2) Association shall have to send reports of general assembly to the competent authority within 15 days since the date of its meeting.

**Article 423:**

- (1) An association may establish agency.

- (2) Agency, after proclamation, shall acquire independent legal personality. Agency may not amend those parts of its internal charter relating to its obligations towards the principal association and its procedure and general policy without agreement of the principal association.

## **Subtopic 2 — Board of Directors**

### **Article 424:**

- (1) Association shall have a board of directors. Appointment of members of the board of directors, their powers and obligations and termination of their membership shall be stated in charter of association.
- (2) Board of directors shall consist of three or more members and period of their service may not exceed three years.
- (3) Membership shall be renewed according to charter of association.

### **Article 425:**

Person who is appointed as a member of board of directors must not have been deprived of his political and civil rights by a final decision of competent court.

### **Article 426:**

- (1) Board of directors shall administer association's affairs within the limits of powers stated in articles of association.
- (2) Board of directors shall hold meeting at least twice a month.

### **Article 427:**

Board of directors shall appoint a person, from among its members or other members of the association, as president.

### **Article 428:**

Person who is appointed by board of directors as president shall carry out affairs relating to proposal and appointment of employees, implementation of disciplinary punishments, checking expenditure documents and supervision over implementation of resolutions of general assembly and board of directors, provided that charter of association has not stipulated the contrary.

## **Subtopic 3 — General Assembly**

### **Article 429:**

- (1) General assembly shall consist of all members who have fulfilled their obligations according to charter of association.
- (2) Resolutions of general assembly beyond subjects included in the agenda shall not be valid.

### **Article 430:**

Resolutions of general assembly shall be made by the majority of present members two have met the quota of two third of original members. Resolution of general assembly regarding amendment of charter of association shall be made with absolute majority; and regarding dissolution of association,

dismissal of members of board of directors, association's unification or merger with another association shall be made with a two third majority of the members, unless charter of association has stipulated the contrary.

**Article 431:**

Members shall participate in person in general assembly meetings or appoint in writing another member as their representative.

**Article 432:**

General assembly shall have to hold meeting within three months since the end of each financial year in order to examine budget affairs, account of the whole year, annual report of board of directors and the financial report. General assembly may, if necessary, hold extraordinary meetings. Meetings of general assembly shall be held upon invitation of board of directors.

**Article 433:**

If board of directors does not hold an extraordinary meeting of general assembly within 15 days since the date of written request of at least 10 members of the assembly, wherein the aim of the meeting is stated as well, the requesters may directly invite members of general assembly to hold a meeting.

**Article 434:**

Member of association shall not have a right to vote in a subject in which he has an interest. The vote for appointment of members of board of directors of association is excluded from this provision.

**Article 435:**

(1) If general assembly or board of directors or president of association makes resolutions against provisions of law or charter of association, annulment of such resolutions may be requested.

Request of annulment shall be submitted to the court in whose jurisdiction headquarters of association is located by prosecutor or one of members of association, within three months since the date of issuance of resolution.

(2) Annulment of such resolutions shall not affect those acquired rights of persons that have been obtained in good faith.

**Article 436:**

(1) The competent authority shall suspend implementation of resolutions of general assembly, board of directors or president of association that are against law and public order and mores.

(2) The competent authority shall have to file an annulment claim against the mentioned resolutions with the competent court within 30 days since the date of suspension.

## **Subtopic 4 – Dissolution and Administration of Association**

**Article 437:**

(1) Association shall be dissolved in following cases:

1 – If it cannot fulfill its obligations.

2 – If it allocates its properties or interests for objectives other than those stated in charter.

- 3 – If association violates provisions of charter or takes any measure against law, goals for which association was formed and public order and mores.
- (2) Request of dissolution of association shall be submitted by any member of association, concerned person or prosecutor to the competent court in whose jurisdiction association is located.

**Article 438:**

If court rules association dissolved, it shall appoint one or several persons for administration of accounts affairs and distribution of assets of association on the basis of provisions of its charter. If the charter includes no rule on distribution of assets of the dissolved association, court may transfer the assets to another association or organization that has common goals with the dissolved association.

**Article 439:**

If court rejects request for dissolution of association, it may nullify the measure against which the protest was filed.

## **Topic 4 – Public Welfare Associations**

**Article 440:**

- (1) Public welfare associations are those that are created to secure public benefits.
- (2) Title of “public welfare association” shall be granted by a government decree. The granted title may be divested by such a decree.

**Article 441:**

Public welfare association shall have not to observe conditions of legal capacity for owning movable and immovable properties.

**Article 442:**

Limits of use of powers of public authority by public welfare association, such as impermissibility of attachment of all or part of properties of the association, ineffectiveness of period of limitation on ownership of properties of the association and permissibility of expropriation for securing goals of the association shall be specified by regulations.

**Article 443:**

Public welfare association shall act under supervision of relevant competent authority. The mentioned authority shall inspect and scrutinize activities of the association in terms of their compliance with laws, charter and resolutions of general assembly of the association. An inspection delegation shall be appointed by the competent authority and shall, at the end of the work, report the measures it has taken to the relevant authority.

**Article 444:**

- (1) The competent authority may approve merger of several public welfare associations that have common goals. Also, it may decide on unification of activities or amendment of goals of different associations on the basis of contextual needs or with the purpose of coordinating services they deliver or for other causes that are deemed beneficial for securing the goals of associations.

- (2) The mentioned authority shall explain, in its decision, the causes and procedure of unification and the method of delivery of properties, papers and documents to the new board.

**Article 445:**

- (1) The competent authority may refuse to accept applications for membership in the executive board.
- (2) The competent authority may appoint one of the applicants for supervising the process of election of the members.
- (3) If the election has taken place contrary to provisions of law or charter of association, the competent authority shall issue a reasoned order to the effect of cancellation of election, within 15 days since the day of election.

**Article 446:**

- (1) The competent authority may, by a reasoned order, appoint president of board of directors to perform the duties stated in charter of association.
- (2) Temporary president or board of directors shall be appointed when there have appeared such violations in activities of president or board of directors of association that their continuation will not be in the interest of association and notwithstanding the association's notification and lapse of 15 days since the day they received the notification, they have not rectified the violations.

**Article 447:**

- (1) Members of board of directors of association and its staff shall have to deliver all properties of association and relevant documents and books to the temporary board of directors.
- (2) Legal responsibility of members of board of directors and the staff of association shall not end with the delivery of properties, documents and relevant books to the temporary board of directors.

**Article 448:**

Temporary president or board of directors shall have to call, within the period specified in their appointment order, the meeting of general assembly and submit report measures they have taken to it. General assembly, upon hearing the report, shall appoint new board of directors according to the charter and provisions of law.

**Article 449:**

Association shall have to implement resolutions by temporary president or board of directors who have been appointed within the period specified in the order, within the boundaries stated in the mentioned order or charter of the association.

**Article 450:**

The competent authority shall deprive previous members of board of directors, whose responsibility due to violation is proven, from applying for membership of board of directors for a period not more than three years.

## **Topic 5 — Charity Association**

**Article 451:**

- (1) Charity association is an association that is established for charitable purposes or social welfare in order to be used by members of association or other persons.
- (2) Members of board of directors may not engage in any other paid occupation within the association.

**Article 452:**

- (1) Board of Directors of charitable association shall have to prepare annual report of activities.
- (2) Board of directors shall submit annual budget of association attached with its documents to the competent authority and shall provide it with any necessary information.

## **Topic 6 – Cultural Association**

**Article 453:**

Cultural association is an association that is established for development of scientific, technical, literary and artistic affairs.

**Article 454:**

Board of directors of cultural association shall have to submit its annual report to the competent authority. Regarding submission of documents and information, this association shall be subject to provisions on other associations stated in this Law.

## **Topic 7 – Institutions**

**Article 455:**

Institution is a legal personality that is established for carrying out humanitarian, religious, technical or supportive services by allocating properties for an indefinite period of time, and is run for non-profitable purposes.

**Article 456:**

- (1) Institution shall be established by official document.
- (2) Official document shall be considered as charter of institution and shall include the following themes:
  - 1 – Title of institution and its headquarters. The headquarters of institution may not be located outside Afghanistan.
  - 2 – Aim and intention of establishment.
  - 3 – Name and complete identity of founder or founders.
  - 4 – Details of assets allocated to institute.
  - 5 – Administrative structure of institute and name of its president.
  - 6 – Method of supervision and inspection of financial affairs of institute.

- 7 – Procedure of amendment of charter and merger, disintegration and establishment of agencies of institution along with explanation of procedure of administration and determination of the authority to which properties of institution shall belong.

**Article 457:**

If founding member has creditors or heirs, establishment of the institution shall be considered as will or donation for their rights. If establishment of institution harms rights of creditors or heirs, they may file a lawsuit according to provisions of the law on will and donation.

**Article 458:**

Founder of institution that is established by official document may, before proclamation, withdraw from the establishing by another official document.

**Article 459:**

Legal personality of institution shall be established upon its proclamation according to provisions of this Law.

**Article 460:**

Institution shall be proclaimed upon request of its founder or first president or the competent authority that supervises institution, according to provisions on proclamation of associations stated in this Law.

**Article 461:**

The competent authority may amend the establishment, procedure of administration and charter of institution, with the aim of securing goals of establishing institution.

**Article 462:**

Institution shall be administered and represented by president.

**Article 463:**

President shall submit annual budget and statements of institute to the competent authority and provide it with necessary information.

**Article 464:**

Institution may not, without permission of the competent authority, accept any testament or donation.

**Article 465:**

The competent authority may, by filing a lawsuit, request the relevant court to dismiss employees who have been negligent in their assigned duties or have committed actions against law or charter of institution or have used properties of institution against objectives of establishing of institution or against the will of its founder or have committed gross negligence.

**Article 466:**

The competent authority may, in order to secure objectives of institution or preserve its properties, request the competent court to relax or nullify all or part of obligations and conditions specified in charter of institution.



**Article 467:**

If president of institution acts against law and public order or beyond limits of his authority, the competent authority may suspend these acts or request the competent court to nullify them.

**Article 468:**

- (1) Request of nullification stated in Article (467) of this Law shall have to be submitted to court, maximum within one year since the date of actions.
- (2) Nullification of such actions shall not affect acquired rights of persons who have gained them in good faith.

**Article 469:**

Provisions on associations, such as those on establishment, merger, disintegration, establishing agency, appointment of temporary president, dissolution and administration, changing institution to a public welfare one and also provision stated in Article (418) of this Law shall also be applicable to all institutions.

**Article 470:**

Provisions on institutions stated in this Law shall exceptionally not be applicable to those institutions that are established in the form of endowment.

**Article 471:**

Taking action against offences of employees of associations and institutions specified in this Law, shall not prevent application of the penal code.

## Chapter 3 — Properties

**Article 472:**

Property is a physical object or right that has material value among people.

**Article 473:**

Objects that are traded by their nature or according to provisions of law may be subject to financial rights.

**Article 474:**

Objects that cannot be traded by their nature are those that no person may allocate them to himself.

**Article 475:**

Objects that may not be traded according to provisions of law are those that may not legally be subject to financial rights.

**Article 476:**

- (1) Fungible objects are those whose units or parts are similar to each other and may, without considerable difference, be interchanged.

(2) Non-fungible objects are those whose units are different from one another and may not be interchanged.

**Article 477:**

(1) Consumptive objects are those that may not be utilized without being consumed.

(2) Useable objects are those that are not consumed by repetitious utilization.

**Article 478:**

Immovables are those objects that have a fixed base and their transportation, without destruction, is impossible. Objects that are not of this characteristic are deemed as movables.

**Article 479:**

Movables that are allocated by owner for using immovables shall be deemed as immovables.

**Article 480:**

Any real right relating immovables and any claim thereto shall be recognized as immovable, other financial rights shall be recognized as movable properties.

**Article 481:**

Properties that are owned by individuals are private and those that are not owned by individuals and are allocated to public benefits and interests are public.

**Article 482:**

(1) Public properties are as follows:

- 1 – Movable and immovable properties of the state.
- 2 – Movable and immovable properties of legal persons.
- 3 – Movable and immovable properties allocated to public benefits and interests.
- 4 – Movable and immovable properties recognized as public by provision of law.

(2) Possession, attachment and ownership by laps of time of these properties shall not be permissible.

**Article 483:**

(1) Public properties shall be recognized as non-public when the period of their allocation to public benefits ends.

(2) End of allocation shall occur by provision of law or in practice or by termination of purpose for which properties were allocated to public benefits.

# BOOK 1 — RIGHTS

## Title 1 — General Provisions

### Article 484:

Financial rights are divided into real and personal rights.

### Article 485:

- (1) Real right is direct dominance of person over substance of object that is granted by law.
- (2) Real rights are either principal or subordinate.

### Article 486:

Principal real rights are possession and utilization rights to the object that are exclusive to the following rights:

- 1 – Right of ownership of real estate and benefit of object.
- 2 – Right of ownership of benefit of object without ownership of real estate.
- 3 – Easement rights.

### Article 487:

Subordinate real rights are rights over object in order to guarantee debt that are exclusive to the following rights:

- 1 – Rights of official mortgage
- 2 – Right of possessory mortgage
- 3 – Right of retention of object
- 4 – Appropriation right
- 5 – Priority right (prerogative)

### Article 488:

Personal right or pledge is a relation between obligation of creditor and debtor on the basis of which creditor may demand debtor to grant an object, perform an action or refraining from doing it.

### Article 489:

- (1) Subject of pledge to debt is cash or fungible objects.
- (2) Pledge shall become obligatory upon obligator by contract or guarantee.

### Article 490:

Subject of pledge to object is substance of certain object on the basis of transferring ownership of object or its benefits or that of delivering or protecting the object.

**Article 491:**

Intellectual rights that are rights to intangible property shall be subject to provisions of special laws.

## **Title 2 — Sources of Rights**

### **Chapter 1 — General Provisions**

**Article 492:**

Sources of rights are legal factors that create rights and consist of legal action and legal event.

**Article 493:**

Legal action is verbal action that emanates from decisive will of person for creating certain legal effect in accordance with provisions of law.

**Article 494:**

Legal action in contracts shall be completed by agreement of wills of parties to contract and in consequence of which obligation shall be imposed on one of the parties.

**Article 495:**

Action that imposes obligation on one of the parties shall be completed only by offer of obligator.

**Article 496:**

Legal event is a practical action that occurs with or without will of person and law has granted it certain effects.

## **Chapter 2 — Legal Acts**

### **Section 1 — Contracts**

#### **Topic 1 — General Provisions**

**Article 497:**

- (1) Contract is agreement of two wills for creation, amendment, transfer or elimination of right within the limits of law.
- (2) Mutual obligations of contracting parties shall result from contract.

**Article 498:**

Contract may be concluded on movable or immovable objects, substitutable or un-substitutable, with the aim of transferring ownership.

**Article 499:**

Contract may be concluded for holding objects in trust or depreciating it by utilization in loan and payment by substitute.

**Article 500:**

Contract may be concluded on benefits of objects for utilizing it in lease or without substitute in hire by preserving and returning the object to owner.

**Article 501:**

Contract may be concluded for performing certain action or service.

**Article 502:**

- (1) Contract shall be concluded on the condition of presence of contracting parties, special words for contract and subject of conclusion of contract.
- (2) Conditions of validity of contract are capacity of contracting parties, suitability of the subject for contractual rules, usefulness of contract and its non-opposition to public order and mores.

**Article 503:**

If, at the conclusion time of contract, person who has the right to permit and enforce it is absent, contract shall be void.

**Article 504:**

General rules of contract shall apply to all contracts and special rules of each contract consist of provisions related thereto.

## **Topic 2 -- Elements of Contracts**

### **Subtopic 1 -- Consent**

**Article 505:**

Validity of a contract is subject to consent of contracting parties without duress and coercion.

**Article 506:**

- (1) Contract is concluded by offer and acceptance of parties.
- (2) Offer and acceptance are made by words customarily employed for concluding contracts.

**Article 507:**

Offer and acceptance shall be in past tense and they may be in present tense or imperative provided that it is intended as present tense.

**Article 508:**

Contract shall be concluded in future tense if contracting parties have intended to conclude it by this tense.

**Article 509:**

Expression of shall takes place orally, in writing or by customarily used signs. The will may also be expressed by an exchange that clearly denotes the reality of contract.

**Article 510:**

Expression of will may implicitly take place, unless the law or contracting parties have required an explicit will.

**Article 511:**

Expression of will shall be effective if the other party has been aware of it. If expression of will has reached the other party, it is considered as an indication of his acquisition of its knowledge, unless there is a reason to the contrary.

**Article 512:**

Expression of will in the state of unconsciousness or mental disorder that forfeits the discerning ability, even if the disorder is temporary shall be considered void.

**Article 513:**

Will that is expressed against person's mind shall not be considered void, except when the other party has knowledge of defiance of person's expressed will or intention.

**Article 514:**

Every person shall be obligated by his offer, unless he has explicitly stated his non-obligation, or due to clear indications or the nature of transaction it becomes evident that there has been no intention of obligating by the offer.

**Article 515:**

If offeror or acceptor dies or loses his capacity before the offer or acceptance becomes effective, contract shall be valid and effective at the moment the other party acquires knowledge of such an offer or acceptance, provided that expression of will or nature of transaction does not indicate contrary to this.

**Article 516:**

- (1) Whenever a time limit is fixed for acceptance, offeror may not withdraw his offer before the end of the designated time.
- (2) If no reference is explicitly made to a time limit, acceptance may be specified by clear indications or the nature of transaction.

**Article 517:**

Concluding parties have a right to withdraw until the end of the contracting meeting. If offeror, after making the offer and before acceptance by offeree, withdraws his offer or one of the parties acts in a way or says such a thing that indicates withdrawal from acceptance, such an offer shall be void and acceptance thereafter shall be void as well.

**Article 518:**

If offer is repeated before acceptance, the last offer is considered valid.

**Article 519:**

Person to whom offer is made may reject it. If the offer is made due his own request, he may not reject it, unless he has compelling reasons for the rejection.

**Article 520:**

If acceptance expands, restricts or modifies offer, such acceptance is considered as rejection of offer and shall be considered as a new offer.

**Article 521:**

Conformity between offer and acceptance shall be achieved when parties agree on all basic issues of contract. Agreement on some of those issues shall not be sufficient for binding the parties.

**Article 522:**

- (1) If parties agree on all basic issues of contract, and postpone the details to the future, such a contract shall be considered complete, unless completion of the contract is subjected to agreement on details of issues.
- (2) If parties dispute over issues not already agreed upon and file a lawsuit on them, court shall decide the suit, taking the nature of the transaction into account, according to provisions of law, custom and justice.

**Article 523:**

- (1) Contract between absent parties shall be considered complete whenever and wherever offeror acquires knowledge of acceptance of offeree, provided that neither of parties nor provisions of law have specified the contrary.
- (2) As soon as acceptance reaches offeror, it shall be assumed that the knowledge of it has been acquired.

**Article 524:**

Contract through telephone or similar means shall be considered, with respect to time, as contract between present parties and, with respect to place, as contract between absent parties.

**Article 525:**

No words shall be attributed to silent person. Silence in a situation that requires statement shall be considered as acceptance.

**Article 526:**

Silence shall be considered as acceptance when parties have previously transacted in this way and offer has also been made on the basis of this transaction, or when offer is in sole interest of the other party.

**Article 527:**

Auction contract shall be completed with the final bid. The first bid shall be overridden by a higher bid, even if the higher bid is void or the auction is postponed with no winner person.

**Article 528:**

In collective contracts acceptance shall be made by consent of the majority and the minority shall be considered subordinate to their acceptance.

**Article 529:**

Acceptance in adhesion contracts shall, within the limits of conditions stipulated by offeror, be made on mere delivery. The conditions are incontrovertible.

**Article 530:**

- (1) If both parties or one of them undertake to confirm certain contract in the future, such a contract shall be completed when all basic issues of contract, including the period within which contract shall have to be confirmed, are specified.
- (2) If law has stipulated observation of certain formalities for completion of contract, presence of such formalities in the preliminary agreement that includes promise to confirm this contract shall also be considered essential.

**Article 531:**

- (1) Payment of deposit at the time of confirmation of contract shall be considered as reason for conclusiveness of contract, unless agreement of the parties or custom specifies the contrary.
- (2) If depositor withdraws confirmation of contract, he does not have a right to deposit refund. If receiver of deposit withdraws, he shall have to return the original deposit and its equivalent.

**Article 532:**

If a pledge, on the basis of which deposit has been paid, becomes effective, the deposit shall be deducted from the original price.

**Article 533:**

Whenever effectiveness of contract becomes impossible, due to reason not attributable to failure of parties, or if contract is rescinded due to mistake or agreement of parties, the deposit shall be returned.

## **Subtopic 2 — Representation in Contracts**

**Article 534:**

Contract may be concluded principally or by representation, unless law has stated the contrary.

**Article 535:**

Person who principally concludes contract shall personally undertake related rights and obligations.

**Article 536:**

- (1) Representation in contract shall occur by agreement of parties or by provisions of law.



- (2) Limits of authority of representative shall be specified by principal, in case of agreement of parties, and by law, in legal representation.

**Article 537:**

Anything related to defects in will or consequences of knowledge of special circumstances or indispensability of such knowledge shall be attributed to representative, not principal.

**Article 538:**

If representative, within the limits of his authority, concludes a contract in the name of principal, rights and obligations therefrom shall be attributed to principal.

**Article 539:**

If representation is not expressed at the time of conclusion of contract, consequences therefrom shall be attributed to representative, unless the other party to contract has knowledge of his representation.

**Article 540:**

If representative and the other party are, at the time of conclusion of contract, unaware of expiration of the period of representation, the consequences therefrom shall be borne by principal or his successor.

**Article 541:**

Representative may not conclude contract for himself or in the name of principal, unless principal has already authorized him or confirms it afterwards. Cases on which there are different provisions according to the commercial code or rules shall be excluded from this provision.

### **Subtopic 3 — Validity of Consent in Contracts**

#### **Part 1 — Capacity to Contract**

**Article 542:**

Every person has capacity to conclude contract, except his capacity is divested or limited by law.

**Article 543:**

Acts taken by undiscerning minor are shall be void, even if authorized by his guardian.

**Article 544:**

- (1) Acts taken by discerning minor that are completely to his interest shall be permissible, even if not authorized by his guardian. If it is entirely to his detriment, it shall be void, even if authorized by his guardian.
- (2) Acts entailing profit and loss shall be subject to authorization of guardian within the limits of his authority or to authorization of person with incomplete capacity after he attains majority age.

**Article 545:**

- (1) Actions taken by insane and person with incomplete capacity shall be, after registration of order of incapacity, considered void.

- (2) Actions taken before registration of order of incapacity shall not be considered void, unless state of insanity or incomplete capacity is prevalent during conclusion of contract or the other party has knowledge of it.

**Article 546:**

- (1) Actions taken by prodigal or imbecile shall be, after registration of order of incapacity, subject to provisions on discerning minor.
- (2) Actions taken before registration of order of incapacity shall be valid and shall not be voidable, unless they are taken as a result of exploitation or conspiracy.

**Article 547:**

Will or endowment of person incapacitated due to prodigality or imbecility shall be valid if only court has authorized them on a case by case basis.

**Article 548:**

Actions taken by incapacitated person due to prodigality shall be, with regard to administration of properties that court has authorized their delivered to him, valid within the limits of provisions of law.

**Article 549:**

If judicial assistant is appointed for person, any action by the person after registration of order of appointment of assistant and without participation of the judicial assistant shall be voidable.

**Article 550:**

Person with incomplete capacity may request annulment of contract. He shall be obligated to compensate if he has deceptively concealed his incomplete capacity.

## **Part 2 — Defects of Consent in Contracts**

### **1 — Duress**

**Article 551**

Duress shall mean forcing unrightfully a person to perform an act to which he does not consent, be it physical duress or mental.

**Article 552:**

Duress is of two types: complete and incomplete.

**Article 553:**

Complete duress is grave physical or financial threat. Incomplete duress is threat of unsubstantial danger.

**Article 554:**

Complete duress shall extinguish consent and vitiates volition. Incomplete duress shall extinguish consent, but does not vitiate volition.

**Article 555:**

Threat to harm person's parents, spouse or Maharim (close relatives) or threat that endangers person's prestige shall be considered duress. Court shall assess threat with due consideration to situations and qualities.

**Article 556:**

Duress shall differ proportionate to personality, age, social status, characteristics and the extent of effect of threat, in terms of its intensity or mildness.

**Article 557:**

Duress shall extinguish consent when threatener is capable of implementing the threatening action and threatened person considers, most probably, occurrence of duress indispensable if he does not perform the subject of threat.

**Article 558:**

If occurrence of one type of duress is, at the time of confirming contract, proved, the contract shall not be valid.

**Article 559:**

If duress has occurred in one of revocable contracts, threatened may, after removal of duress, revoke the contract. This right shall not extinguish by the death of threatener or parties to the contract. Heirs of the deceased shall be recognized as his successors.

**Article 560:**

Contract of threatened shall be concluded as a vitiated one. Whenever, after removal of threat, threatened explicitly or implicitly authorizes the contract, it shall become valid.

**Article 561:**

Effectiveness of contract of threatened person shall not be subject to his authorization after removal of threat. Taking delivery of the sold property shall constitute vitiated ownership. In such a case, any irreversible possession shall be valid and the threatened has the option to claim price of day of delivery or that of day of possession.

2 – Mistake

**Article 562:**

If mistake in subject of contract has been made while subject of contract is designated and referred to, following provisions shall apply:

- 1 – In case of difference in substance, contract shall depend on the designated subject without which contract shall be void.
- 2 – In case of unity of substance and difference in description, contract shall depend on the referred subject and shall be concluded on the basis of existence of the referred subject. In this case, contracting party shall have the option to rescind or confirm the contract.

**Article 563:**

Person who has made an essential mistake may rescind contract provided that the other party has made the same mistake or had the knowledge of mistake, or could easily become aware of it.

**Article 564:**

If mistake be so grave that contracting party would not confirm contract if he were aware of it, such a mistake shall be considered essential.

**Article 565:**

If mistake is made on the person of contracting party or on one of his characteristics while the person of contracting party or his characteristic is the main cause of conclusion of contract, such a mistake shall be considered essential.

**Article 566:**

Contract may be rescinded due to mistake in law if the mistake has been made in the context of events relevant to contract, unless law has stated the contrary.

**Article 567:**

Arithmetic or material mistake does not affect validity of contract and it shall have to be corrected.

**Article 568:**

Person who has made mistake may not resort to it in a way that contradicts good faith requirements. If the other party expresses his readiness to authorize this contract, it shall become binding with confirmation.

**Article 569:**

Provisions on mistake shall be applicable to intentions or any means that transfers volition of parties to the other in a distorted manner.

### **Subtopic 3 — Fraud and Lesion**

**Article 570:**

Fraud comprise using deceitful means, words or acts, that entices the other party to consent to conclude contract, in a manner that if these means were not used, he would not consent to contract.

**Article 571:**

- (1) If fraud of one party to contract inflicts excessive lesion on the other party, the deceived may claim rescission of contract.
- (2) Lesion shall be called excessive if the difference between the real value of property at the time of contract and the price it is sold amounts to 15 percent or more.

**Article 572:**

Person who has been deceived in trust contract shall have a right to rescind contract if he proves the other party's misrepresentation and cheating.

**Article 573:**

Negative fraud takes place as soon as reality is concealed. This fraud is considered as misrepresentation.

**Article 574:**

If third party to contract commits fraud, , the deceived may claim rescission of contract if he proves knowledge of the other party of fraud of the third party at the time of conclusion of contract or his ability to acquire such information.

**Article 575:**

- (1) Excessive lesion shall cause rescission of contract.
- (2) If the person suffering from lesion were aware of lesion at the time of conclusion of contract and showed consent to it, he may not rescind contract, unless his consent is based on the other party's false information, concealment of reality or fraud.
- (3) Excessive lesion regarding government's properties, endowment and property of incapacitated persons, in any manner committed, shall cause rescission of contract.

**Article 576:**

Contracts concluded by open auction, no protest may be raised that lesion has been committed.

**Article 577:**

If need or lack of experience or weak perception of one of the parties has been abused and, in consequence, excessive lesion occurs has been occurred in the contract, the deceived person may, within one year since the date of conclusion of contract, claim annulment of contract or reduction of his obligations to a reasonable extent.

**Article 578:**

If payment of an amount, determined by judge, be considered sufficient for rectification of lesion, the other party, in reciprocal contracts, may withdraw the rescission claim.

### **Subtopic 4 — Subject of Contract**

**Article 579:**

Existence of a subject, to which contract is attributed and it is eligible for conclusion of contract, is considered necessary for any kind of obligation deriving from contract. Subject of contract may comprise objects, debts, benefits or other financial rights. Also, subject of contract may be an action or omission.

**Article 580:**

Subject of obligation deriving from contract shall have to be possible, definite or determinable and legitimate, otherwise contract shall be considered void.

**Article 581:**

- (1) If subject of obligation is inherently impossible, contract shall be considered void.

- (2) If subject of obligation is not inherently impossible and it only is impossible for debtor person, contract shall be valid and debtor shall, due to nonperformance of obligation, be obligated to compensate.

**Article 582:**

Subject of obligation shall have to be definite and determined in such a way that will prevent profound ignorance. If ignorance of subject of obligation results in conflict, contract shall be considered vitiated.

**Article 583:**

- (1) Subject of obligation shall be defined by describing its substance and distinguishing features or determination of its quantity. If subject exists in contracting meeting, definition shall happen by pointing and, otherwise, it shall take place by defining the place and it is necessary to describe all that remove profound ignorance.
- (2) Description of substance of subject without mentioning quantity or characteristic is not considered sufficient for definition of subject.

**Article 584:**

If subject of obligation consists of an action, the mentioned action shall have to be determined or determinable.

**Article 585:**

If determination of subject of obligation is assigned to one of the parties or a third person, in case of delay in determination or unjust determination, court shall determine subject of obligation.

**Article 586:**

If determination of subject of obligation is assigned to a third person, whereas the mentioned person is unable to determine it or does not intend to do so or subject of obligation is not justly determined or within a reasonable period, contract shall be considered void.

**Article 587:**

Subject of obligation shall have to be eligible for transaction in such a way that is not repugnant to the original objective to which the subject has been dedicated.

**Article 588:**

If money is the subject of obligation, debtor is obligated to pay the amount mentioned in contract. Rise or fall in value of money does not affect repayment of debt, unless law or agreement of parties has specified otherwise.

**Article 589:**

- (1) If subject of obligation come to existence in the future, contract shall be permitted if it is not based on approximation does not involve ignorance and harm.
- (2) Transaction on inheritance of person during his lifetime is not permissible, even if owner consent to it, unless law provides otherwise.

**Article 590:**

If subject of obligation is repugnant to the public order and mores, it shall be considered void.

## **Subtopic 5 – Cause**

**Article 591:**

Cause shall be the principal objective for attainment of which contract is a legitimate instrument.

**Article 592:**

If cause of obligation is contrary to the public order and mores or does not exist at all, contract shall be considered void.

**Article 593:**

Existence of legitimate cause for any obligation shall be considered the principal state, unless there is a reason for its negation.

**Article 594:**

Cause explicitly stated in contract shall be considered the real cause, unless its contrary is proved.

## **Topic 3 – Conditions of Contract**

### **Subtopic 1 – General Provisions**

**Article 595:**

- (1) Condition is a pledge to do something in the future for something that belongs to future, which is stipulated by special terms.
- (2) Suspension is relating something belonging to future, by one of conditional modalities, to realization of another thing in the future.

**Article 596:**

If formation of contract is not suspended to condition and is not attributed to future tense, such a contract shall be conclusive and immediately valid.

**Article 597:**

Contract suspended to a known condition shall be concluded and become binding whenever the condition is realized.

**Article 598:**

A contract suspended to an existent matter shall immediately be concluded. Suspension to an impossible matter or a condition that is repugnant to the public order and mores shall be void.

**Article 599:**

- (1) If rescission of contract is suspended to rescinding condition shall be considered valid but not binding. If the condition is realized, the contract shall be rescinded. In this case creditor is obligated to return what he has taken and, in case it is impossible, he shall be obligated to pay guarantee. If the condition is realized, the contract shall become binding.
- (2) Creditor's actions regarding administration of the property, notwithstanding realization of the condition, shall be considered valid.

**Article 600:**

If condition in a suspended contract is realized, its effects shall be considered valid since the time of conclusion of contract, unless it becomes clear from the intention of contracting parties or the nature of contract that validity or invalidity of obligation has been related to the time of realization of condition.

**Article 601:**

If validation of contract, before realization of condition, due to external cause without interference of debtor, becomes impossible, the condition shall not have a retroactive effect.

**Article 602:**

Deferred contract is a contract that its validation is postponed to a time in future. Such a contract shall be immediately concluded, but its validity shall be deferred to the designated time.

**Article 603:**

Deferment in contract shall be considered in the interest of debtor, unless the contract, text of law or relevant circumstances shows that deferment has been made in the interest of creditor or both of the contracting parties.

**Article 604:**

Person in whose interest deferment is made may willfully waive it.

**Article 605:**

If, due to bankruptcy, order of attachment of person's properties, in whose interest deferment is made, is issued or if guarantees of debtor are reduced or are not paid at all, the right of deferment shall extinguish.

**Article 606:**

Deferment shall extinguish by death of debtor, unless there are real guarantees for debt or creditor has caused death of debtor or it has been agreed that deferment shall not extinguish by death of debtor. Death of creditor does not affect deferment of debt.

## Subtopic 2 — Provisions on Conditions



## **Part 1 — General Provisions**

### **Article 607:**

Condition that is suitable for contract or condition that is required by contract or emphasizes provisions of contract, also condition that is compatible with the common custom or does not contradict requirement of contract shall be considered valid

### **Article 608:**

Condition that is not in the interest of contracting parties shall be is null and contract containing it shall be considered valid.

### **Article 609:**

Contract without constituting element or one of its conditions shall be considered void.

### **Article 610:**

Condition that is unsuitable for contract or condition that is not required by contract or does not emphasize provisions of contract, also condition that is not compatible with the common custom or is fraudulent shall be considered vitiated.

### **Article 611:**

Contract shall be considered suspended if capacity to take all actions or one type of actions is divested therein.

### **Article 612:**

If contract contains a condition that states withdrawal from it, contract shall be considered non-binding.

## **Part 2 — Void Contract**

### **Article 613:**

Void contract is one that is illegitimate by nature and description.

### **Article 614:**

Void contract shall not essentially be concluded and shall not state any provision, even if delivery has been taken.

### **Article 615:**

If void contract has been enforced, considerations have to be returned and the original state has to be restored. If return of considerations is impossible, court shall rule on just guarantee.

### **Article 616:**

Authorization of void contract shall have no legal effect. Concerned persons may resort to nullify of contract.

**Article 617:**

If nullity of part of contract appears, the remaining part shall be considered valid as an independent contract, unless contract is indivisible.

**Article 618:**

If valid constituting elements of another contract exist in a void contract, the mentioned contract shall be considered valid due to the validity of the second contract, provided that contracting parties have intended it.

**Article 619:**

Void contract shall not result in effects of legal contract, unless it results in guarantee due to ordinary event.

### **Part 3 – Vitiating Contract**

**Article 620:**

Vitiating contract is one that is legitimate in principle and illegitimate in description, in such a way that it is principally valid and there is no defect in its constituting element and subject, unless it is vitiating due to certain external descriptions.

**Article 621:**

Vitiating contract shall not state ownership of subject of contract, unless delivery has been taken with consent of owner.

**Article 622:**

In reciprocal contracts, suspension and association of contract with vitiating condition shall not be permissible. Contract shall be considered vitiating due to such a condition.

**Article 623:**

In case of association of bare contract with vitiating condition, it shall be valid and the condition shall be null. Suspension of contract to vitiating condition shall cause its nullity.

**Article 624:**

Contracts that are recognized as mere extinguishments, notwithstanding their conclusion upon suspension to suitable or unsuitable condition or their association with vitiating condition, shall be recognized as valid. In this case, the condition shall be nullified.

**Article 625:**

Suspension of acquittal contracts to suitable or vitiating condition shall be valid, the vitiating condition shall be considered null.

**Article 626:**

Each of contracting parties or their heirs may rescind vitiating contract, unless cause of vitiating has been eliminated.

**Article 627:**

Authorization of vitiated contract and waiver of right of rescission shall not be permissible.

**Article 628:**

If vitiation occurs in content of contract, parties may rescind contract before or after taking delivery.

**Article 629:**

If vitiation of contract is caused by condition, parties may rescind contract before taking delivery, unless vitiating condition is eliminated by consent of parties. Also, parties may, in case stipulator does not waive his condition, rescind contract after taking delivery.

**Article 630:**

Stipulator of vitiated condition may, by recourse to part of contract, nullify the condition and request authorization of contract from the other party. The other party may not, after nullification of the condition, claim rescission of contract. Valid part of contract shall take effect when it becomes an independent contract.

**Article 631:**

Taking delivery in vitiated contract proves revocable ownership and possessor shall be obligated to pay the price or the similar, not the property itself. This contract states possession of the delivered property, not benefiting from it.

**Article 632:**

If one who has taken delivery in a vitiated contract concludes a contract on the delivered property with third person, the right to rescind shall extinguish. In such case, original owner may claim the return of subject of contract from the third party. Also, the third party may claim the price or similar of subject of contract from the delivery taker.

**Article 633:**

Change in delivered property, in case of increase whether attached or separated, shall not prevent rescission of contract. In such case, the delivered property with the increase shall have to be returned.

**Article 634:**

If delivered property changes due to loss, owner of property may claim return of property along with redress, unless loss is caused by action of owner.

**Article 635:**

If form of delivered property changes, rescission may not be made and price of the delivery day shall have to be paid.

**Article 636:**

Vitiated contract shall not result in effects of legal contract, unless it results in guarantee due to ordinary event.

## **Part 4 — Suspended Contracts**

**Article 637:**

- (1) Suspended invalid contract shall have no legal effect and shall not state proof of ownership, except by authorization of person who has authority over subject of contract and taking action on it and his authority meets all validity conditions.
- (2) Contract by following persons shall be considered suspended:
  1. Unauthorized person.
  2. Seller who resells the property to person other than buyer.
  3. Usurper.
  4. Representative or agency of representative who transgresses the designated limits of his representation.
  5. Owner of mortgaged property.
  6. Owner of land given to another person for agriculture, when seeds belong to farmer, unless special law has provided otherwise.
  7. Terminally ill person who sells to his heirs.
  8. Executor appointed by testator who sells to his heirs.
  9. Heir who sells to a terminally ill testator.
  10. Heir who sells indebted inheritance.
  11. Discerning minor.
  12. Discerning person with incomplete capacity.
  13. Prodigal person.
  14. Person suffering from neglect.

**Article 638:**

Person who takes an action on behalf of another person without having representation or agency shall be called unauthorized person.

**Article 639:**

Transaction by unauthorized person shall be valid, but suspended to authorization by owner. In case of non-authorization, contract shall be considered void.

**Article 640:**

If legal possessor affirms, by word or act, transaction by unauthorized person, this affirmation shall be considered as prior agency and unauthorized person, like agent, shall be bound to present and return anything that he has possessed.

**Article 641:**

If unauthorized person surrenders the property that is subject of transaction to the other party of contract and it perishes before authorization, the owner may claim its price from the unauthorized person or the other party of contract.

**Article 642:**

If unauthorized person surrenders the property that is subject of transaction to the other party of contract and the other party contracts it with another person, the owner may authorize one of these two contracts.

**Article 643:**

Unauthorized person and the other party of contract may rescind contract prior to authorization of owner.

**Article 644:**

If several unauthorized persons participate in one contract, they shall be considered collectively liable.

**Article 645:**

- (1) In case of death of unauthorized person, obligation of his heirs shall be the same as that of heirs of agent.
- (2) In case of death of owner, unauthorized person shall have the same obligation to owner's heirs as to owner himself.

**Article 646:**

In order for authorization of transaction of unauthorized person to be valid, the unauthorized person, the other party, owner of property and the consideration have to exist at the time of issuance of authorization. Also, presence of authorizing person at the time of transaction is considered necessary.

**Article 647:**

Authorization of suspended contract shall be made, explicitly or implicitly, by person who has authority to do so. Person who has authority to authorize may submit his objection maximum within one year since the date of knowledge of transaction or elimination of cause of incompleteness of capacity or elimination of cause of suspension of contract.

**Article 648:**

Authorization of suspended transaction shall have effect since the time of issuance of transaction, not the time of issuance of authorization.

**Article 649:**

Unauthorized person may not withdraw from his transaction at the time of transfer of ownership of subject of contract to him.

## **Part 5 — Revocable Valid Contracts**

**Article 650:**

If contract, by nature, does not bind one or both parties of contract or in which one of the parties has option of rescission, contract shall be considered valid but revocable.

**Article 651:**

If one of the parties, who is not bound by contract, reverts from it, contract shall be rescinded since the time of reversion, and effects of contract shall remain valid until the time of reversion.

**Subtopic 3—Options Deferring Bindingness of Contracts**

**Part 1 — Option of Condition**

**Article 652:**

- (1) Contracting parties may, in all contracts, either during or after contract, reserve option of rescission or continuity of contract for maximum three days.
- (2) Period of option of condition is exceptionally permissible for more than three days regarding endowment, bailment and assignee of debt. If condition is stipulated during contract, period of option shall start from the time of contract and if condition is stipulated after contract, the period shall start from the time of stipulation of condition.

**Article 653:**

Option of condition is valid in those binding contracts that have possibility of rescission, but shall not be valid in marriage contract, divorce, exchange, advance sale, confession, agency, donation and will.

**Article 654:**

Grant of option of condition is permissible for both contracting parties, one of them or third parties.

**Article 655:**

- (1) If, in financial reciprocal contract, option of condition is granted to parties of contract, neither of them shall lose ownership of considerations of contract.
- (2) If option of condition is granted to one of the parties of contract, option holder shall remain owner of his property and shall not become owner of property of the other party.

**Article 656:**

Contract that its rescission is subject to option shall be rescinded if option holder rescinds it, by word or act, within the designated time. In case of rescission by word, knowledge of the other party of rescission of contract, within the designated time, shall be necessary.

**Article 657:**

Authorization by option holder, by word or act, within the designated period that shows his consent to bindingness of contract, shall make contract, that its rescission has been subject to option, complete and binding, even if the other party does not have knowledge of it.

**Article 658:**

- (1) If option of condition is granted to the parties of contract, only option of the party that authorizes it shall extinguish and option of the other party shall remain until the end of period of option.
- (2) If one of the parties rescind contract, authorization of the other party shall not be valid.

**Article 659:**

If period of option, in contract subject to option, expires without rescission or authorization of option holder, contract shall be considered binding and complete.

**Article 660:**

- (1) If option holder, before rescinding or authorizing contract, dies within the period of option, contract shall become binding and heirs may exercise right of option, unless the contrary is agreed.
- (2) If option of condition is granted to the parties of contract and one of them dies, contract shall become binding on the deceased and option of the other party remains until the end of period of option.

**Article 661:**

Bindingness of contract shall be valid since the time of its issuance.

## **Part 2 — Option of determination**

**Article 662:**

- (1) Choosing one of the designated things as subject of contract is permissible and parties may use option of determination.
- (2) If option of determination is mentioned in an absolute way, possessor is deemed as option holder, unless law provides otherwise, or the parties have agreed contrary to it.

**Article 663:**

Number of objects that shall be designated as subject of option of determination may not be more than three.

**Article 664:**

Period of option of determination shall not exceed three days. Start of the period shall be since the time of agreement.

**Article 665:**

Contract shall be revocable until the exercise of option. In case option is explicitly or implicitly exercised, contract shall become binding and enforceable as regards the part on which option is exercised.

**Article 666:**

Option shall be determined at the time of issuance of contract.

**Article 667:**

If option of determination is granted to person to whom possession is given, his ownership of one of objects shall be considered established; other objects in his possession that are subject of option of determination shall be considered to be kept in trust.

**Article 668:**

- (1) If possessor takes an action, before expiration of period of option, on one of objects that is subject of option, his action shall be suspended to choice of person to whom possession is given.
- (2) If object of action is later determined by person to whom the possession is given, determination shall have effect since the time of conclusion and action of possessor shall be considered void.

**Article 669:**

- (1) If one of the objects that are subject of option of determination perishes before taking delivery, person to whom the possession is given may exercise his option regarding determination of the remaining.
- (2) If all of the mentioned objects perish, contract shall be considered void.

**Article 670:**

- (1) If one of the objects that are subject of option of determination perishes after taking delivery, the perished object shall be considered as subject of contract and person to whom possession is given shall be obligated to pay its price. In such case, remaining objects shall be considered to be kept in trust and be returnable to possessor. If all the mentioned objects perish after taking delivery, one after the other, the first object shall be recognized as subject of contract and remaining objects shall be considered to be kept in trust.
- (2) If all the objects perish at the same time, person to whom possession is given shall be obligated to pay price of one of the objects, remaining objects shall be considered to be kept in trust .

**Article 671:**

- (1) If option is granted to possessor, objects that are subject of option shall remain in his ownership until determination and after determination of one of the objects, the determined object shall be considered as subject of contract.
- (2) If possessor has taken action on one of the objects, his action shall be permissible.

**Article 672:**

- (1) Possessor who is granted option of determination may rescind or confirm contract. His action on objects that are subject of option of determination is permissible. This action of his shall be considered as rescission of contract.
- (2) If possessor obliges person to whom possession is given to accept one of them, person to whom possessed is given shall be considered as obligated to it.

**Article 673:**

If all objects that are subject of option of determination perish before taking delivery, the perished objects shall be on the account of possessor and the action shall be considered void. If some of the objects perish, option of possessor shall remain and he may oblige person to whom possession is given to accept the object or rescind contract.

**Article 674:**

- (1) If one of the objects that are subject of option of determination perish after taking delivery, the perished object shall be kept in trust on the account of possessor. He may oblige person to



whom possession is given to accept one of the remaining objects or rescind contract. If all of the mentioned objects perish, one after the other, the first perished object shall be considered to be kept in trust on account of possessor and person to whom possession is given shall be obligated to pay price of the remaining.

- (2) In case of perishing at the same time, one of them shall be considered to be kept in trust on account of possessor and perishing of the remaining objects shall be considered on account of person to whom possession is given, on the basis of their price.

**Article 675:**

Option of determination shall be transferred to heirs.

### **Part 3 — Option of Sight**

**Article 676:**

Right of rescission of contract by option of sight shall be proved in the following cases without any previous condition:

- 1 – Purchase of properties that must be determined and are not one of established obligations of debt.
- 2 – Lease of properties.
- 3 – Division of non-fungible properties.
- 4 – Compromise on objects that are real properties

**Article 677:**

Option of sight shall not be proved in contracts that may not be rescinded.

**Article 678:**

In order to prove option of sight, subject of contract must be determinable and person to whom possession is given has not seen it at the time of contract.

**Article 679:**

Right to option of sight shall remain until the designated period for sight expires or cause of extinguishment of the option appears.

**Article 680:**

Option of sight shall extinguish by seeing subject of option, explicit or implicit consent of option holder, death of option holder, perishing of whole or part of the property by such an action of option holder that does not imply rescission or occurring of right of another person on it.

**Article 681:**

Rescission of contract by option of sight shall be considered complete by explicit or implicit word or act. It shall not be suspended to ruling of court or consent of the other party.

### **Part 4 — Option of Defect**

**Article 682:**

Right of rescinding contract shall be proved by option of defect, without any prior condition.

**Article 683:**

Option of defect shall be established in contracts that may be revoked.

**Article 684:**

Defect shall give rise to option if it existed before conclusion of contract and affected price of object of sale. Also person to whom possession is given should not be aware of it and possessor has not stipulated that the object has no defect.

**Article 685:**

- (1) If defect meets conditions of Article (684) of this Law, contract shall not be binding on person to whom possession is given, he may break the contract at his own will before taking delivery and inform possessor.
- (2) After taking delivery, contract may not be broken due to defect without consent of parties or ruling of competent court.

**Article 686:**

If person to whom possession is given breaks contract by option of defect, contract shall be rescinded, return of the sold object, if delivery is taken, and demand of consideration, if it is paid, shall become binding.

**Article 687:**

Person to whom possession is given may not claim the difference of price from possessor while he has kept the defective object with himself, except in case return of the object has become impossible, without interference of person to whom possession is given, and he has not received its consideration.

**Article 688:**

Option of defect shall extinguish with perishing of subject of option, increase or decrease thereof, extinguishing of option by option holder or his consent to defect after becoming aware of it or taking action on the object before becoming aware of its defect.

**Article 689:**

Option of defect shall not extinguish with the death of person to whom possession is given, his heirs shall be recognized as his successors.

## **Topic 4 — Effects of Contracts**

### **Subtopic 1 — Effects of Contract on Parties to Contracts**

**Article 690:**

Valid contract, with conclusion of which effects such as provisions and rights are caused, is a contract that is legitimate by nature and description and its contractual linguistic form is uttered by capacitated

person on an object that is suitable for the contract provision. Also, its descriptions are valid and free of defect and it does not include a contract vitiating condition.

**Article 691:**

Contract shall have effect on parties to contract and their general successors, without violation of rules of inheritance, unless it is known from contract, nature of transaction or text of law that the general successors shall not be affected.

**Article 692:**

If personal obligations and rights arising from contract relates to a property that shall later be transferred to particular successors, the mentioned rights and obligations shall transfer along with the transfer of property, provided that they are required by the property and successors are aware of this at the time of transfer of property.

**Article 693:**

If reciprocal contract that is concluded on properties meets all conditions of validity, it shall require establishment of ownership of each of parties of consideration given in return to his property and obligate each of them to deliver his property to the other party.

**Article 694:**

If reciprocal contract that is concluded on benefits of properties meets all validity and enforcement conditions, possessor of property shall be obligated to deliver it to the recipient of benefits and the recipient of benefits shall be obligated to deliver consideration for benefits to the possessor of property.

**Article 695:**

In addition to transfer of ownership and arrangement of profit, contract shall be considered to have the effect of proving debt or binding person to perform action or guaranteeing debt.

**Article 696:**

- (1) Contract shall be considered binding upon authorization, reversion from contract or modification thereof, without consent of both parties or provision of law, shall not be permissible.
- (2) If exceptional events or natural disasters or events impossible to predict occur and due to them debtor encounters such a problem that threatens infliction of grave loss on him, even if performance of contractual obligation is not impossible, court may, after assessment of interests of parties, reduce debtor's obligation to a just extent. Any agreement repugnant to this provision is considered void.

**Article 697:**

Contract shall be valid on anything included therein and required by good faith. Also, contract binds parties to what is included therein as well as include all requirements of nature of obligation according to provision of law, custom and justice.

**Article 698:**

- (1) If contract is concluded in the form of adhesion and under unjust conditions, court may modify the mentioned conditions or acquit the other party as justice requires, unless adhesion conditions are stipulated governmental authorities.

- (2) Competent governmental authorities shall approve and monitor conditions interpolated into contract forms, including prices, regarding contracts of adhesion of private organizations.

## **Subtopic 2 — Effects of Contract on Third Parties**

### **Article 699:**

- (1) If contracting parties have concluded contract in collaboration with each other or with force or by way of joking, creditors of contracting parties and their particular successors may make recourse to apparent contract providing they have good faith. Also, they may prove formalities of the contract due to which they have been damaged and make recourse to the non-apparent contract.
- (2) If interests of concerned persons in such contract conflict, some make recourse to apparent and some to non-apparent contract, the apparent one shall be preferred.

### **Article 700:**

- (1) Between contracting parties and their general successors non-apparent contract shall be valid, apparent contract shall have no effect.
- (2) If concluding parties conceal real contract by apparent contract, real contract shall be considered valid if it meets all validity conditions.

### **Article 701:**

- (1) If person promises third person's pledge, third party shall not be obligated due to it, if third party rejects the promise, promisor shall be obligated to compensate. If promisor fulfils his obligation without inflicting harm on creditor, he shall not be obligated to pay compensate for promise.
- (2) If third party confirms the promise, he shall be bound by it since issuing confirmation, unless attribution of confirmation to the day of promise is, implicitly or explicitly, proved.

### **Article 702:**

- (1) Person may conclude contract, based on undertakings by which interest of third person is stipulated, under his own name, provided that there is material or intellectual benefit for himself in the implementation of undertakings. Due to such stipulation, the third party shall gain a right to directly exercise the mentioned condition, unless the contrary is agreed.
- (2) Undertaker may, against direct exercise of right by third party, defend as it is contractually appropriate.

Also stipulator may demand implementation of interest stipulated for the benefit of third person, unless contract states the contrary.

### **Article 703:**

- (1) Stipulator may, before third person expresses his agreement on the exercise of condition to undertaker or stipulator, break the condition he stipulated, unless contract requires the contrary. Creditors or heirs of stipulator may not exercise this right.
- (2) Stipulating condition does not acquit undertaker against stipulator, unless contrary to this is explicitly or implicitly agreed upon. Stipulator may replace third person by another third person or by himself.

**Article 704:**

In stipulating for benefit of other, it is permissible that beneficiary be an independent person or cause. Also, person or cause that is not inherently specified at the time of contract, may only be third party that can be specified at the time of emergence of contract's effects.

**Subtopic 3 — Interpretation of contracts****Article 705:**

In principle, contract is based on consent of contracting parties and it shall result in effects to which they have bound themselves by contract.

**Article 706:**

In contracts, having taken apparent will of parties into account, intentions and meanings, rather than words and letters, shall be valid.

**Article 707:**

In principle, real meaning of words shall be intended, not their figurative meaning. As long as real meaning may be intended figurative meaning shall not be permissible, unless real meanings cannot be intended.

**Article 708:**

Implied meaning shall not be preferred to the explicit one. If they conflict, explicit meaning shall be preferred.

**Article 709:**

In inner affairs, their proof shall succeed them.

**Article 710:**

If impediment and exigency conflict, impediment shall be preferred.

**Article 711:**

Giving meaning to words is preferred to ignoring them. As long as a meaning can be given to words, they may not be ignored, unless no meaning may be given to them.

**Article 712:**

Mentioning part of what is indivisible is the same as mentioning the whole.

**Article 713:**

Absolute terms shall remain so until there is explicit or implicit reason for their change.

**Article 714:**

Description is not valid for the present and it is valid for the absent.

**Article 715:**

Question that is implicitly admitted by answer of addressee shall be considered answered.

**Article 716:**

If something is subjected to several conditions, it shall extinguish with extinguishment of one of the conditions.

**Article 717:**

Doubt shall be interpreted to the benefit of debtor.

**Article 718:**

Ruling shall come into existence with the existence of reason and extinguish with its elimination.

**Article 719:**

Whatever is proved against analogy, nothing else shall be analogized with it.

**Article 720:**

What is famous in custom shall be as if it were stipulated as condition.

**Article 721:**

Custom, general or special, shall be accepted as the basis of ruling.

**Article 722:**

Custom shall be valid if it is general or predominant. Widespread predominance shall be valid, not the rare one.

**Article 723:**

What is customarily impossible shall be considered as it is actually impossible.

**Article 724:**

Reality shall be left by indication of custom.

**Article 725:**

Subordinate shall be considered as principle.

**Article 726:**

Subordinate shall fall under the ruling on principle, no separate ruling shall be made on it.

**Article 727:**

Person who owns an object shall also own anything indispensable to it.

**Article 728:**

Subordinate shall extinguishes with the extinguishment of principle and if anything is included therein, it shall extinguish as well.

**Article 729:**

If donation and relinquishment of something without stipulation of any condition is permissible, stipulation of condition shall be obligatory.

**Subtopic 4—Effects of Contracts on Guarantee of Contracts****Article 730:**

If undertaker cannot fulfill the exact obligation of contract or postpones the fulfillment beyond the designated time, court may condemn him to guarantee, unless it is proved that impossibility of fulfillment of obligation or its delay has been caused by something beyond his will.

**Article 731:**

Contracting parties may, while concluding, determine amount of guarantee that has to be paid in case of non-fulfillment or delay, or they may agree on it afterwards.

**Article 732:**

If debtor proves that the determined guarantee is unjust and is not proportionate to the damage caused by non-fulfillment, creditor shall not be entitled to it.

**Article 733:**

In cases that the incurred damage is more than the designated guarantee, creditor may not claim the difference from debtor, unless he proves that debtor has committed treachery or grave fault.

**Article 734:**

Court may, in case amount of guarantee is not already agreed or it is not specified in law, specify its amount by taking account the inflicted damage on creditor and deficit of his revenue.

**Article 735:**

- (1) If debtor delays payment of a debt of cash the amount of which is specified at the time of demand, creditor may claim the deferred payment loss that is 3% per year in civil cases.
- (2) If it is not possible to specify period of delay of compensation payment on the basis of parties' agreement or the custom, it shall commence since the date of judicial claim.

**Article 736:**

Parties to contract may, based on agreement, determine the compensation stated in Article (735) of this Law over 3% per year, provided that it does not exceed 7% a year. Agreement contrary to this shall not be binding and creditor shall be obligated to return the amount exceeding the mentioned 7%.

**Article 737:**

Any action and benefit exceeding the amount stated in Article (735) of this Law that is stipulated by creditor as condition shall be considered inconspicuous profit and shall be reduced to the specified amount of the mentioned Article.

**Article 738:**

If it is proved that creditor, while claiming the right, has caused prolongation of dispute, court may reduce the legal or agreed compensation or does not rule compensation of the unduly prolonged time.

**Subtopic 5 – Effects of Contracts on Dissolution of Contracts****Part 1 – Rescission****Article 739:**

If one of contracting parties, in contracts that bind the parties, does not perform his obligations, the other party may demand rescission of contract and, if necessary, compensation.

Contracts that are naturally non-binding or include an option that will entail rescission, shall be excluded from this provision.

**Article 740:**

While serving the rescission, court may grant debtor moratorium on performance of his obligation.

**Article 741:**

If what debtor has not performed is trivial, compared to the obligation, court may reject the claim for rescission.

**Article 742:**

Parties of contract may agree to rescind it, without court ruling, if contractual obligations are not performed. This agreement shall not exempt them from service of rescission, unless they have agreed in writing on exemption of the service.

**Article 743:**

- (1) If reciprocal contract on financial properties is rescinded, its obligations shall extinguish. In this case, delivery of consideration established by the contract shall not be obligatory.
- (2) If consideration is already delivered, its return and, if return is impossible, return of its guarantee shall be ruled.

**Article 744:**

In financial reciprocal contracts, if subject of contract, while in possession of owner, perishes, contract shall be rescinded and if delivery of consideration is taken, it shall have to be returned to the other party, whether perishing has been caused by action of owner or it has occurred beyond his will.

**Article 745:**

If mutual obligations, in reciprocal contracts, shall have to be performed in a consecutive way, person responsible for subsequent obligation may refrain from performing his obligation until the other party performs his.



**Article 746:**

If obligations of parties, in reciprocal contracts, shall have to be performed simultaneously, they may concurrently deliver subject of obligation to each other or deposit it with a just person so that each of them takes delivery of his right at the same time.

**Part 2 — Dissolution by Mutual Agreement**

**Article 747:**

Parties may dissolve, by mutual agreement, contract after its conclusion. Dissolution by mutual agreement shall nullify contract.

**Article 748:**

Barter shall substitute for offer and acceptance and dissolution by it shall be considered valid.

**Article 749:**

Stability and existence of subject of contract at the time of dissolution by mutual agreement is necessary. If the subject perishes before the dissolution, it shall be void. If part of the subject perishes, the dissolution of the remaining part shall be considered valid.

**Article 750:**

Dissolution by mutual agreement shall be considered as rescission with regard to the parties and as new contract regarding third person.

**Section 2 — Unilateral Will**

**Article 751:**

Unilateral will shall be subject to all provisions on contract, except cases wherein agreement of will of two parties shall be essential to formation of obligation.

**Article 752:**

Holder of unilateral will shall be considered bound according to provisions of law.

**Article 753:**

Unilateral will sometimes creates obligation or promise and sometimes causes gaining or extinguishing ownership or permitting possession and sometimes exercising one of options.

**Article 754:**

Promise shall be commitment that person undertakes for another one in future. It shall not imply immediate undertaking. Promise may be made to conclude contract or take action.

**Article 755:**

Promisor shall be obligated to perform the promise until he is dead or insolvent.

**Article 756:**

If person promises to give prize for performing a designated action, he shall be obligated to grant the promised prize to the person who has performed it, even if the action has been performed with taking the promise into account.

**Article 757:**

If promisor has not specified time for performance of action, he may revert from his promise before the person has performed the designated action. Claim of prize shall not be heard after 3 months since the date of proclamation of reversion.

## **Chapter 3 — Legal Events**

### **Section 1 — Harmful Act**

#### **Topic 1 — Action Occurring upon Property**

##### **Subtopic 1 — Destruction**

**Article 758:**

Person who destructs property of another person shall be obligated to compensate for the caused damage.

**Article 759:**

Person who destructs property of another, whether in his possession or his trustee, intentionally or unintentionally, shall be liable for compensation of the damaged caused by his action.

**Article 760:**

As creation of cause of destruction shall bring about liability to compensate, failure to provide possible means for taking necessary precautions shall also entail compensation for the damage.

**Article 761:**

In case of full destruction, compensation for all of the property and in case of partial destruction, compensation for the loss of price of property shall be obligation of destroyer.

**Article 762:**

If discerning or undiscerning minor or person considered as subject to provision of undiscerning minor destructs property of another, compensation for the destructed property shall be paid from his own property. If he does not have property, moratorium shall be granted until he gains property. Guardian, executor and custodian shall not be considered liable for the destructed property, unless court obligates them to compensate for the property, in this case they have the right to refer to the destructor.

**Article 763:**

In case of association of actor and instigator, either of them who has taken action or has been relied upon shall be liable. In case of joint action, both of them shall jointly be considered liable to compensate.

**Article 764:**

Instigator shall only be obligated to pay compensation if his action has caused the damage.

## **Subtopic 2 - Usurpation**

**Article 765:**

- (1) Usurper is obligated to return what he has usurped.
- (2) If harm is caused by usurpation, usurper shall be liable to compensate for the harm, in addition to returning the usurped property at the place of usurpation.

**Article 766:**

If usurper uses up the usurped property or all or part of it perishes while in his possession or if it is destroyed due to his abuse or without it, he shall be considered obligated to compensate for the usurped property.

**Article 767:**

If the usurped property changes while in possession of usurper, the person whose property has been usurped may claim the property with compensation for the harm inflicted or compensation for the whole property from the usurper.

**Article 768:**

Results of the usurped property belong to owner, in case the results perish or are used up by usurper, he shall be liable for compensation.

**Article 769:**

- (1) If the usurped is real property, usurper shall be obligated to return it to owner or pay its market price.
- (2) If usurper has constructed building on real property or planted trees therein, owner may remove them or, if usurper agrees, pays their price when removed.
- (3) In case of destruction of real property or decrease of its price, even if usurper has not committed abuse, he shall be obligated to pay compensation.

**Article 770:**

Usurper of usurper is treated the same as usurper. If the usurped property perishes while in his possession or if he destructs it, both usurpers shall be liable towards the person whose property is usurped.

**Article 771:**

If the second usurper returns the usurped property to the first usurper, only the former shall be acquitted and if the property is returned to owner, both usurpers shall be acquitted.

**Article 772:**

If usurper exchanges or donates the usurped property in consequence of which all or part of the property is destroyed, both of the usurper and the person to whom possession is given shall be recognized liable. The person whose property has been usurped may can claim compensation from either of them.

**Article 773:**

Whatever that is equal to usurpation, when removal of possession is required, shall be treated as usurpation.

## **Topic 2 — Action Occurring upon Self**

**Article 774:**

Person who commits harmful act such as murder, injury, assault or other injuries to a self, he shall be obliged to compensate for the inflicted harm.

**Article 775:**

Person who causes murder or death of another person by injury or any other harmful act, he shall be obligated to pay compensation to people whose alimony has been the deceased's responsibility and have been deprived of it due to the murder or death.

## **Topic 3 — Common Provisions**

**Article 776:**

If harm is inflicted on another due to mistake or fault, the perpetrator shall be obligated to pay compensation.

**Article 777:**

Any assault that causes harm, other than harms mentioned in the above Articles, to another person, the perpetrator shall be obligated to pay compensation.

**Article 778:**

(1) Compensation shall also include evaluation of intellectual harm.

- (2) If, due to death of person who has been assaulted, intellectual harm is inflicted on his spouse or relatives, court may rule for compensation to the spouse and relatives up to second category.
- (3) Compensation for intellectual harm shall not be transferable to others, unless its amount is fixed by agreement of the parties or by final ruling of court.

**Article 779:**

Court shall determine the amount of compensation proportionate to the damage incurred, provided that it is directly caused by the harmful act.

**Article 780:**

If court cannot precisely determine the amount of compensation, it may reserve for the harmed a right to appeal on determination of the amount of compensation within a reasonable period of time.

**Article 781:**

Method of compensating, observing the circumstances, shall be determined by court. Compensation may be paid in installments or regular revenue, in which case the debtor may be obligated to give guarantees.

**Article 782:**

If the harmed person has caused or increased the incurred harm by his own fault, court may reduce the amount of compensation or even reject it.

**Article 783:**

Person shall not be obligated to pay compensation if he proves that the inflicted damage has been due to external cause without his interference or due to unexpected event or force majeure or fault of the harmed person or that of another person, unless law or agreement of parties states the contrary.

**Article 784:**

- (1) Necessity shall be estimated by the extent thereof.
- (2) Person who causes harm in defense of himself or his property or of another person or his property shall not be considered liable, provided that he has not exceeded the extent of necessary defense, otherwise he shall be obligated to pay just compensation.

**Article 785:**

Intense harm shall be dispelled by light damage. Person who inflicts, in protecting his self, greater damage than what he has incurred on another, shall be condemned to pay the compensation that court considers just.

**Article 786:**

Special harm shall be incurred in order to prevent general harm.

**Article 787:**

- (1) Act shall be attributed to its doer not to its orderer, unless doer is forced to act. In acts, only complete duress shall be considered as acceptable coercion.

(2) Public officer shall not be held liable for his act that has caused harm to another if he has performed it on the basis of order of an authority that had to be obeyed or he believed so and he has also proved his belief on legitimacy of the mentioned act by referring to reasonable means and observing necessary precautions.

**Article 788:**

Inflicting harm and repelling harm with harm shall not be permissible, also harm cannot be removed by its similar.

**Article 789:**

If several persons are responsible for harmful act, they shall have equal liability for compensation, unless judge determines compensation share of every one of them.

## **Topic 4 — Liability for Acts of Others**

**Article 790:**

Father and grandfather shall, respectively, be liable to compensate for damage inflicted by minor, unless they prove that they had taken necessary care in this respect or that harm would have occurred notwithstanding the necessary care.

**Article 791:**

- (1) Person who, by provision of law or agreement, has obligation of supervision of person shall be liable for harmful acts of person under his supervision, such as minor and insane.
- (2) Employer shall be considered liable for harms inflicted by his employee due to committing illegal act during work or due to the work, unless otherwise provided by law or agreement.

**Article 792:**

Person liable due to act of another may claim the doer compensation for he has paid.

## **Topic 5: Liability for Animals or Things**

**Article 793:**

Criminal event caused by animal shall not create any liability. Owner shall be liable to compensate for damages caused by animal if his failure to take necessary precaution to preventing the event has been proven.

**Article 794:**

If owner sees animal while inflicting harm on property of others and does not prevent it or he has had been aware of defect of animal but has not protected it, he shall be considered liable.

**Article 795:**

If person enters an animal into property of other without his permission, he shall be liable to compensate for the inflicted damage.

**Article 796:**

- (1) Caretaker of building, even though he may not be its owner, shall be liable for damage caused by destruction, even if the damage is minor, unless it is proved that destruction was not due to negligence in caretaking or it has happened due to oldness or defect of the building.
- (2) If person faces risk by building of another person, he may demand its owner to make necessary arrangements in order to prevent the risk. In the owner does not take any action, person may, upon obtaining permission of court, made those arrangements on the account of owner.

**Article 797:**

If person possesses technical instruments or other objects that need special attention in order not to inflict harm, in case of infliction of harm by these objects and instruments, he shall be recognized liable, unless he proves that he has taken adequate precautions for prevention of harm. Special provisions, in this respect, that will later be enacted shall be observed.

**Article 798:**

Claim of compensation for damage caused by any kind of harmful act shall not be heard after lapse of three years since the date of knowledge of the harmed and the inflictor of the occurrence of damage and, in all circumstances, after lapse of 15 years since the date of occurrence of harmful act.

**Article 799:**

If person, even undiscerning, gain, without legitimate cause, profit to the harm of another person, he shall be obligated to compensate for the inflicted, within the limits of what he has gained.

## **Section 2 — Useful Action**

### **Topic 1 — Unjust Payment**

**Article 800:**

Person who pays something to another person, on the assumption that its payment is obligatory for him, and it is proved afterwards that it was not obligatory, he may demand its return.

**Article 801:**

- (1) If something is given delivery to person with incomplete capacity to which he is not entitled, he shall be obligated to return what he has obtained.
- (2) If contract of person with incomplete capacity becomes void, he shall be obligated to return what he has obtained by validation of the contract.

**Article 802:**

If bad faith of person un-entitled to delivery at the time of delivery of thing or afterwards is proved, he shall be obligated to return the property and also profits accrued since the time of delivery and compensation for damages caused by his possession.

**Article 803:**

Claim of return of whatever that is paid on the basis of performance of an obligation whose cause has not been realized or has extinguished after realization shall be permissible.

**Article 804:**

If debtor fulfills his obligations before the due date, without having knowledge of it, he may demand return of what he has paid. Nevertheless, creditor may return to debtor only the profit he has gained due to the early payment, proportionate to the inflicted damage. If the undue obligation is cash payment, creditor shall be obligated to compensate for the inflicted damage, according to provisions of Article (735) of this Law or based on agreement of parties regarding the remaining time of the designated period.

**Article 805:**

- (1) If debtor assigns debt to another person, the mentioned person shall replace, upon payment of debt, the original creditor and may claim debt from debtor.
- (2) If debtor pays debt before the assignee does so, the assignee may claim return of the paid debt from debtor or original creditor.

**Article 806:**

If person pays debt of another person without being assigned to do so, debtor shall be acquitted of debt. Acceptance or non-acceptance of debtor shall not be taken into account, in this case, the payer shall be recognized as donator and shall not have a right to claim against debtor, unless there are indications that the payer has paid for a reason or he did not intend to donate at all.

**Article 807:**

If person uses, without permission, property of another person, he shall be obligated to pay its profit, unless it is movable property and the user has had good faith.

**Article 808:**

If property of person is so attached to property of another person that detaching it without damage shall be impossible, the property with lesser price, after payment of its price, shall be recognized as subordinate to the property with higher price.

**Article 809:**

If person, even undiscerning, gains, without a legitimate cause, profit to the harm of another person, he shall be obligated to compensate, within the limits of what he has gained, to the harmed person, even though gaining profit does not continue.

**Article 810:**

Claim against gaining without cause, in all previous cases, shall not be heard after lapse of three years since the date of creditor knowledge of his right to refer or lapse of 15 years since the starting date of the right to refer.

## **Topic 2 - Unauthorized Contracts**

**Article 811:**

- (1) In circumstances where act of unauthorized person has been beneficial and has been carried out due to emergency, on the basis of agency or request, he shall be obligated, to take the same care



in carrying out the act as ordinary person. Unauthorized person shall be recognized liable for his own fault and that of person obligated to take action on his behalf.

- (2) Principal may directly claim compensation from the person obligated by unauthorized person to take action.

**Article 812:**

Unauthorized person may, in circumstances stated in Article (811) of this Law, claim expenses incurred during taking action from principal within three months since the date principal becomes aware of it.

Title Three - Effects of Obligation

## Chapter 1 - Natural Obligations

**Article 813:**

If act creates natural obligation, court may determine its scope within the limits of Sharia and law.

**Article 814:**

Natural obligation may cause civil commitment.

## Chapter 2 - Specific Performance

**Article 815:**

Undertaker shall be obligated to perform specifically what he has undertaken. If specific performance is impossible, obligating undertaker to financial substitute shall be permissible, unless financial substitute shall inflict substantial harm on the other party.

**Article 816:**

Promise to transfer of ownership or any other type of real rights, shall cause immediate transfer of these rights upon observing rules of document registration, provided that subject of obligation is inherently a definite object and promisor is its owner.

**Article 817:**

If person promises to transfer one of a specified kind of real rights, transfer shall not occur until subject is specified, otherwise, creditor may, with permission of court, acquire subject out of the kind. Also, creditor may, in both cases, claim price of subject of obligation in addition to compensation for damage.

**Article 818:**

Promise to transfer real right shall entail promise to deliver subject of promise and its protection until the delivery time.

**Article 819:**

If nature of obligation or agreement of parties requires personal performance of action by undertaker, creditor may reject performance of action by another person.

**Article 820:**

- (1) If undertaker does not perform the action he has undertaken and if performance of action by him is not considered essential, the other party may seek permission to perform the mentioned action, if possible, on undertaker's account, from court.
- (2) In emergency cases, the other party may, without seeking permission of court, after noticing undertaker, perform the action on undertaker's account.

**Article 821:**

If person has promised to perform an action, he shall be obligated, upon demand of the other party, to perform the promised action, otherwise, if nature of transaction requires, ruling of court shall replace performance of undertaker.

**Article 822:**

In promise to take action, if protection or administration of object taking precaution in performance is required from promisor, promise shall only be considered fulfilled if promisor takes the kind of precaution in performance that he usually takes, even though the desired aim is not realized, unless otherwise explicitly stated by law or agreement of parties. In all cases, if promisor commits fraud or big fault, he shall be considered liable.

**Article 823:**

If undertaker infringes his obligation of action or omission, the other party may demand removal of what has been performed against the promise and, if necessary, claim compensation for damages from undertaker.

## **Chapter 3 — Performance through Threatening to Claim Compensation**

**Article 824:**

- (1) If specific performance shall be impossible or unsuitable without personal performance of obligation by undertaker, the other party may request court ruling to obligate undertaker to perform and, in case of refusal, to threaten him to compensate.
- (2) If court considers the amount of compensation, for forcing undertaker who refuses to perform his obligation, inadequate, it may raise amount of compensation as the case requires.

**Article 825:**

If undertaker, after being threatened by compensation, does not personally fulfill his obligation or insists in refusing to perform, court shall determine the amount of compensation by taking the inflicted damage to the other party and intention of undertaker into account.

## **Chapter 4 — Performance through Compensation**

**Article 826:**

Performance through compensation shall take place in accordance with provisions of law.

**Article 827:**

Entitlement to compensation shall not realize before notifying undertaker, unless law has provided otherwise.

**Article 828:**

Notifying undertaker shall happen by written notice or whatever that can substitute notice. Agreement of parties to the effect that mere arrival of date of performance of obligation without any other measure shall be considered as notifying may also be considered as substitute of notice.

**Article 829:**

Notifying undertaker shall not be necessary in following cases:

- 1- If specific performance of obligation has become impossible by personal act of undertaking person.
- 2- If subject of undertaking is compensation for damages caused by illegal act.
- 3- If subject of undertaking is returning something that has been stolen, and undertaker has knowledge of it or he has knowingly delivered it unjustly.
- 4- If undertaker has stated his refusal in writing.

**Article 830:**

- (1) Agreement of parties on bearing liability for unforeseen and force majeure events by undertaker shall be permissible.
- (2) Also, it is permissible for parties to agree on acquitting undertaker of any kind of liability due to failure to perform his contractual obligations. Liability due to fraud and big fault of undertaker person by agreement of parties may not be acquitted. Undertaker may stipulate acquittal of his liability in case of fraud and big fault of persons recruited for performance of obligation.
- (3) Any kind of agreement by parties on acquittal of liability due to illegal action shall be void.

## **Chapter 5 - Guarantee of Rights of Creditors**

### **Section 1 - General Provisions**

**Article 831:**

- (1) All properties of debtor shall be used as guarantee for payment of his debt.
- (2) All creditors have equal rights on properties of debtor, unless creditors who have priority rights according to provisions of this Law.

### **Section 2 - Means of Performance**

#### **Topic 1 - Indirect Claims**

**Article 832:**

Creditor may exercise debtor's rights on behalf of debtor, even if debt is not due yet, provided that the mentioned right is not of non-financial exclusive rights of person of debtor or it is not possible to be

attached. If creditor has exercised this right, he may prove its non-exercise by debtor and also prove that non-exercise of the right by debtor would cause his bankruptcy or increase of his bankruptcy. In this case, notifying debtor is not necessary, unless his involvement as opponent in lawsuit is indispensable.

**Article 833:**

If creditor exercises debtor's rights, he shall be recognized as his substitute and profits gained as a result of the exercise of rights shall be property of debtor and shall be guarantee for all creditors.

## **Topic 2 – Claim of Invalid Use**

**Article 834:**

If creditor's right is payable and debtor takes an action on it that inflicts harm on creditor, in a way that reduces rights of debtor or increases his obligations in a way that results in debtor's bankruptcy or increase of his bankruptcy, creditor may, with due consideration of conditions prescribed in Article (835) of this Law, claim invalidation of such action.

**Article 835:**

- (1) Debtor's reciprocal action shall be invalid for creditor if the mentioned action entails debtor's fraud, and the other party has knowledge of it. Debtor's action shall entail fraud if debtor has knowledge of his bankruptcy at the time action.
- (2) Knowledge of the other party of debtor's bankruptcy shall be considered adequate to show his knowledge of fraud. Debtor's pro bono action for creditor shall not be considered valid, even though the other party has good faith and debtor has not committed fraud.
- (3) If successor, to whom debtor transferred property, transfers property to another successor in exchange for consideration, creditor may not resort to invalidation of action, unless the second successor has, during debtor's transaction with the first successor, knowledge of debtor's fraud in the reciprocal contract or has knowledge of his bankruptcy in bare contract.

**Article 836:**

If creditor claims bankruptcy of debtor, he shall be obligated only to prove the amount of debts of debtor. Debtor shall be obligated to prove that he owns an amount of property that equals to or is more than his debts.

**Article 837:**

If order of invalid action is issued, all creditors to the harm of whom the action is taken may benefit from this ruling.

**Article 838:**

- (1) If debtor fulfills his obligations or his properties are sufficient for repayment of his debts, right of creditor to invalid action shall extinguish.
- (2) The other party of debtor may be denied claim to invalid action if he personally takes measures in claiming rights of creditors or proves that debtor owns such amount of property that is adequate to pay his debts.

**Article 839:**

If person acquires a right from bankrupt debtor with paying no consideration, claim of creditors against him shall not be heard if the mentioned consideration is fungible and is deposited in treasury or a bank designated by court.

**Article 840:**

- (1) If fraud is committed merely with the aim of gaining unfair priority of one of creditors, such an act shall only result in deprivation of priority right for the creditor.
- (2) If bankrupt debtor pays debt of one of creditors before its due date, such payment shall not affect rights of other creditors to file claim of invalid action. Also, if debt has been paid after the due date based on parties' compromise, it shall be considered subject to the same rule.

**Article 841:**

Claim of invalid action shall not be heard after lapse of three years since the date creditor gains knowledge of the reason causing invalidity of action. In other cases, claim shall not be heard after lapse of fifteen years since the date of action.

## **Section 3 — Issues of Guarantee**

### **Topic 1 — The Right to Retention**

**Article 842:**

Each of contracting parties may, in financial exchanges, keep subject of contract with himself until he is not given delivery of consideration.

**Article 843:**

If person bears necessary and useful costs for property of other that is under his legitimate possession, he may refuse to return the property return to owner until he obtains what he is legally entitled to, unless obligation for returning the property arises from illegitimate action.

**Article 844:**

Person who promises to give a property, he may refuse to give the mentioned property until the other party performs the obligation deriving from debtor's relevant promise or gives adequate guarantee for performing it.

**Article 845:**

Proof of the right to retention object shall not prove priority right to it. Retainer shall be obligated to protect the object and present account of its revenues. If there is fear of destruction or defection of the object, retainer may request court permission to sell it according to procedure for selling possessed mortgaged objects, in this case the right to retention shall transferred to price of object.

**Article 846:**

- (1) The right to retention of object shall extinguish with elimination of its possession.

- (2) If object is taken out of person's possession secretly or notwithstanding his protest, he may claim return of possession, provided that the claim is made within one month since the date person obtains knowledge of exclusion of object and before lapse of one year since this date.

## **Topic 2 - Incapacitation of Bankrupt Debtors**

### **Article 847:**

If debtor refuses to pay payable debts and it becomes clear that his debts exceed his property, there is fear of destruction of his property among creditors or debtor concealed his property or has reserved it under the name of another person, he shall be recognized as bankrupt.

### **Article 848:**

- (1) If conditions stated in Article (847) of this Law apply to debtor, each of creditors may request the court in whose jurisdiction debtor resides to incapacitate debtor in taking action on the property. This request shall be registered in the relevant book.
- (2) Upon registration of the request, any action by debtor shall be void.

### **Article 849:**

- (1) Upon issuance of order of prohibition of debtor from taking action and its registration and publication in official gazette, each creditor may request the relevant court to issue an order of attachment of debtor's movable and immovable property, including debts others owe him. Properties that may not be attached are exempted from this provision, attachment of bankrupt's properties to the interest of creditors shall remain in force until the end of attachment.
- (2) The attached properties shall be entrusted to a reliable person chosen by creditors in order to be administered. The person submits account of the properties to the court that has issued the attachment order.

### **Article 850:**

Alimony of debtor who is prohibited from possession and alimony of persons that has to be paid by the debtor, during prohibition period assessed by , shall be paid from the attached properties.

### **Article 851:**

- (1) If bankrupt debtor is ruled incapacitated, deferment period of deferred debts shall extinguish and the profit made since the time of extinguishment shall be reduced from the mentioned debts.
- (2) Court may, based on request of debtor and against creditors in deferred debts, order preservation of moratorium or its extension.

Similarly, court may, in case conditions or interest of debtor and creditors require, extend urgent debts.

### **Article 852:**

If incapacitated debtor confesses to have debt, his confession shall not be valid. If he pays a debt, that he owes, to one of creditors, other creditors shall have the right to its repossession.

**Article 853:**

Trustee who is appointed to administer properties of debtor shall deposit profit of the properties in a bank designated by court under the account of creditors. Also he may, with permission of court and agreement of debtor and creditors, take measure to sell that part of the attached properties that their sale is permissible in order to pay debt.

**Article 854:**

- (1) Incapacitated debtor may, with agreement of majority of creditors who represent three fourth of debts, sell all or part of his properties, provided that he allocate the price for payment of his debts.
- (2) If creditors do not agree on distribution of the price, it shall be deposited in the bank designated by court so that court distribute it according to the provisions of law.

**Article 855:**

Debtor may, with permission of court even without consent of creditors, take action on his property, provided that this action is taken with market price and that the customer deposit it in the bank determined by court under creditors' escrow account.

**Article 856:**

Debtor shall be sentenced to fraud punishment in the following cases:

- 1- When debt claim is filed against debtor and he intentionally pretends bankruptcy with the intention of inflicting harm on creditors, provided that the claim has ended with issuance of bankruptcy ruling and proof of debt.
- 2- When debtor, with the purpose of harming creditors after issuance of incapacitation ruling due to his bankruptcy, conceals some of his properties in order to prevent implementation of the ruling or makes up debts or exaggerate them.

**Article 857:**

Bankruptcy shall terminate in the following cases based on the request of interested persons and verdict of the competent court:

- (1) When it is proved that properties of debtor exceed his debts.
- (2) When all or some of creditors acquit debtor and properties of debtor exceed the remaining debts.
- (3) When debtor pays an urgent debt while incapacitation ruling has not had any effect on its urgency. In this case, urgent debts shall refer to the designated time before issuance of the bankruptcy verdict, provided that its due installments have been paid as well.
- (4) When all debts are, on the basis of settlement, paid among creditors, trustees and debtor.

**Article 858:**

- (1) After termination of incapacitation ruling, the issue shall be registered in the margin of registration of incapacitation ruling and shall be published in the official gazette at expense of debtor.
- (2) Remaining properties shall be taken out of possession of the trustee and shall be submitted to debtor.

# Chapter 6 — Multiplicity of Parties to an Obligation

## Section 1 — Shared and Unshared Debts

### Article 859:

Debt with the same cause shall be considered shared, whether it has arisen from a single contract or been transferred to heirs or been spent from common property or given from shared property in exchange of a loan.

### Article 860:

In case of difference, debt shall be considered unshared.

### Article 861:

If debt is shared between two or more persons, each of them may claim his own part from debtor. If one of partners takes delivery of part of debt, the remaining partners shall, proportionate to their shares, share it. In case of absence of some of partners, the present partner may claim payment of his own share.

### Article 862:

If one of partners takes delivery of part of the shared debt, the other partner may share the delivered part and jointly claim the remaining part from debtor or may claim his complete share from debtor.

### Article 863:

If partner chooses to refer to debtor, he may not refer to the partner who has taken delivery of part of debt, unless his share has been destroyed. In this case, he shall refer to the one who has taken delivery for his own share in the gained property.

### Article 864:

- (1) If the partner who has taken delivery of part of debt transfers it, one way or another, or destroys it, he shall be liable towards other partners proportionate to their share.
- (2) If the delivered perishes, unintentionally, while in his possession, he shall not be liable for shares of other partners, the remaining debt of debtor shall belong to other partners and the partner who has taken delivery shall not have share in it.

### Article 865:

If one of partners takes guarantor for his share from debtor or if debtor assigns his debt to another person, other partners shall share the amount he takes delivery of from the guarantor or the assignee.

### Article 866:

If one of partners gains permission of a property equivalent to his share from debtor, he shall be recognized as possessor of his own share. Other partners may, proportionate to their shares, share with the possessor or refer to debtor.



**Article 867:**

If one of partners in shared debt donates his share to debtor or acquit him, the mentioned donation and acquittal shall be valid and he shall not be liable towards other partners.

**Article 868:**

If debtor dies and the inheritance is less than his debts, all partners shall share inheritance proportionate to their shares.

**Article 869:**

If the shared debt is inheritance property, none of partners may defer share of his partner without his permission. He may only defer his own share.

**Article 870:**

If the shared debt is based on payable loan contract, none of partners may defer the debt alone, without agreement of other partners.

**Article 871:**

Partners may agree that each of them has a right to take delivery of their shares of debt from debtor without giving others the right to refer to him. This agreement shall have be considered as division of debt and each partner's share shall belongs to himself without partnership of other partners.

**Article 872:**

If the claimed debt is unshared, each of creditors may solely gain his share from debtor. Other partners shall not have a right to share in the delivered debt.

## **Section 2 — Joint Guarantees**

### **Topic 1 — General Provisions**

**Article 873:**

Joint guarantee among creditors and debtors may not happen without agreement of parties or provision of law.

### **Topic 2 — Joint Surety of Creditors**

**Article 874:**

- (1) Creditors may, based on joint surety, collectively or individually claim all of the debt from debtor.
- (2) Debtor may not, in case of claim of payment of debt by one of the joint surety partners, resort to those defence methods that belong to other creditors. Debtor may resort to special defence methods that belong to the claiming person or to his share or resort to defence methods that are common among all creditors.

**Article 875:**

Debtor may pay all of the debt to one of the joint surety creditors, unless one of creditors has prohibited him by a prior notice.

**Article 876:**

- (1) If debtor is acquitted against one of the joint surety creditors due to a reason other than payment of debt, he shall not be acquitted against the remaining creditors, unless the acquittal is equivalent to shares of creditors against whom he has been acquitted.
- (2) If one of the joint surety creditors takes an action on the basis on which harm is inflicted on creditor, this action shall not be affect shares of other creditors.

**Article 877:**

All creditors shall share whatever one of the joint surety creditors takes from debtor as payment of debt, unless agreement of creditors or provisions of law states the contrary.

### **Topic 3 – Joint Surety of Debtors**

**Article 878:**

- (1) When joint surety exists among debtors, creditor may claim all of the debt from all of the debtors or from any one of them that he wishes. Claiming debt from one does not preclude claiming from other debtors.
- (2) Debtor from whom creditor claims the debt may not resort to special defence methods that belong to another debtor, except to the extent of his own share, provided that he has paid his own share of debt in some way. The debtor may resort either to the special defense methods that belong to himself or to the defense methods shared among all debtors.

**Article 879:**

If one of the joint surety debtors pays all of the debt or its substitute or through assignment, he and the rest of debtors shall be recognized acquitted.

**Article 880:**

Renewal of debt between creditor and one of the joint surety debtors shall cause acquittal of the rest of debtors, unless creditor has reserved his right to claim against the rest of debtors.

**Article 881:**

A joint surety debtor may not resort to offset of debts that is occurred between creditor and other partner debtors, except to the extent of share of the same debtor.

**Article 882:**

In case of unity of creditor's obligation with one of the joint surety debtors, debt shall not extinguish for other debtors, except to the extent of share of the debtor whose obligation has become united with creditor.

**Article 883:**

If creditor acquits one of the joint surety debtors, his debt shall extinguish. Other debtors shall not be considered acquitted, unless creditor explicitly mentions their acquittal. In this case, creditor may claim only the remaining part of debt after deducting of share of the acquitted from the rest of debtors.

**Article 884:**

If creditor acquits one of the joint surety debtors, he shall have a right to claim all of the debt from the rest of debtors, unless the contrary is agreed.

**Article 885:**

- (1) In all cases where one of the joint surety debtors is acquitted of debt or joint surety by creditor and another debtor becomes bankrupt, the rest of debtors may refer to him, during payment of debt and proportionate to the debt that is transferred from the acquitted debtor to the bankrupt debtor, according to Article (892) of this Law.
- (2) If creditor frees the acquitted debtor from any debt obligation, share of the bankrupt debtor shall be imposed on creditor himself.

**Article 886:**

- (1) If debt of one of the joint surety debtors comes under period of limitations, other debtors may not benefit from it, except proportionate to the share of the mentioned debtor.
- (2) If period of limitations of one the joint surety debtors is stopped or invalidated, creditor may not resort to it against other debtors.

**Article 887:**

- (1) Joint surety debtor shall, in performing his obligations, be only responsible for his own actions. If creditor gives notice to one of the joint surety debtors, it shall not affect other debtors, unless otherwise agreed.
- (2) If notice is given to creditor by one of the joint surety debtors, other debtors may benefit from it.

**Article 888:**

- (1) If creditor compromises with one of the joint surety debtors over the subject of debt in such a way that it entails acquittal of debt or implies acquittal of debtor of his obligation in some way, the rest of debtors shall benefit from it.
- (2) If compromise of creditor with one of the joint surety debtors increases debtor's obligations or creates new obligations, such a compromise shall not affect other debtors, unless they have agreed so.

**Article 889:**

- (1) If one of the joint surety debtors confesses to debt, his confession shall not be valid for other debtors.
- (2) If one of the joint surety debtors dishonors his oath or creditor swears to justify it, the rest of debtors shall not be affected by it.
- (3) If creditor considers sufficient the oath of one of the joint surety debtors, the rest of debtors shall benefit from it.

**Article 890:**

- (1) If a verdict is issued against one of the joint surety debtors, due to a special cause, this verdict may not be used against other debtors.
- (2) If a verdict is issued to the benefit of one of the joint surety debtors, other debtors shall benefit from it, unless the verdict is issued due to a special cause related to the beneficiary debtor.

**Article 891:**

- (1) If one of the joint surety debtors pays all of the debt, he may refer to the rest of debtors proportionate to the share of each of them. And if the real debtor is another person and he has paid the debt instead of this real debtor, in this case, he may refer as creditor to the real debtor for all of the debt.
- (2) If one of the joint surety debtors pays debt, the debt shall be equally divided among all the joint surety debtors, unless otherwise is the agreement or provision of law.

**Article 892:**

If one of the joint surety debtors becomes bankrupt, debtor who paid debt and the rest of debtors who are able to pay the debt shall bear paying the bankrupt debtor's share proportionate to their own shares.

**Article 893:**

If only one among all the joint surety debtors is recognized as beneficiary to debt, this person shall be obligated to pay debt.

**Article 894:**

Obligation shall not be divisible in the following cases:

- 1 – When subject of obligation is naturally indivisible.
- 2 – When it becomes obvious from intention or purpose of contracting parties that obligation is indivisible

**Article 895:**

- (1) If there are multiple debtors in an indivisible obligation, each of them shall be considered obligated to fulfill all of the undertaking.
- (2) Debtor who pays debt may refer to the rest of debtors proportionate to their own shares, unless its contrary appears from circumstances and conditions.

**Article 896:**

- (1) If creditors or heirs of creditor are multiple in an indivisible obligation, each of creditors or heirs may claim performance of all of obligation from debtor. In case of objection of one of creditors or heirs to that, debtor shall be obligated to pay the whole to all creditors or heirs, or deposit the debt, which is subject of obligation, in trust.
- (2) Creditors may refer to the creditor who has received all the debt for their own shares.

# Chapter 7 — Discharge of Debt

## Section 1 — Methods of Discharge

### Article 897:

Discharge of debt shall take place by cash payment, offset of debts, acquittal, assignment and renewal.

## Section 2 — Parties to Discharge

### Article 898:

- (1) Debt may be discharged by debtor, his representative or person to whose interest is the payment, subject to consideration of provisions of Article (819) of this Law.
- (2) Also, subject to observation of the above sub-clause, discharge of debt by third party, even if the discharge is not to his interest, shall be valid, with or without order of debtor. Similarly, creditor may reject discharge of debt by third party if debtor objects to this and notifies it to creditor.

### Article 899:

- (1) If a person other than debtor discharge debt, he may refer to debtor for the amount he has paid.
- (2) Nevertheless, debtor without whose consent discharge has been made may deny referring of person who has discharged all or part of the debt, provided that he proves that there is a benefit in the objection.

### Article 900:

If discerning minor or incapacitated person discharges his debt, his discharging shall be valid and he shall be considered acquitted.

### Article 901:

Debtor with terminal illness may not pay one of creditors if it is to the harm of other creditors.

### Article 902:

In order for discharge of debt to be valid, discharging person has to be owner of discharged property and have capacity to take action on it. If the paid property is rightfully taken by another person or substitute is taken due to its destruction, creditor may claim debt from debtor.

### Article 903:

If a person other than debtor discharges debt, he shall be recognized as successor of creditor in the following cases:

- 1- When he is obligated, jointly or on behalf of debtor, to discharge debt.
- 2- When discharging person is creditor, pays debt of a creditor who has real guarantee and is prior to the mentioned creditor, though the discharging person does not have guarantee.
- 3- When person has bought a real property that is a guarantee for rights of creditors and price of the mentioned property has been paid for discharging of their debts.
- 4- When discharging person is recognized by explicit provision of law as successor.

**Article 904:**

Creditors who have received their debts from persons other than debtor may, upon agreement of parties, appoint the payer as their successor, even though debtor does not consent to this agreement. The agreement may not take place after discharging.

**Article 905:**

If debtor borrows from third party in order to pay his debt, he may appoint the lender as successor of the creditor to whom he has paid the debt, even if the mentioned creditor does not consent to it, provided that it is mentioned in the loan contract that the borrowed property is allocated to paying debt and on the receipt of debt it is stated that it has discharged out of this property.

**Article 906:**

Person who becomes, by provision of law or agreement, successor of creditor shall own rights of creditor with all attributes, supplements, guarantees and defenses attached to debt. This person shall be recognized as successor of creditor for the amount has paid creditor.

**Article 907:**

- (1) If person other than debtor pays part of debt and becomes successor of creditor for that part, this shall not harm creditor and in claiming the remaining part of debt he shall have priority right over persons other than debtor, unless its contrary is agreed.
- (2) If another person becomes successor of creditor for payment of the remaining part of debt, each of them may, proportionate to his own share, refer to debtor.

**Article 908:**

Debt shall principally be paid to creditor or his agent. If creditor is incapacitated, debt shall have to be paid to his guardian, executor or protector who has authority to take delivery of debt. If debt is paid to the incapacitated creditor, it shall not be valid and debtor shall not be recognized as acquitted. If it is destructed or wasted, the guardian, executor or protector may claim the debt.

**Article 909:**

If debt is paid to person other than creditor or his agent, debtor shall not be recognized as acquitted, unless creditor confirms payment of debt or debt is paid in good faith to a person who is apparently recognized as entitled to it.

**Article 910:**

- (1) If creditor, after valid offer of payment of debt, refuses to accept it or prevent from taking actions without which discharging may not take place or notifies debtor that he is in no circumstance ready to accept the payment, debtor may officially notify creditor of acceptance of the payment within the designated time.
- (2) The following legal consequences shall arise from debtor's notice to creditor:
  - 1- Transfer of liability for destruction or waste of debt from debtor to creditor.
  - 2- Suspension of profits.
  - 3- Depositing of debt with bank or treasury of government at the expense of creditor.
  - 4- Claim of compensation for inflicted damage from creditor.

**Article 911:**

Depositing debt may only be counted as substitute for discharging when creditor accepts it or court rules its validity.

**Article 912:**

If subject of debt is real property or something that its survival and stability is desired and debtor has requested court to give it to possession of trustee, this delivery shall substitute depositing.

**Article 913:**

Debtor may, upon permission of the relevant court, sell in an open auction perishable objects or objects that their protection or depositing require huge expenses and deposit their price with a bank escrow account.

**Article 914:**

Debtor may take measures to deposit debt in trust or take those actions that substitute it if identity and domicile of creditor is unknown to him or creditor lacks capacity or has incomplete capacity and does not have a successor who accepts payment of the debt or debt is subject of conflict of several persons or there are major factors that require the above actions.

**Article 915:**

- (1) If debtor offers payment of debt to creditor and subsequently deposits it in trust or takes similar actions, he may withdraw his offer, provided that creditor has not accepted the offer or final ruling on its validity is not issued by court. In this case partners or guarantors of debt shall not be recognized as acquitted.
- (2) If debtor withdraws his offer of payment of debt after creditor's acceptance or after issuance of validity ruling by court and creditor accepts his withdrawal as well, creditor may not resort to guarantees for his rights. In this case, partners and guarantors of debt shall be recognized as acquitted.

### **Section 3 — Subject of Debt Discharge**

**Article 916:**

- (1) If debt is of those things that can be determined by determination, debtor may not pay another object without consent of creditor, even if the value of substitute is equivalent to or more than that of the object.
- (2) If debt is of those things that cannot be determined by determination and is designated by contract, debtor may pay its similar, even if creditor does not consent to it.

**Article 917:**

If creditor obtains a commodity, of the same substance as that of his own right, from property of debtor through legitimate ways, he may retain it, provided that it has the same attributes.

**Article 918:**

In immediate debt, debtor may not compel creditor to accept part of the debt, even though it is divisible.

**Article 919:**

If debtor pays one of the due debts that one of them is with guarantee and the other is without guarantee or one of them is loan and the other is price of the sold object or one is a shared debt and the other is a special debt or if the two debts are different in some way, in case of disagreement between creditor and debtor on the type of debt, debtor may determine it at the time of payment.

**Article 920:**

If debtor is obligated to pay the debt with its expenses and compensations and the paid amount does not suffice the debt and its supplements, from this amount, expenses of compensations and the principle of debt shall be respectively deducted, unless the contrary is agreed.

**Article 921:**

- (1) If debt is a deferred one or is to be paid in definite installments, debtor may not claim the debt before the due date.
- (2) If debt is immediate or discharge date has become due, debtor is obligated to pay it immediately. However, court may, if necessary and subject to lack of legal bars, considering debtor's circumstance, grant debtor a moratorium, provided that it does not cause grave harm to creditor.

**Article 922:**

- (1) If debt is deferred and the deferment is to the interest of debtor, debtor may discharge the debt before its due date. In this case, creditor shall be compelled to accept the payment, unless the contrary is agreed or creditor shall be harmed by this compulsion.
- (2) If debtor pays debt before its due date and then the accepted payment is taken by entitlement, the debt shall return to its previous deferred state.

**Article 923:**

- (1) If debtor has undertaken to deliver a property that entails freight and expenses and its delivery place is not designated in contract, the mentioned property shall be given delivery in the place that it was present during conclusion of contract.
- (2) In other obligations, debt shall be discharged at the residence place of debtor at the time of discharging or at his workplace, provided that the mentioned obligation is related to that work, unless the contrary is agreed.

**Article 924:**

If debtor sends payment of debt by his courier and it perishes before reaching creditor, debtor shall not be acquitted. If delivery is given to authorized representative of creditor, debtor shall be acquitted.

**Article 925:**

Costs of discharge of debt shall be borne by debtor, unless custom or provision of law states the contrary.

## **Section 4 - Discharge of debt by Substitute**

**Article 926:**

If creditor accepts another object instead of what he is entitled to, this replacement shall be considered as substitute to discharge.



**Article 927:**

If discharge of debt by substitute has taken place by transferring ownership of the object that is paid in return of debt, provisions of sale, especially those related to capacity of contractors, guarantee of entitlement and hidden defects shall be applied to it. And with respect to discharge of debt, provisions on discharging, especially those related to determination of type of discharge and extinguishment of guarantees shall be applied.

## **Section 5 - Renewal and Representation**

**Article 928:**

Renewal of debt by a new contract that is different from the previous one in subject, cause or change of one of parties to contract shall be permissible.

**Article 929:**

Renewal of debt is permissible in the following cases:

- 1 – Change of debt due to change of place or cause of the original debt by agreement of both parties.
- 2 – Replacement of creditor by agreement of creditor, debtor and the third person in such a way that the third person is considered the new creditor.
- 3 – Replacement of debtor in such a way that creditor and another person agree that the latter replaces the original debtor, and the original debtor, regardless of consent the new debtor, is recognized as acquitted.
- 4 – Agreement of another person to be recognized as the new debtor and the original debtor has obtained agreement of creditor to this effect.

**Article 930:**

In case of renewal of contract, the original debt shall extinguish and the new debt shall substitute it.

**Article 931:**

If the original debt has either personal or real guarantee, in case of renewal of debt, its guarantees shall extinguish, unless their renewal is agreed.

**Article 932:**

- (1) Renewal of debt shall be valid if the former and new debts are free from nullity causes.
- (2) If the former debt originates from a contract that is recognized as voidable, its renewal is not permissible, unless renewal is made in order to permit conclusion of contract and its substituting the former contract.

**Article 933:**

Debt shall have to be renewed on the basis of explicit agreement or circumstances and conditions explicitly indicate so. Renewal of debt in the form of loan is not permissible.

**Article 934:**

Representation in debt shall be valid if creditor accepts undertaking of another person to pay the debt instead of debtor, this shall be recognized as renewal of debt with change of debtor. Renewal of debt by

representation shall not be valid on the basis of assumption. If agreement for renewal does not exist, new undertaking shall be created along with the old one.

**Article 935:**

Obligation of representative to creditor shall be valid, even if his obligation to debtor is void or defensible against debtor. In this case representative may only refer to debtor.

## **Section 6 — Offset of Debts**

**Article 936:**

Offset is extinguishment of debts that two people mutually owe to each other.

**Article 937:**

Offset is either compulsory that takes place by provision of law voluntary that takes place with consent of parties.

**Article 938:**

In compulsory offset, unity of substance, description and entitlement of both debts are essential and in voluntary offset, the mentioned unity is not a condition.

If substance or description of debts is different, one of them is deferred and the other urgent, offset may not take place, except with consent of parties whether causes of debts are united or different.

**Article 939:**

If trustor owes trustee a debt that is of the same substance as the deposited property or if owner of the usurped property owes usurper a debt that is from the same substance as the usurped property, offset of debts shall not happen without consent of parties.

**Article 940:**

If creditor destructs a property of debtor that is of the same substance as debt, debt shall be offset. In case of difference of substance, offset of debts may not happen without consent of parties.

**Article 941:**

If creditor owes the guarantor of debtor a debt of the same substance as the debt, the debts shall be offset without consent of the parties. In case of difference of the substance of the guaranteed debt, offset shall not happen without consent of creditor and guarantor.

**Article 942:**

Offset shall take place at least by two debts and it shall be valid when the beneficiary resort to it.

**Article 943:**

If a debt lawsuit, which is based on offset, is dismissed due to lapse of time limit, the dismissal shall not prevent offset of debts, provided that offset has been possible before lapse of time limit.

**Article 944:**

- (1) Offset that harms acquired rights of other persons shall not be permissible.
- (2) If another person, who is in possession of debtor's property, attaches the property, and thereafter debtor becomes creditor of his own creditor, debtor may not offset the debts to the harm of the person who has attached the property.
- (3) Offset of a debt that is deposited in trust or lent shall not be permissible.

**Article 945:**

If debtor, despite having the right to claim offset of debts, discharges the debt, he may not resort to offset to the loss of others regarding guarantees for his rights, unless he has not been aware of the mentioned rights.

**Article 946:**

- (1) If creditor assigns his right to another person and debtor explicitly accepts this assignment, after that, debtor may not resort to offset against assignee, even if he had had this right before acceptance of the assignment. In this case, debtor does not have a right to revert, except against the assignor.
- (2) Mere notification of assignment to debtor, without his acceptance, shall not prevent him to resort to offset, unless the right that is subject of offset has been transferred to assignor after notification of assignment.

## **Section 7 — Unity of Obligation**

**Article 947:**

If in a single debt attributes of creditor and debtor are united in one person, the debt shall extinguish to the extent of unity of obligation.

**Article 948:**

If cause of unity of obligation extinguishes and this extinguishment has retroactive effect, debt and its supplements shall be restored regarding the concerned persons. In this case, unity of obligation shall be considered as if it never existed.

## **Title 4 — Termination of Contracts**

### **Chapter 1 - Acquittal**

**Article 949:**

Acquittal of right shall take place either in the form of acquittal by waiving or acquittal by utilization.

**Article 950:**

Acquittal by waiving means that creditor acquits his debtor of all or part of his right. Acquittal by utilization is that creditor confesses receipt of his right.

**Article 951:**

Acquittal shall happen either in particular, of a single right or claim, or in general, of all of rights and claims.

**Article 952:**

Acquittal shall be valid if the person who acquits has the capacity to donate.

**Article 953:**

Acquittal shall not be subject to acceptance of debtor, but it shall be rejected by rejection of debtor. If debtor dies before acceptance of acquittal, his debt shall not be claimed from his inheritance.

**Article 954:**

Acquittal has the meaning of transferring ownership and subjecting it to conditions shall be valid.

**Article 955:**

If creditor acquits debtor of part of the debt with the condition that debtor pays the remaining part of the debt on a specific date, in case debtor fulfils the condition, he shall be recognized as acquitted, otherwise, he shall be obligated to pay all of the debt.

**Article 956:**

If a right is not waivable, it may not be acquitted.

**Article 957:**

If there are multiple debtors, each of them shall have to be definitely mentioned in the acquittal.

**Article 958:**

Acquittal of those rights shall be permitted that are established before acquittal. It shall not include those debts that will become binding after acquittal, even if cause of debt has existed before acquittal.

**Article 959:**

Claim of a right, acquitted in particular or general, shall not be heard.

## Chapter 2 — Impossibility of Performance

**Article 960:**

If debtor proves that fulfillment of his obligation has become impossible due to a cause beyond his will, the obligation shall extinguish.

**Article 961:**

If a property, based on a contract or without it, comes in possession of a person other than the owner and this property perishes without infringement by or fault of this person, if the possession has been with guarantee, the possessor shall be liable to compensate for the loss, and if the possession has been in trust, there shall be no compensation.

**Article 962:**

Possession shall be considered with guarantee if possessor has possessed the property with the purpose of ownership. If possessor has possessed the property with the intention of being on behalf of owner, this possession shall be recognized as trust.

**Article 963:**

Possession in trust shall change to possession with guarantee if possessor unrightfully prevents the owner of possessing the object or take it without the owner's permission, even if this has not happened with the purpose of ownership.

**Article 964:**

- (1) If ownership of an object is transferred on the basis of contract, possession of the previous owner before delivery of the property shall be recognized as possession with guarantee.
- (2) If the owner denies delivery of the property because of the right to retention, his possession shall be changed to possession in trust.

## Chapter 3 — Extinction of Rights Due to Lapse of Time

**Article 965:**

- (1) Rights shall not extinguish due to lapse of time.
- (2) Claim of rights, on any basis, against disclaiming person shall not be heard after lapse of fifteen years, subject to observation of its special provisions and the following exceptions:

**Article 966:**

If continuous, periodic and renewable rights, such as rent of accommodations, lease of lands and salaries, which are not claimed within five years without any legal excuse, they shall not be heard. But the time limit for crops for which possessor with bad faith or endowment supervisor is liable shall be fifteen years.

**Article 967:**

Claims of the following rights shall not be heard after lapse of one year:

- (1) Rights of physicians, professors, architects and attorneys deriving from their jobs and, in general, rights of any person who has freelance job such as pharmacists, dealers, commissioners and experts.
- (2) Rights of merchants and craftsmen regarding imported commodities and products transferred to other persons who do not commerce with them.
- (3) Rights of owners of hotels and restaurants regarding the per night rent, cost of foods and other expenses.
- (4) Rights of laborer, servant and hireling regarding the daily or non-daily wages.

**Article 968:**

Even if the mentioned persons continue to provide services, work and products, claims of Article (967) of this Law shall not be heard.

**Article 969:**

Person who resorts to dismissal of claim due to lapse of one year shall, if court orders him to swear, have to take such an oath that he has no obligation of the debt. If court orders heirs of debtor or his guardians, executors and protectors to swear they shall have to take such an oath that they do not have knowledge of existence or discharge of the debt.

**Article 970:**

- (1) The time stated in Article (967) of this Law shall start from the end of the assigned duty, even though creditors continue to perform other duties.
- (2) If a right is supported with a written document, claim of such a right shall not extinguish, unless it has not been claimed, without legal excuse, within 15 years since the date of entitlement.

**Article 971:**

If predecessor waives a claim and his successor also waives it for some time in a way that sum of both periods of waiving equals the designated criterion of time limit, the claim shall not be heard.

**Article 972:**

Period of time limit shall be calculated on the basis of day, not hour. The first day shall not be counted and with the expiration of the last day, the period shall be considered completed.

**Article 973:**

- (1) The designated period of dismissal of case shall start from the date of entitlement of discharge of debt.
- (2) The designated period of dismissal of case regarding conditional debts shall start from the date of realization of condition and regarding guarantee of entitlement, it shall start from the date of establishment of entitlement and regarding deferred debt, it shall start from expiration of the due date.
- (3) If the due date is determined by creditor's will, the time limit shall start from the date in which creditor is able to express his will.

**Article 974:**

- (1) Claims of taxes and duties to which the government is entitled shall not be heard after lapse of five years. The time limit of taxes shall start from the end of entitlement date and that of duties on judicial documents shall start from the end of the date of the claim that is written on the mentioned documents or the date in which the documents were written if the claim has not been filed yet.
- (2) Claim of refund of taxes and duties paid unrightfully shall not be heard after five years. This period shall start from the discharge date.
- (3) If the above provisions contradict any special law, provisions of the special law shall apply.

**Article 975:**

- (1) The designated period of dismissal of case shall be stopped due to legal excuse, intellectual impediments and an impediment that makes the creditor's claim of his right impossible.
- (2) The period that is lapsed due to the excuse shall not be calculated.

**Article 976:**

If some of the heirs, without excuse, waives their claim of debt, within the designated period, against their testator and the rest of heirs have legal excuse for waiving their claims, claims of the remaining heirs, proportionate to their shares of debt, shall be heard.

**Article 977:**

The designated period of dismissal of case shall be interrupted by judicial claim of attachment notice, even if claim is filed with a court not assigned to it, or by creditor's request of acceptance of his right against creditors, in bankruptcy or in distribution and division of property of bankrupt debtor, also by any action of creditor resorting to his right during any legal proceedings of a claim for his right.

**Article 978:**

- (1) If debtor confesses, explicitly or implicitly, to creditor's right, the designated period of dismissal of case shall stop.
- (2) If debtor deposits a property with creditor as collateral for payment of his debt, this implies confession of debtor.

**Article 979:**

- (1) If the designated period of dismissal of case is interrupted, the new period, like the previous one, shall restart.
- (2) If verdict is finalized or the designated period of dismissal of case has been one year and stopped by debtor's confession, the new period of dismissal of case shall be fifteen years.

**Article 980:**

If lawsuit regarding the original debt is not heard due to lapse of time, its supplements shall not be heard as well, even if the designated period of dismissal of case's supplements has not been completed.

**Article 981:**

- (1) Court may not directly dismiss a case due to lapse of time, unless on the basis of request of debtor or creditor or that of any person who has interest in the request, even if debtor does not resort to it.
- (2) Resorting to time limit shall be permissible at any stage of claim, even if before appellate court.

**Article 982:**

- (1) Waiving the right to defend on the basis of dismissal of claim due to lapse of time is not permissible before the right is established. Also agreement of parties on dismissal of case during the periods contrary to those designated in this Law shall not be permissible.
- (2) Person who is capable of exercising his rights may, after his right are established, even implicitly, waive his right of defend on the basis of dismissal of claim due to lapse of time. This waiving shall not be valid for creditors who are harmed by it.

# Title 5 — Proof of Rights

## Chapter 1 — General Provisions

**Article 983:**

Reasoning on the basis of probable reason shall not be valid.

**Article 984:**

Proved by proof shall be like proved by observation.

**Article 985:**

Acquittal shall be the original state.

**Article 986:**

Certainty shall not be eliminated by doubt.

**Article 987:**

Bringing witness shall be obligation of claimant and taking oath shall be burden of disclaimer.

**Article 988:**

Witness shall be for proving what is contrary to the appearance and oath shall be for the purpose retaining the original.

**Article 989:**

Addition of the new shall be determined as soon as possible.

**Article 990:**

Stability of object in its original state and lack of contradicting attributes shall be the principle.

## Chapter 2 — Documents

### Section 1 — Official Documents

**Article 991:**

- (1) Official document is a paper in which the public officer or public services staff, according to provisions of law and within the limits of their specialized authority, registers and saves anything that is reported to them or they obtain from concerned persons.
- (2) If the said paper lacks the attributes of official document, but the concerned persons have signed, stamped or put their fingerprint on it, it shall have the status of customary documents.



**Article 992:**

Contents of official documents stated in Article (991) of this Law are considered authentic, provided that they free of forgery and deception expressed by law.

**Article 993:**

- (1) If original copy of an official document exists, its official copy including duplication or photocopy, as long as it corresponds with the original, shall be considered authentic.
- (2) So long as one of the parties has no objection on correspondence of the copy of document with its original, its copy shall be treated as original and, in case of objection, the original shall be referred to.

**Article 994:**

If the original copy of official document does not exist, its copy shall be considered authentic as follows:

- 1 – If the official copy is taken from the original document and its appearance confirms its correspondence with the original one with no doubt, parties may request its comparison with the original.
- 2 – If the official copy is made from another copy of the original document, it shall not be considered authentic, but judge may use it as a judicial indications.

## **Section 2 – Customary Documents**

**Article 995:**

- (1) Issuance of customary document by the signer shall be valid, unless he expressly denies his signature, seal or fingerprint, unless a special law provides otherwise.
- (2) Regarding successor and heirs, taking oath on lack of knowledge shall suffice.

**Article 996:**

- (1) Date of customary document shall not be authentic for another, unless its date is fixed.
- (2) Date shall be fixed in the following manner:
  - 1 – Since the day it is registered in the special book.
  - 2 – Since the day its content is registered on another paper that has a fixed date.
  - 3 – Since the day that the relevant public officer has signed it off.
  - 4 – Since the day of death of one of the persons who has left a credible effect on the document or since the day of an incident before occurrence of which issuance of the document is certainly known.
- (3) Court may, as circumstances may require, refrain from applying provision of this Article to receipts.

**Article 997:**

- (1) Signed letters have status of customary documents.
- (2) Telegraph papers whose original, signed by the telegraph sender, exists in the telegraph office shall have status of customary documents. Telegram paper shall be considered as correspondent

with the original until reason to its contrary appear, and if the original is destroyed, it shall not be valid.

**Article 998:**

- (1) Commercial books shall not be evidence against people other than merchants, but materials registered in these records may be used as the basis for ordering oath by one of the parties before court, only in those cases that may be proved by witness.
- (2) Commercial books that are properly kept may be used against merchants. Those who resort to these books may not argue on the basis of those parts that prove their interests and reject what is contrary to their claim.

**Article 999:**

Non-commercial books and papers may not be used against person on whose behalf they are arranged and written, unless in the following two cases:

- 1 – If it is explicitly mentioned in it that he has completely received payment of debt.
- 2 – If it is explicitly mentioned that purpose of writing those papers was that the written papers should become substitute for document in proving right of the concerned person.

**Article 1000:**

- (1) Writing a paper that implies acquittal of debtor in the original document, as long as its contrary is not proven, shall be considered authentic against creditor, even though the mentioned writing has not been signed by him. This provision is valid if only the mentioned document has definitely not been taken out of possession of creditor.
- (2) Written paper by handwriting of creditor, without his signature, on the separate original copy of document or on the receipt of acquittal of debtor, which is in possession of debtor, shall be considered authentic.

## **Chapter 3 – Confession**

**Article 1001:**

Confession is admission of the opponent, in the court, to right of another person against himself.

**Article 1002:**

Confession shall not be subject to acceptance by the confessee, unless it is rejected by him. If part of it is rejected, the remaining part shall be valid.

**Article 1003:**

- (1) Confession shall be valid if confessor be sane, pubescent and not incapacitated.
- (2) Confession by permitted discerning minor shall be valid in those affairs for which he has permission.

**Article 1004:**

Confession to the unknown shall be valid, unless in contracts whose validity shall be impeded by lack of knowledge.

**Article 1005:**

Confession of confessor shall be valid if the apparent circumstances do not refute it.

**Article 1006:**

Disagreement of confessor and confessee on cause of confession shall not affect its validity.

**Article 1007:**

Suspending confession to condition shall not be permissible, unless it is suspended to a time that is customarily determinable.

**Article 1008:**

Confessor shall be bound by his confession, unless court rules his confession as untrue. In such a case, his confession shall be void.

**Article 1009:**

Confession may not be withdrawn.

**Article 1010:**

Confession is an evidence against confessor only.

**Article 1011:**

Confession is indivisible, unless it relates to several unrelated events that existence of one of them does not require existence of the other.

## **Chapter 4 — Oath**

### **Section 1 — Cross Oath**

**Article 1012:**

Parties to a lawsuit may, upon permission of court, request each other to take cross oath.

**Article 1013:**

Request of cross oath is permissible in all civil conflicts, unless it is contrary to public order and mores.

**Article 1014:**

One oath may be sufficient in a lawsuit that includes several claims.

**Article 1015:**

Party who is requested to take oath may refer it to the other party, unless the oath is based on an event to which both of the parties have not contributed and is only caused by the person who is asked to take oath.

**Article 1016:**

Party who has requested oath or referred it to the other party, may not, once the other party accepts it, withdraw it by oath.

**Article 1017:**

Oath or its denial shall not be valid outside court.

**Article 1018:**

In cross oath, person shall have to take oath on the basis of an event or action that he himself has created it. And if the oath is based on action of another person, the oath shall be taken on the knowledge.

**Article 1019:**

In affairs that cause does not perish, oath shall be taken on cause and in affairs that cause perishes, oath shall be taken on outcome.

**Article 1020:**

If the party who is requested to take oath denies it without referring it to the other party or the party to whom the oath is referred denies it, the case shall end against him.

**Article 1021:**

If untruthfulness of oath is proved in criminal ruling, person who has been harmed by the oath may, while reserving the right to object the issued ruling against him, claim compensation.

## **Section 2 - Complementary Oath**

**Article 1022:**

- (1) Court may, in order to provide reason for the ruling on the case subject or for the price of what it rules about, directly order one of the parties to take oath.
- (2) This kind of oath can only be ordered if there is no perfect evidence for the case but it is not without evidence as well.

**Article 1023:**

Court may directly order taking oath in the following cases:

- 1- If claim of right to inheritance is proved, court shall order claimant to take oath that he has not obtained this right from the deceased for himself or for another person, it is not extinguished or assigned, he has not obtained the mentioned right from a person other than the deceased and he does not hold any collateral from the deceased for a debt.
- 2- If buyer requests return of the sold object due to defect, court shall order him to take oath that he has not explicitly or implicitly shown consent to the defect.

**Article 1024:**

Person who is ordered to take complementary oath may not refer it to the other party.

## Chapter 5 - Witnesses

**Article 1025:**

In proving legal action, in non-commercial affairs, testimony of witnesses shall be considered adequate if its value does not exceed one thousand Afghanis or is not undetermined.

**Article 1026:**

Value of action shall be evaluated on the basis of the time of action, if value of action exceeds one thousand Afghanis and derives from addition of supplements to the principle, in this case, proof by testimony of witnesses is permissible.

**Article 1027:**

If claim includes several claims based on several causes, proof each part that does not exceed one thousand Afghanis by testimony of witnesses is permissible, even though total claims exceeding the one thousand has arisen from relations of parties to the lawsuit or from actions that are of single nature. This provision applies to payments with values of more than one thousand Afghanis as well.

**Article 1028:**

Proof by testimony of witnesses shall not be permissible in the following cases, even if its value does not exceed one thousand Afghanis:

- 1- If claim is contrary to or exceeds the amount recorded on the written document.
- 2- If claim is part of such a right whose proof by testimony is considered inadequate, even though it is the remaining part of that right.
- 3- If claim is made for more than one thousand Afghanis and subsequently is reduced to less than one thousand.

**Article 1029:**

- (1) Proof by testimony of witnesses in cases that ought to be proved by written documents is permissible, provided that source of the written proof is existent.
- (2) Issuance of a written document that makes the claimed action probable shall be recognized as the source of proof of written document.

**Article 1030:**

Proof by testimony of witnesses in cases that ought to be proved by written documents is permissible in the following cases:

- 1 - If material or intellectual causes prevent obtaining written document.
- 2 - If written document is lost due to causes beyond the will of creditor.

## Chapter 6 — Circumstantial Evidence

### **Article 1031:**

- (1) If there is legal indication to the interest of person, he shall not need other methods of proof, unless there is no text of law contrary to it.
- (2) Overruling legal indication by opposite indication shall be permissible.

### **Article 1032:**

Rulings possessing authority of final ruling shall be considered authentic with all their contents and no other evidence shall be accepted to overrule them, provided that conflict has arisen between the same persons and is related to the same place and cause of right.

### **Article 1033:**

Civil judge may not issue criminal ruling, unless on events on which he has issued ruling due to necessity.

### **Article 1034:**

Judge may take into account indications that are not predicted by law, but are inferred from circumstances relevant to lawsuit. Reference to them may only be made in cases which are permitted by law to be proved by testimony.

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# BOOK 2 — DESIGNATED CONTRACTS

## Title 1 — Transfer of Ownership

### Chapter 1 — Sales Contract

#### Section 1 — Elements of Sales

##### Topic 1 — Object of Sale

**Article 1035:**

- (1) Sale contract is transfer of ownership of property by seller to buyer in exchange for a property that is consideration for object of sale.
- (2) In designated contracts, particular elements of each contract, in addition to the general elements that are mentioned in Topic one of Section 1 of Contracts, shall be observed.

**Article 1036:**

Sale of object in exchange for money shall be called absolute sale, sale of money in exchange for money shall be called exchange sale and sale of object in exchange for object shall be called swap sale.

**Article 1037:**

Sale contract shall be concluded with such offer and acceptance that constitutes transferring and acquisition of ownership with determination of object of sale and consideration.

**Article 1038:**

Object of sale must be present, have value and be deliverable. It must be known to buyer in such a way that excludes gross ignorance.

**Article 1039:**

If it is stated in contract that buyer has complete knowledge of object of sale, his right to rescind the sale due to lack of knowledge shall extinguish, unless he proves seller's deception.

**Article 1040:**

If object of sale is not present before buyer, he shall have to have knowledge of its characteristics and distinguishing descriptions.

**Article 1041:**

If object of sale is present in the contract session, it is enough to point to it without mentioning its attributes.

**Article 1042:**

Sale and purchase of objects that parties have not seen during conclusion of contract shall be permissible, provided that their substance and attributes are stated or they have pointed to them or their places. In this case, notwithstanding the validity of contract, sale shall not be complete and buyer shall not be bound.

**Article 1043:**

In order for sale to be binding, buyer shall have to see object of sale during conclusion of contract, unless he has previously seen it and, during contract, is certain that object of sale is exactly the same thing.

**Article 1044:**

If person buys a property without seeing it, he shall be given option at the moment of seeing it, even though he has previously given verbal consent to it. Seller shall not have option regarding whatever he has sold before seeing.

**Article 1045:**

Concluding parties may specify the period of time at the end of which option of seeing extinguishes, provided that during such a period nothing that explicitly or implicitly nullifies the option is made by buyer or object of sale is not damaged.

**Article 1046:**

Sale and purchase of blind person shall be valid. His option shall extinguish after rejection or touching or tasting or smelling the object or describing it to him. If blind person delegates purchase and taking delivery, his option shall extinguish with his agent's seeing.

**Article 1047:**

If several and different objects are sold under one contract, in order for the contract to become binding it shall be necessary to see every one of the objects.

**Article 1048:**

Person who buys different properties by one contract, in such a way that he has seen some of them and has not seen some other, he may rescind the contract or accept or reject all of the properties, whether or not the seen properties accord with the agreement.

**Article 1049:**

Things which are sold on sample, seeing of the sample is sufficient. If the object of sale is proved to be different from the sample, buyer shall have the option to accept it at an agreed price or reject it by rescinding the sale.

**Article 1050:**

If buyer, before seeing the object of sale, takes such action on it that rescission impossible or that another person acquires rights over it, such as he sells it by an absolute sale without option or mortgages it or leases it or it perishes while under his possession or he destroys or damages it, his right to reject the object of sale based on option of sight shall extinguish and the sale shall become binding.



**Article 1051:**

If a property is sold on the basis of a desired attribute and the object of sale lacks the mentioned attribute, buyer may accept it on an agreed price or reject it by rescinding the sale.

**Article 1052:**

If person has option due to lack of attribute and takes possessory action on the object of sale, his right to reject the object shall extinguish and if something happens to the object that prevents its rejection, it shall be evaluated with the attribute and without it and buyer may claim the difference of the two prices from seller. If buyer dies before the option, a right to claim rescission shall be transferred to his heirs.

**Article 1053:**

Agent's seeing and consent in buying or taking delivery shall be the same as seeing and consent of the principal buyer.

**Article 1054:**

Whatever that can be separately sold it may be excluded from the object of sale.

**Article 1055:**

Sale of nonexistent shall be void. Sale of fruit of trees before their appearance and crops before its growth shall not be permissible.

**Article 1056:**

Sale of whatever that appears one after another, provided that most of it has appeared, shall be permissible with the remaining part that has not appeared, in a single contract.

**Article 1057:**

- (1) Sale of upper floor before construction of lower floor shall not be permissible.
- (2) Contracts of sale of floors and stories of buildings that will be constructed based on civil planning maps in accordance with the government construction regulations shall, before construction, be permissible.

**Article 1058:**

If upper floor is owned by the owner of the first floor, its sale shall be permissible if already constructed. The buyer shall have the right to reside on the roof of the first floor and, in case of destruction of the upper floor, buyer may rebuild it similar to the previous one.

**Article 1059:**

Sale of a determined share of common property, before allocation, shall be permissible, unless this inflicts harm to seller or partner.

**Article 1060:**

- (1) In a sale conditional to trying, buyer may accept or reject the object of sale. In that case, seller is obligated to make it possible for buyer to try it. If buyer rejects the object of sale, he shall have to proclaim his rejection within the designated period. If the period is not determined, seller

shall specify a reasonable period. Silence of buyer, while being able to try it within the mentioned period, shall be considered as acceptance.

- (2) Sale conditional to trying shall be sale suspended to known condition and it shall constitute acceptance of the object of sale, unless it becomes clear from the circumstances that it is a sale suspended to rescinding condition.

**Article 1061:**

In sale conditional to tasting, buyer may accept or reject the object of sale. Proclamation of acceptance of the object of sale shall happen within the agreed or customary period. Sale shall be considered binding since the date of proclamation of acceptance.

**Article 1062:**

Price shall be consideration for the object of sale, even if it is less or more than the price of the object of sale. Price must be determined and defined and full knowledge of it must have been acquired.

**Article 1063:**

- (1) In absolute sale, price must be determined in cash. Albeit, sometimes it may be sufficed to mention elements that shall determine the price in future.
- (2) If it is agreed to determine the price according to market rate, in case of fluctuation of rate, the time and place in which the object of sale is delivered to buyer shall be credible. If there is no market in the place of delivery, rate of a local market that custom approves its generality shall be credible.

**Article 1064:**

Sale with urgent and deferred payment, when its period is determined, without considering longevity and shortness of the period, shall be permissible. Also, stipulation of installments for the price that will be paid at due dates shall be permissible. And it is also permissible to agreed that in case of non-payment of installments at due dates, the price shall be changed to a deferred one.

**Article 1065:**

If deferred sale without option is stipulated, the time for payment of price shall become due as soon as the object of sale is delivered and, in case of option of condition, since the date the option extinguishes.

**Article 1066:**

If, in an absolute sale, no mention is made of urgency or deferral of price, price shall be paid urgently, unless custom rules otherwise.

**Article 1067:**

Agreement on increase or decrease of price after conclusion of contract shall be permissible and it shall be referred to the original contract. Holder of preemption right shall benefit from decrease of price and shall not be harmed by its increase. If seller waives all of the price, holder of preemption right may buy the real property for the price of a similar property.

**Article 1068:**

Sale contract shall be permissible in the following forms: with interest, which is selling with the same sale price plus a defined interest; without profit which is selling with the same price as it was first

bought; sharing which is selling part of the object of sale for part of the price; and reducing which is selling the object of sale for less than the price as it was first bought.

**Article 1069:**

Seller may, before taking delivery of price, take action on it or assign it to his creditor, whether or not it is of determinable objects.

**Article 1070:**

In order for sale to result in outcome regarding third parties, the contract must be registered according to provisions of law.

## **Topic 2 – Obligations of Seller**

### **Subtopic 1 – General provisions**

**Article 1071:**

If the object of sale is naturally determined or is sold based on approximation, ownership of the object shall automatically transfer to buyer. And if kind of the object of sale is defined, its ownership shall not transfer without seller's action.

**Article 1072:**

Buyer may take action on the object of sale as soon as the ownership is transferred, whether it is movable or immovable, even if it is prior to taking delivery.

**Article 1073:**

If seller, after taking delivery of price and before giving delivery of the object of sale to buyer, becomes bankrupt, buyer shall obtain the object of sale from seller or his heirs. Other creditors shall not bother buyer.

**Article 1074:**

- (1) Seller may, in a sale with deferred payment, stipulate deferment of transfer of ownership of the object of sale to the moment of paying all of the price, even if the object of sale has been already given delivery.
- (2) If price of the object of sale is being paid in installments, contracting parties may agree that seller retain part of it, if all installments are not paid, as an exchange for rescission of sale. Albeit, court may, considering conditions and circumstances, decrease the agreed exchanges according to provision of Article (731) of this Law.
- (3) If all installments are paid, ownership of the object of sale shall transfer to buyer since the date of conclusion of sale.
- (4) Provisions of the above items shall apply even if contracting parties conclude sale contract under the title of lease contract.

**Article 1075:**

Seller shall be obligated to take necessary actions for transfer of ownership of the object of sale and to avoid actions that make transfer of ownership impossible.

**Article 1076:**

Seller shall be obligated to deliver the object of sale to buyer with the same qualities that existed during conclusion of contract and in a state according with its nature.

**Article 1077:**

Delivery shall include all supplements of the object of sale and whatever that is prepared for the permanent use of the object of sale. This provision shall apply according to requirement of nature of object, custom and intention of contracting parties.

**Article 1078:**

Delivery of the object of sale shall mean removing obstacles between buyer and the object in such a way that buyer be able to take delivery of it without obstacle or barrier.

**Article 1079:**

Removal of obstacles shall be recognized as legal taking delivery and shall change according to changes in condition and kind of the object of sale in accordance with customary requirements.

**Article 1080:**

If the object of sale is already in possession of buyer, new delivery taking shall not be necessary, whether his possession before the sale had made him fully responsible or liable as a trustee.

**Article 1081:**

Delivery of the object of sale in absolute sale shall be made in the place that the object exists during conclusion of contract and the place of contract shall not be considered the place of delivery, unless the parties have agreed to deliver the object at a certain place.

**Article 1082:**

If amount of the object of sale is determined in contract, seller shall be responsible, according to customary requirements, for defect of the object, provided that no contrary agreement has been made. Notwithstanding that, buyer may not claim rescission of contract due to defect in the object of sale, unless he proves that the defect is to an extent that he would not conclude the sale if he had knowledge of it.

**Article 1083:**

If the object of sale exceeds what is stated in contract and price is fixed for each unit and the object is not divisible, buyer shall be responsible for the price, unless the excess is great. In this case, he may claim rescission of contract, provided that the contrary is not agreed.

**Article 1084:**

Claim of decrease of price by buyer and claim of increase of price by seller based on increase or decrease of the object of sale shall not be heard after lapse of three months since the date of de facto delivery of the object of sale.

**Article 1085:**

If the object of sale perishes before delivery due to causes beyond seller's control, contract shall be rescinded and price shall be returned to buyer, unless perishing has occurred after notification of delivery of the object of sale to buyer.

**Article 1086:**

If, before delivery, price of the object of sale decreases due to occurrence of defect, buyer shall have the option to rescind contract or retain it with a decreased price.

**Article 1087:**

- (1) If something, that is taken delivery of with the intention of purchase after fixing its price, perishes while in possession of the delivery taker, he shall be liable for it. If price has not been fixed, he shall have liability of trustee and shall not be liable for waste and destruction that have occurred without any intention and fault of his.
- (2) If delivery is not taken with the purpose of purchase and the object has perished without intention of the delivery taker, his liability shall be considered as that of a trustee and he shall have no liability, whether or not its price has been fixed.

## **Subtopic 2 – Violation Liability and Entitlement**

**Article 1088:**

Seller shall be recognized as liable not to violate buyer's partial or full benefiting from the object of sale, whether violation originates from his own action or from that of a third party who, at the time of contract, had such a right on the object of sale that he may argue against buyer or may prove that the mentioned right had been given to him by seller after the contract.

**Article 1089:**

When the object of sale is entitled by another person, if the entitlement relates to property of seller, seller shall be liable for it, even if the liability has not been stipulated in contract.

**Article 1090:**

It shall not be permissible to stipulate that if the object of sale is entitled, seller will not be liable. Such a stipulation shall make contract void.

**Article 1091:**

- (1) If entitlement is only proved by confession or denial of buyer, seller may not be held liable.
- (2) If buyer, in the case stated in the above sub-clause, has good faith and has informed seller of claim of entitlement at reasonable time and has notified him of taking action on the claim and seller has not done so, buyer may claim liability of entitlement.
- (3) If buyer does not notify seller of claim of entitlement and a final decision is issued against him, his right to refer to seller shall extinguish, provided that seller proves that his action on the claim would have resulted in rejection of claim of entitlement.

**Article 1092:**

If claim of entitlement is proved and then the entitled person and buyer agree in such a way that the object of sale remains with buyer in exchange for consideration, this agreement shall be considered purchase from the entitled and buyer may refer to seller.

**Article 1093:**

- (1) If the object of sale is taken away from buyer due to entitlement and seller has not had knowledge of the entitlement on the object of sale at the time of contract, buyer may claim return of all of price and the price he has been obligated to return to the entitled person with expenses resulting in the increase of value of the object and all expense of liability claim and entitlement claim, except whatever that buyer could have refrained from spending if the claim had been notified to seller. Increase or decrease of price of the object of sale shall not have any effect in this respect.
- (2) If seller, during conclusion of the contract, has had knowledge of entitlement of the object of sale, buyer may, in addition to the above claims, also claim the extra difference amount of price of the object of sale and non-essential expenses that he has paid on the object with compensation for incurred damage and the loss due to entitlement of the object of sale.

**Article 1094:**

- (1) If part of the object of sale is taken by entitlement or a right is imposed on it of which buyer did not have knowledge at the time of contract, he may rescind contract.
- (2) If buyer accepts the remaining part of the object of sale, he may claim compensation for the inflicted damage due to entitlement.

**Article 1095:**

- (1) Contracting parties may, based on special agreement, increase or decrease liability for entitlement or relinquish it.
- (2) If right of easement is obvious or seller has made it clear to buyer, condition of non-liability shall automatically be created.

**Article 1096:**

- (1) Seller shall be liable for entitlement originated from his action, even if there is an agreement of non-liability in this respect. Agreement of parties against this provision shall not be valid.
- (2) If entitlement originates from action of another person, seller shall only be liable to return the price.

### **Subtopic 3 – Liability for Latent Defects**

**Article 1097:**

If the object of sale, at the time of delivery, does not have attributes that are significant for buyer, or defects are seen therein that causes decrease in price or benefit, on the basis of desired purpose of contract or that of natural appearance of the object or of the reason for which it has been prepared, seller shall be held liable to compensate, even if seller has not had knowledge of it.

**Article 1098:**

If buyer has been aware of defects of the object of sale at the time of sale contract or had he looked into it as an ordinary person he would have known its defects, in this case, seller shall not be considered liable for the mentioned defects, unless buyer proves that seller faked the object of sale as perfect or he has had an intention to conceal defects.

**Article 1099:**

Objects that are sold by a single contract and defects of some of them are revealed afterwards, if no harm is inflicted by their division, buyer may return the defective and claim price from seller. Buyer may not return all of the mentioned objects without consent of seller. If harm is inflicted by their division, buyer may accept all the objects for all the price or reject them.

**Article 1100:**

- (1) If old defect of the object of sale is evident and then, while in possession of buyer, new defect is revealed therein, buyer may not return it despite the new defect, but he may only claim decrease of price from seller.
- (2) If new defect of the object of sale becomes extinct, buyer may return it to seller based on the old defect.

**Article 1101:**

Increase in the object of sale caused by property of buyer shall prevent him from returning it. But, buyer may refer to seller for reduction of price proportionate to defect of the object.

**Article 1102:**

If defective object of sale perishes while in possession of buyer, he may only claim decrease of price from seller.

**Article 1103:**

If buyer, after becoming aware of old defect in the object of sale, takes possessory action on it, his option of defect shall extinguish.

**Article 1104:**

Contracting parties may, by special agreement, determine extent of liability. If seller deliberately conceals defect of the object of sale, all circumstances that extinguish or reduce liability shall be considered void.

**Article 1105:**

Defect that is not customarily considered important, seller shall not be liable for it.

**Article 1106:**

Liability of defect, in a sale that has been concluded by court ruling or in an auction held by governmental agencies, shall not be valid.

**Article 1107:**

- (1) Claim of liability for defect shall not be heard after lapse of six months since the date of delivery of the object of sale, even if the defect of the object has not yet been appeared to buyer after expiration of the mentioned period, provided that buyer has not accepted a longer period.
- (2) If buyer proves that concealment of the defect has originated from seller's cheating, seller may not resort to expiration of the mentioned period.

### **Topic 3 — Obligations of Buyer**

**Article 1108:**

Buyer shall be obligated to pay the agreed price and payment costs, according to terms of contract.

**Article 1109:**

- (1) If place of payment of price has been determined in contract, it shall have to be paid at the designated place and if the place is not determined, price shall be paid at the place wherein the object of sale is delivered.
- (2) If seller is not, at the time of delivery of the object of sale, considered entitled to price, the mentioned price shall be paid at buyer's domicile at the time of entitlement, unless agreement or custom provides the contrary.

**Article 1110:**

If payment of price of the object of sale has been determined at a specific time or in installments, payment of price shall become due at the deadline or each installment. Delay in payment of one installment shall not accelerate installments, unless it is stipulated in contract.

**Article 1111:**

If, in absolute sale, seller offers the commodity, buyer shall be obligated to pay the price before its delivery. In swap or exchange sale, delivery of the object of sale and payment of price shall be made simultaneously.

**Article 1112:**

- (1) Seller shall not be entitled to legal profit of price of the object of sale, unless he has already notified buyer to pay the price or given him delivery of the object of sale. In any way, the object of sale has to be productive or profitable, unless agreement or custom provides the contrary.
- (2) Profits and products of the object of sale along with obligations attached to it shall belong to buyer since the time of conclusion of contract, unless agreement or custom provides the contrary.

**Article 1113:**

- (1) If a person protests against buyer based on a right existing before the sale contract or a right to the object of sale belonging to seller or if there is fear of taking ownership of the object of sale, buyer may, until removal of the infringement or the fear, keep price of the object of sale with himself, provided that terms of contract do not prevent it. Nevertheless, seller may, on the condition of presenting bail, claim payment of price of the object of sale.



(2) If buyer discovers a defect in the object of sale, he may take advantage of the provision stated in the above sub-clause.

**Article 1114:**

If all or part of price is immediately payable, seller may keep the object of sale with himself until he receives what he is entitled to, even if buyer gives collateral or guarantee for it, unless the contrary is agreed.

**Article 1115:**

If seller delivers the object of sale before taking delivery of price, he shall lose the right to retain the object. In this case, he may not claim return of the object in order to receive payment of price.

**Article 1116:**

If buyer, before paying price, takes delivery of the object of sale without permission of seller, seller may take it back. If the object of sale perishes or damaged while in possession of buyer, the mentioned delivery taking shall be considered valid and buyer shall be obligated to pay price.

**Article 1117:**

If seller has agreed to deferred payment of price of the object of sale, he shall not have the right to retain the object and shall be obligated to deliver it to buyer. In this case, he shall not have the right to claim the price before its due time, unless reduction of guarantees of payment of price by buyer has appeared or he becomes bankrupt by which fear of waste of price is conceivable.

**Article 1118:**

If buyer dies before taking delivery of the object of sale and paying price while he is bankrupt, seller may retain the object until receiving price or request its sale from court. If price is more than seller's right, seller's right shall be paid and the residual shall belong to other creditors and if it is less than it, seller shall be treated the same as other creditors with regard to the remaining part.

**Article 1119:**

If buyer refuses to pay price of the object of sale at the due time or does not fulfill other obligations which he has undertaken under sale contract, seller may claim enforcement or rescission of sale.

**Article 1120:**

If parties to contract agree that in case of non-payment of price at the designated time the sale shall automatically be considered rescinded, court may extend the period as long as notification of rescission of contract is not served. If it is stated in contract that rescission shall happen without service of notification, in such a case, court may not give moratorium to buyer.

**Article 1121:**

Buyer is obligated to take delivery of the object of sale at the place it existed at the time of conclusion of contract, unless its contrary is agreed. The object of sale must be transferred with no delay, unless its transfer requires time or is determined to take place at a designated time and place.

**Article 1122:**

If dispatch of the object of sale to buyer has been stipulated, delivery shall happen after the object reaches buyer, unless otherwise agreed.

**Article 1123:**

Buyer shall bear costs of delivery of the object of sale and those of sale contract, registration duties and other costs related to the object, unless agreement or custom provides the contrary.

## **Section 2 — Kinds of Sales**

### **Topic 1 — Salam (Advance)**

**Article 1124:**

Salam (advance) is selling deferred price for urgent price.

**Article 1125:**

Salam may be made on objects that their quantity and quality can be confirmed determined.

**Article 1126:**

Advance sale shall be valid if it is concluded for grain and the like that can become existent between the time of conclusion of contract to the time of delivery.

**Article 1127:**

In advance sale, substance, kind, quality, amount and delivery time of the object of sale with the price and place of delivery shall have to be specified.

**Article 1128:**

In order for salam to be valid, price shall have to be paid during the contract meeting and before contracting parties leave it.

**Article 1129:**

Time of delivery shall be determined by agreement of contracting parties. It shall have not to be less than one month.

**Article 1130:**

Salam shall result in establishment of contracting parties of considerations immediately upon conclusion of contract.

**Article 1131:**

Seller in salam may not take action on price before taking delivery of it and buyer in salam may not take action on the object of sale before its delivery.

**Article 1132:**

Period of salam shall become void by death of seller, not by death of buyer. And the object of sale shall be bought from inheritance of seller.

## **Topic 2 — Sarf (Exchange)**

**Article 1133:**

Sarf shall be sale of money for money.

**Article 1134:**

In exchange sale, considerations shall have to be delivered before contracting parties split and contract shall have to be free of option of stipulation and deferment.

**Article 1135:**

Sarf shall result in establishment of ownership of considerations by contracting parties.

## **Topic 3 — Wafa (Troth) Sale**

**Article 1136:**

Wafa sale shall mean having the right of taking back the object of sale by seller and that of taking back price by buyer.

**Article 1137:**

Rights of taking back by seller and buyer may not be conditioned and limited to a period of time. Any agreement contrary to this shall be considered void.

**Article 1138:**

In wafa sale, buyer may take advantage of part or all of benefits of the object of sale. Buyer may not, in wafa sale, sell the object of sale to another person or transfer its ownership to another person on any reason.

**Article 1139:**

Seller may sell the object of wafa sale only if buyer claim him refund of price and seller cannot pay it without selling the object.

**Article 1140:**

- (1) The object of wafa sale shall be recognized as property of buyer until its return and rules of ownership shall apply to it.
- (2) In wafa sale, buyer may use the object of sale as his property until seller exercises his right of taking back, unless buyer's actions are fraudulent.

**Article 1141:**

- (1) Return of the object of sale shall happen upon formal notification served by seller to buyer.

- (2) After completion of notification, the sale contract shall be rescinded and seller shall return the object of sale free of guarantees given by buyer.
- (3) This notification shall not affect other persons who have gained rights afterwards with good faith, unless the mentioned notification is already registered or has been referred to in the margin of registration of the sale.

**Article 1142:**

- (1) If seller exercises his right of return, he shall be obligated to reimburse price of costs of contract, costs of exercising right of returning and other essential costs borne by, unless the contrary is agreed.
- (2) Buyer may specify a period for those costs, mentioned in sub-clause (1) of this Article, that are really paid by seller. If seller does not pay these costs within the mentioned period, rescission resulting from exercising the right of return shall be ignored.

**Article 1143:**

If buyer has paid for useful and necessary costs of the object of sale and price of the object has increased due to this, he has a right to claim them, provided that the costs are paid with the permission of seller and are not excessive.

**Article 1144:**

If seller return to buyer whatever he is obligated to return, buyer shall be obligated to return to seller the object of sale and the increases occurred to it since the time of sale or whatever he has taken delivery of since the date of return of the mentioned items.

**Article 1145:**

If the object of sale is agricultural land and seller claims its return during an agricultural year while buyer has cultivated it, buyer may retain the land until the time of harvest and pay seller what the custom requires for the period between rescission of contract and the harvest time.

**Article 1146:**

If, in wafa sale, the object of sale is part of a shared property and partners claim sale of the mentioned property, due to its indivisibility, from buyer, buyer shall be obligated to notify seller of returning his right. If seller does not exercise his right of return and all of the mentioned property transfers to the ownership of buyer, through auction, and then seller wishes to return what he has sold, buyer may compel seller to return all of the mentioned property.

**Article 1147:**

If the object of wafa sale perishes, in case value of the object equals the claimed debt, the debt shall extinguish and if it is less than that, the amount equivalent to the perished part shall extinguish and buyer shall claim the remaining part from seller.

**Article 1148:**

If the object of wafa sale perishes while in possession of buyer and its value exceeds the amount of debt, the amount of debt shall extinguish from the value and buyer shall be obligated to pay the exceeding amount.

**Article 1149:**

Buyer shall be liable for fundamental changes in the object of sale due to his action or that of some other liable person.

**Article 1150:**

If one of contracting parties, in wafa sale, dies, the heirs shall succeed him in fulfilling provisions of wafa sale.

**Article 1151:**

- (1) If real property mortgage is implied by wafa sale, the contract shall be void on both sale and mortgage.
- (2) Wafa sale shall be considered real property mortgage if refund of price with its stipulated interest or the object of sale in any shape remains in possession of seller. Proof of tacit mortgage is permissible by all methods of proving.

## **Topic 4 — Sale of Property of another Person**

**Article 1152:**

If a person sells property of another person without his permission, the sale shall be concluded and its enforceability shall be subject to owner's authorization. In case of authorization, the sale shall be binding, otherwise, owner may claim its rescission.

**Article 1153:**

If owner authorizes the sale, it shall be valid for buyer and seller. Also if, after conclusion of contract, ownership of the object of sale transfers to seller, contract shall be considered valid as regards the object of sale.

**Article 1154:**

If rescission of sale is ruled and buyer is not aware of non-ownership of the object of sale by seller, he may claim compensation from seller, even if seller has had good faith.

## **Topic 5 — Sale by Representative for Himself**

**Article 1155:**

- (1) Father who has guardianship over his children may sell his property to them or buy for himself their property for a customary price.
- (2) Grandfather shall be considered as father.

**Article 1156:**

- (1) Executor or protector appointed by court may not sell his property to the minor or incapacitated or buy their property for himself.
- (2) The mentioned executor or protector may take such actions on the basis of permission by judge.

**Article 1157:**

Executor who has been appointed by father or grandfather may not sell his property to minor or buy property of minor for himself, unless it is to the interest of minor and has been made upon permission by court.

**Article 1158:**

- (1) Broker and experts to whom properties are deposited with them for sale or price determination, may not buy them for himself under his name or a pseudonym.
- (2) If person to whom property belongs, while having necessary capacity, authorizes contract, contract shall be considered valid.

## **Topic 6 — Sale of Disputed Rights**

**Article 1159:**

If person waives his disputed right in favor of another person in exchange for something, the party to dispute may take back the disputed right from buyer (the other person), provided that he pay the price paid by the buyer with the costs and legal interest since the time of payment.

**Article 1160:**

Provision of the above provision shall not apply to the following cases:

- 1 – If the disputed right is part of properties that are all together sold for a single price.
- 2 – If the disputed right is shared in common among heirs or several owners and one of the partners has sold his share to another person.
- 3 – If debtor has transferred the disputed right to creditor in exchange for debt.
- 4 – If the disputed right relates to a mortgaged real property that has been sold to person who has the property in his possession.

**Article 1161:**

Judges, members of prosecution office and governmental agencies, advocates and court personnel may not buy all or part of a disputed right that falls within the jurisdiction wherein they work, under their own names or under a pseudonym, otherwise, the sale shall be void.

**Article 1162:**

Advocates may not conclude transactions with their clients on disputed rights which they defend, under their own name or a pseudonym, otherwise, the contract shall be considered void.

## **Topic 7 — Sale of Inheritance**

**Article 1163:**

If someone sells the inheritance without describing what it includes, he shall only be obligated to prove his heirship, unless the contrary is agreed.

**Article 1164:**

Sale of the inheritance shall not affect rights of others, unless buyer takes all necessary measures for transferring all of the rights included in the inheritance. Contracting parties shall have to observe provisions of law on measures for transferring rights.

**Article 1165:**

If seller obtains some of credits of the inheritance or sells some objects belonging to the inheritance, he shall be obligated to return them to buyer, unless their non-return is stipulated during the conclusion of sale.

**Article 1166:**

Buyer is obligated to return to seller all those debts of the inheritance that are paid by seller and settle with seller all debts and rights on the inheritance, provided that otherwise is not agreed.

## **Topic 8 – Sale During Terminal Illness**

**Article 1167:**

If person sells, during terminal illness and on the day he dies, something to heirs or others for a price less than its value, the contract shall only apply against the heirs if the amount of price difference shall not exceed one-third of the value of all of the inheritance. The object of sale shall be considered as part of the all.

**Article 1168:**

If the price difference exceeds one-third of all of the inheritance, sale of what exceeds the one-third shall not be enforceable on heirs, unless the heirs accept it or buyer returns the amount that completes two-thirds of the inheritance.

**Article 1169:**

Those provisions shall apply to sale contract, during terminal illness, that are applicable at the time of cleanness from this illness.

**Article 1170:**

Provisions of the above three Articles shall not apply to the loss of a third person with good faith who has obtained, by paying consideration, a real right on the object of sale.

## **Topic 9 – Barter**

**Article 1171:**

Barter is sale of goods in exchange for goods.

**Article 1172:**

If the exchanged properties in barter contract have different prices, according to opinion of contracting parties, exchange of the amount of difference with cash shall be permissible.

**Article 1173:**

- (1) Each of the exchanged goods in barter contract shall be considered as the object of sale and conditions of the objects of sale shall apply to it. In case of conflict over delivery, giving and taking delivery of the mentioned goods shall happen simultaneously.
- (2) Each of contracting parties to barter contract shall be considered seller with regard to what he gives delivery and buyer with regard to what he takes delivery.

**Article 1174:**

Contracting party to barter contract who takes delivery of the object and then it is taken away from him due to entitlement or returns it due to defect may take back the opposite property or claim its price at the time of entitlement or at the time of barter while free of defect from the other party to the contract. In both cases, if legal cause arises, the mentioned person may claim compensation.

**Article 1175:**

Costs of barter contract shall be equally borne by parties to the contract, unless the contrary is agreed.

## Chapter 2 — Donation

### Section 1 — Elements of Donation

**Article 1176:**

Donation is transferring ownership of property to another person without any consideration. Sometimes it is made in exchange for consideration.

**Article 1177:**

Person who has the capacity to donate and is not incapacitated may, when in good health, donate all or part of his property to anyone he wishes.

**Article 1178:**

- (1) Donation shall not be completed without acceptance and taking delivery by donee or his representative.
- (2) If donation is made by guardian or executor of donee, donor shall also represent in acceptance and taking delivery of the donation.

**Article 1179:**

Donation may be concluded by mutual donation.



**Article 1180:**

Ownership of donated property shall be proven when it is completely taken delivery of. If donated property is a real one, it is necessary for the conclusion of donation that the contract be written on official papers.

**Article 1181:**

If property is donated while it is already in possession of donee, donation shall be considered as taken delivery of.

**Article 1182:**

If debt is donated by creditor to debtor or he is acquitted of it and does not reject the acquittal, donation contract shall be completed and debt shall extinguish. If debt is donated to a person other than debtor, donation shall not be completed before taking delivery of the donated property with the permission of donor.

**Article 1183:**

The donated property shall have to be existent during the conclusion of the contract and it should be defined and under ownership of donor.

**Article 1184:**

If the donated property is a divisible shared property, its donation, even if it is taken delivery of, shall not transfer the ownership, unless donor has divided it and delivered the designated part to donee.

**Article 1185:**

If the donated property is an indivisible shared property, its delivery shall transfer the ownership, provided that its quantity is determined.

**Article 1186:**

Donation limited to lifetime is permissible and shall not be inherited, but donation limited to a specific period of time is not permissible.

**Article 1187:**

Donation of an object that is considered as nonexistent shall not be permissible.

**Article 1188:**

Donation that is harmful to creditors shall not be permissible.

**Article 1189:**

Donation shall be considered void with the death of donor before delivery of the property to donee.

**Article 1190:**

Donation shall be considered void with the death of donee before he takes delivery of the donated property and his heirs shall not have any right to it.

**Article 1191:**

Donation of a person during terminal illness shall be ruled by provisions of will.

## **Section 2 — Provisions on Donation**

### **Topic 1 — Obligations of Donor**

**Article 1192:**

If donee has not been given delivery of the donated property, donor shall be obligated to give the delivery. All provisions on delivery of the object of sale shall apply to this delivery.

**Article 1193:**

Donor shall not be liable for the entitlement of the donated property, unless donor has intentionally concealed the cause of entitlement or donation has been made in exchange for consideration.

In the first case, judge shall determine in a just way the extent of loss inflicted on donee and, in the second case, donor shall be liable for what he has gained from the donated property, unless otherwise agreed.

**Article 1194:**

If the donated property is taken away due to entitlement, donee shall succeed donor regarding rights and claims.

**Article 1195:**

- (1) Donor shall not be recognized liable for defects of the donated property.
- (2) If donor has intentionally concealed the defect or has guaranteed its non-defectiveness, he shall be liable for the loss resulting from the defect. If donation is in exchange for consideration, liability of donor shall not exceed the amount of consideration.

**Article 1196:**

Donor shall only be considered liable for intentional action or gross fault.

### **Topic 2 — Obligations of Recipient of Donation**

**Article 1197:**

Donee shall be obligated to perform what donor has stipulated in exchange for the donated property, whether the performance has been determined to be made for donor or another person.

**Article 1198:**

If price of the donated property is less than price of the stipulated consideration, donee shall only be obligated to pay that amount of the consideration that is equivalent to price of the donated property.

**Article 1199:**

- (1) If donor stipulated payment of his debts in exchange for the donation, donee shall only be obligated to pay that amount of debts that has existed during donation, unless otherwise agreed.

- (2) If, based on guarantee of debt, there are real rights to the donated property against donor or another person, donee shall be obligated to pay the mentioned debt, unless parties have agreed otherwise.

**Article 1200:**

Donee shall be liable for costs of donation, including costs of conclusion of contract and its duties, unless otherwise agreed.

### **Section 3 — Reversion From Donation**

**Article 1201:**

Donor may, subject to agreement of donee, revert from his donation. If donee does not agree, donor shall take permission from court to revert, provided that it is based on reasonable excuse and impediment to reversion has not arisen.

**Article 1202:**

Reversion from donation shall be considered as reasonable excuse in the following cases:

- 1 – When donee does not fulfill his obligations towards donor in such a way that his actions are considered as absolute negligence as regards donor.
- 2 – When donor becomes unable to gain alimony in the way that his social status requires or is unable to provide alimony for persons for whom he is legally responsible.
- 3 – When donor, after donation, becomes father of a child who is alive until the time of reversion or a child, whom donor thought he was dead at the time of donation, is now proved to be alive.

**Article 1203:**

If donor is intentionally and illegitimately murdered by donee, his heirs may nullify donation.

**Article 1204:**

Reversion from all or part of donation, even if donor has extinguished his right, shall be permissible, provided that one of the impediments mentioned in the following Articles does not arise.

**Article 1205:**

If an increase occurs to the donated property that is united with it and causes an increase in its price, it shall prevent reversion. In case removal of the impediment, the right of reversion shall return.

**Article 1206:**

If one of the parties to donation contract dies after taking delivery of it, the right of reversion shall extinguish respectively.

**Article 1207:**

If donee has taken action on all of the donated property, reversion of donor shall not be permissible. If the mentioned action includes only a part of the property, reversion from the remaining part shall be permissible.

**Article 1208:**

If donation has happened between spouses, reversion from it shall not be permissible, even if they separate after the donation.

**Article 1209:**

If donation occurs among close relatives, reversion from it shall not be permissible.

**Article 1210:**

- (1) If the donated property perishes or is destructed, the right of reversion on it shall extinguish.
- (2) If perishment or destruction includes only a part of the property, reversion from the remaining shall be permissible.

**Article 1211:**

If donation has been made in exchange for consideration, the right of reversion from it extinguishes, provided that the consideration has not been for a part of the donated property. If the consideration is taken away on entitlement, donor may revert, provided that the donated property has not increased in such a way that could prevent reversion or other impediments have not arisen.

**Article 1212:**

Father may not take consideration from property of his minor son in exchange for donation to him.

**Article 1213:**

If donation has been made as charity or for a good cause, reversion from it shall not be permissible.

**Article 1214:**

Reversion from donation may happen on the basis of agreement of parties or ruling of court and it shall nullify the contract. In this case, donee shall be obligated to return the profit gained out of the donated property until the time of agreement or that of filing the claim. Donee may claim essential costs that he has paid from donor. But he may claim those beneficial costs that have increased the price of the donated property.

**Article 1215:**

- (1) If donor, without consent of donee or ruling of court, regains the donated property, he shall be considered liable for the loss of the property, whether the loss is due to donor's action or its use or an external cause.
- (2) If court rules in favor of reversion from donation, and if the donated property perishes, after the court's warning, while in possession of donee, donee shall be liable the loss, even if it is not caused by his action.

# Chapter 3 — Partnership

## Section 1 — General Provisions

### Topic 1 — Definitions

**Article 1216:**

Partnership is a contract according to which two or more persons pledge, for the purpose of undertaking a financial enterprise, to participate in paying an amount of property or carrying out an activity or granting credit in such a way that profits and losses are divided among them according to the agreement made between them.

**Article 1217:**

Partnership, whether by contributing property, taking action or granting credit, shall be of two kinds: equal and unequal partnerships

**Article 1218:**

Equal partnership is that in which partners are equal in their actions, capital, profits and losses.

**Article 1219:**

Unequal partnership is that in which partners agree in such a way that they would be unequal with respect to their actions, capital, profits and losses.

**Article 1220:**

Credit partnership is a partnership by which two or more persons, based on their good reputation, agree to buy goods on credit and sell them while each of them shall be liable for a certain part of it and share the profits and losses.

**Article 1221:**

- (1) As soon as partnership is registered it shall be considered as legal person, provided it has been registered and proclaimed. Partnership may not resort to third persons prior to registration and proclamation, but third persons may resort to this un-proclaimed person.
- (2) Commercial partnerships shall be subject to provisions of the Commercial Code.

### Topic 2—General Elements of Partnership

**Article 1222:**

Partnership contract must be in writing, otherwise, it shall not be valid. Likewise, any amendment to the contract, until its form is not completed, shall be considered void. Partners may not resort to this invalidity against third person. It shall not be valid among partners as well, except since the date at which partner has claimed invalidity ruling.

**Article 1223:**

Difference in shares shall be permissible. A share of ownership or merely of profit shall be permissible.

**Article 1224:**

Share of partner may not be limited to his financial influence or credit.

**Article 1225:**

If share of one of partners is in cash and he has not paid it, he shall be obligated, since the date on which legal interest becomes due, to compensate for the loss incurred due to deferred payment of the share, with no need for judicial claim or notification.

**Article 1226:**

If share of partner is right of ownership, right of benefit or other real rights, provisions of sale shall apply regarding guarantee of share in cases of destruction or entitlement or appearance of defect.

**Article 1227:**

If share of partner is only benefiting from property, provisions of lease shall apply to it.

**Article 1228:**

If share of partner is performing an action, he shall be obligated to provide the services he has undertaken in contract and to present an account of it.

**Article 1229:**

Share of performing an action shall be compensated by performance of the action. In this case, partner shall be liable only for relevant actions in partnership.

**Article 1230:**

If share is a debt, obligation of partner shall only be recognized as fulfilled that debt is paid to partnership at due date. In case of nonpayment, in addition to liability of partner for non-payment of share, he shall be obligated to pay compensation since the due date.

**Article 1231:**

Person shall be entitled to benefit as it is stipulated in contract, whether it of property or action.

**Article 1232:**

If, in partnership contract, share of each of partners of profit and loss is not determined, share of profit of each of partners shall be distributed proportionate to their shares of the capital.

**Article 1233:**

If shares of partners of profits have only been stated in contract, this shall be exactly applied to their share of loss. Similarly, determination of share of each partner of loss in contract shall exactly apply to their shares of profits.

**Article 1234:**

Notwithstanding equality of shares of capital, it shall be permissible to distribute more profit than the equal share.

**Article 1235:**

If share of partner is limited to work and action, his share of profit and loss shall be proportionate to partnership use of his action. If partner contributes cash or another object in addition to his action, he shall be entitled to a share for his action and a share for whatever he has contributed in addition to his action.

**Article 1236:**

- (1) If it is agreed that one of partners shall not have share of profit or loss, partnership contract shall be recognized as void.
- (2) Partner who has no share in partnership except performing action may only be exempted, upon agreement of partners, from bearing losses if no fee has been determined for his action.

**Article 1237:**

In credit partnership, profits and losses shall be distributed proportionate to the property that is bought on credit by each of partners for the partnership and has guaranteed it. In this case, no other agreement shall be made.

### **Topic 3 — Administration of Partnership**

**Article 1238:**

Partners shall be trustees against one another and property of partnership in possession of partner shall be considered as in trust.

If the property perishes without any fault or transgression by partner, he shall not be recognized as liable. However, he shall be recognized as liable for his fault or transgression.

**Article 1239:**

- (1) Contract of partnership shall have to include method of administration, name or names of member(s) of board of directors and scope of authority of each member of the mentioned board.
- (2) Inclusion of the above matters shall be permissible on the basis of an agreement made later, provided that legal procedure of amendment has been observed.

**Article 1240:**

- (1) If one of partners is, on the basis of specific stipulation in the content of contract of partnership, assigned to administer partnership, he shall continue to administer the partnership and take those measures that achieve the objectives of partnership, provided that his measures and actions are free of cheat. Removal of such partner as long as partnership exists, without legal permission or amendment of partnership contract, shall not be permissible.
- (2) If the mentioned partner is appointed to the board of directors on the basis of a later agreement, reversion from it shall be permissible like reversion from other ordinary agencies.

**Article 1241:**

If several persons are, without determination of their duties and differentiation of their authorities, appointed to administer affairs of partnership, each one may independently take part in the administration of partnership. However, each of the appointed partners has the right to object to that participation before it is implemented. This objection may be turned down by the majority of votes of

the appointed partners. In case of equality of votes, majority of votes of all partners shall be referred to.

**Article 1242:**

If it is agreed in contract that resolutions be made by majority of votes of members of the board of directors, deviation from this shall not be permissible, unless deviation has been made in order to take an urgent measure that if it is not taken, such a great loss shall accrue to partnership that cannot be compensated.

**Article 1243:**

If issuance of resolutions is determined to take place by majority, it shall mean majority of number of votes, unless the contrary is agreed.

**Article 1244:**

Partners other than members of the board of directors shall not have the right to interfere in administration of affairs. However, they may personally access books and documents of partnership. Any agreement to the contrary shall be considered void.

## **Topic 4 — Effects of Partnership**

**Article 1245:**

- (1) Partner must refrain from any activity that cause loss to partnership or is against it constitutive objectives.
- (2) Partner is obligated to pay such attention to interests of partnership as he usually does to his own personal interests, unless he is assigned to carry out administrative affairs of partnership in exchange for payment. In this case, he may not pay attention less than an ordinary person.

**Article 1246:**

- (1) If partner obtains or attaches some property or a sum of money from partnership, he shall be obligated, without any judicial claim or notification, to pay its interest since the date of obtaining or attachment. If necessary, he shall also be obligated to pay complementary compensation.
- (2) If partner pays some of his own property to partnership as aid or spends certain beneficial costs for the interest of partnership with good faith, he may receive the interest of mentioned amounts from partnership since the date of their payment.

**Article 1247:**

- (1) If properties of partnership do not suffice its debts, partners shall be obligated to discharge the debts, proportionate to their shares of the loss of partnership, from their personal property, unless another proportion has been agreed upon by partners. Agreement of partners on their non-liability for the debts of partnership shall not be valid.
- (2) Creditors of partnership may claim against each of partners up to their shares of profits of partnership.



**Article 1248:**

- (1) Partners shall not be considered as surety for that part of debts of partnership that they are liable to pay, unless there is agreement to the contrary.
- (2) In case of bankruptcy of one of partners, his share of debt shall be divided among other partners proportionate to their shares of the loss.

**Article 1249:**

If there are personal debts against one of partners, the creditors may not, in case partnership is still existent, claim their rights from the share of debtor of partnership capital. However, they may make such a claim against profits of the share of debtor. In case of administration of partnership properties, they may claim against the share of debtor of partnership capital if debt has become due.

Nevertheless, , prior to administration of partnership properties, creditors may request partnership to impose precautionary attachment on the share of their debtor.

## **Topic 5 — Dissolution of Partnership**

**Article 1250:**

Partnership shall be dissolved in one of the following cases:

- 1 – Expiration of the designated deadline.
- 2 – Materialization of objective for which partnership was established.
- 3 – Perishing of the whole or most of the capital of company so much that no profit is conceived of its continuity.
- 4 – Death of one of partners or his incapacitation or registration of his bankruptcy.
- 5 – Withdrawal of one of partners from partnership when period of activity of partnership is unlimited, but, provided that the partner has informed other partners of his intention to withdraw (3) months in advance, otherwise, his withdrawal shall be considered arising from cheat or at an inappropriate time, unless otherwise agreed.
- 6 – Agreement of partners to dissolve.
- 7 – Court ruling for dissolution.

**Article 1251:**

- (1) Partners may agree that partnership shall, after the death of one of partners, continue through his heirs, even though they may be minors.
- (2) Also partners may agree that in case of death, incapacitation, bankruptcy or withdrawal of one of partners the partnership shall continue among the remaining partners. In this case, the mentioned partner and his heirs shall have no other right than their own share from the partnership property that shall be evaluated on the basis of the price of the event day. This amount shall be paid to him in cash and he shall not enjoy the rights which may be created later, except what is accrued from the result of measures taken prior to the event of withdrawal.

**Article 1252:**

- (1) If the designated period of partnership terminates or activities for which partnership has been established complete and partners, nevertheless, embark on such activities for which partnership was established, the contract shall be extended year by year with the same terms.
- (2) Creditors of one of partners may object to the extension mentioned in the above sub-clause and stop consequences of partnership on the share of the indebted partner.

**Article 1253:**

Court may rule on dissolution of partnership on the basis of request of one of partners due to non-fulfillment of obligations of a partner or on the basis of any other reason backed by reasonable evidence. Any agreement to the contrary shall not be valid.

**Article 1254:**

- (1) Each of partners may request court to dismiss the partner whose activities result in dissolution of partnership or objection to its extension, in such a way that partnership remains among other partners.
- (2) Also, in case period of activity of partnership is limited, each of partners may request court his withdrawal from partnership based on reasonable evidence. In this case, partnership shall be dissolved, unless the remaining partners agree on its continuation.

## **Topic 6 — Administration and Division of Partnership Properties**

**Article 1255:**

Administration and division of partnership properties shall take place according to the terms anticipated by contract. If it is not mentioned in contract, provisions of the following Articles shall be applied in this regard:

**Article 1256:**

Authority of the board of directors shall terminate as soon as partnership is dissolved, but personality of partnership shall continue for a necessary period for administration and its finalization.

**Article 1257:**

- (1) Administration of partnership properties shall be conducted by all partners or person or persons appointed by the majority vote of partners.
- (2) If partners do not appoint person or persons for administration by a majority vote, court may appoint one of the partners on the basis of the request of one of partners.
- (3) In case of nullity of partnership, court shall determine administrator person, scope of his authority and administration procedure, on the basis of request of interested persons.
- (4) Until appointment of administrator, the board of directors shall be considered as the administration board with respect to others.

**Article 1258:**

- (1) Administrator may not take new actions in partnership, unless the mentioned actions are necessary for completion of previous actions.

- (2) Administrator may sell properties of partnership, whether they are immovable or movable, by auction or otherwise, unless his authority has been restricted upon his appointment.

**Article 1259:**

- (1) Properties of partnership shall be divided among partners after payment of immediate, settlement of deferred and disputed debts and discharge of costs and debts paid by one of partners in the interest of partnership.
- (2) A sum of money equivalent to value of share of each of partners in partnership capital, according to contract, shall be allocated. If value of share is not specified in contract, its value shall be calculated on the basis of its value at the time of delivery, unless the share of partner is exclusively performance of action or delivery of an object in the interest of partnership or merely a profit.
- (3) If some property remains, it shall be divided among partners proportionate to their share of profits.
- (4) If, after payment of amounts mentioned in the first sub-clause of this Article, the residual property of partnership does not suffice shares of partners, the loss shall be evaluated on the basis of agreement of partners regarding distribution of losses.

**Article 1260:**

With regard to division of properties of partnership, provisions on division of shared properties shall be observed.

## **Section 2 — Kinds of Partnerships**

### **Topic 1 — Mozarebat Partnership**

**Article 1261:**

Mozarebat is a partnership between two persons whereby one of them participates by paying capital and the other, who is called Mozareb, participates by carrying out an action.

**Article 1262:**

In Mozarebat, owner of capital shall have to have capacity to appoint agent and performer (Mozareb) capacity to act as agent.

**Article 1263:**

Capital must be in cash and designated and be given delivery to performer. Debt for which person is liable may not be considered as capital.

**Article 1264:**

Share of each of partners of the profit must be determined as part of a shared property. In case shares of profit are not determined, it shall be divided on an equal basis.

**Article 1265:**

Mozarebat partnership may not acquire legal personality.

**Article 1266:**

Mozarebat shall be either absolute or limited.

**Article 1267:**

- (1) Absolute Mozarebat partnership is the one that is not limited to time, place and type of transaction and seller and buyer are not determined therein.
- (2) Limited Mozarebat partnership is the one that is limited to one of the limits mentioned in the above sub-clause.

**Article 1268:**

Performer shall have the status of trustee and capital shall be in his possession in trust. However, in taking action on capital, he shall be considered as agent of owner of capital and shall be partner in profits.

**Article 1269:**

- (1) In absolute Mozarebat, sale, purchase and appointing performer as agency shall be permissible. Performer may deal in cash or on such credit that is customary in business.
- (2) Acceptance of assignment, depositing partnership property, pawning or mortgaging it by the agent, also leasing and transferring property of Mozarebat by the agent to any place for dealing shall be permissible. Agent may not buy a property with a gross lesion, otherwise, the purchased property shall be considered on his own account.

**Article 1270:**

In absolute Mozarebat, performer may not mix Mozarebat property with his own, nor may he give it to another person for Mozarebat partnership, unless he has already been authorized to do so. Likewise, he may not take more loan than the amount of capital without explicit permission of owner of capital.

**Article 1271:**

In limited Mozarebat, performer shall be obligated to observe the terms specified by owner of capital. In case of violation, he shall be considered as usurper and shall be held liable for the lost property and shall be obligated to compensate for the interest and the property.

**Article 1272:**

In the event of nullity of Mozarebat, profit shall belong to owner of capital and performer shall be entitled to the market fee, provided it does not exceed the designated fees. If no profit is accrued, performer shall not be recognized as entitled to fee.

**Article 1273:**

If performer mixes Mozarebat property with his own property in authorized cases, profits shall be divided proportionate to the share of each of capitals. Profit of property of performer shall belong to himself and profit of Mozarebat capital shall be distributed between owner of capital and performer in accordance with the terms agreed in contract.

**Article 1274:**

If performer obtains a property more than the capital on credit upon permission of owner of capital, it shall be considered as credit partnership between them.

**Article 1275:**

Each of performers and owner of capital must share the profits. If it is stipulated that all profits shall belong to performer, the contract shall be considered as loan contract and if it is stipulated that all profits shall belong to owner of capital, performer shall be considered as dealer and entitled to the market fee.

**Article 1276:**

Loss shall only be borne by owner of capital unless performer has guaranteed to share it.

**Article 1277:**

If part of Muzarebat property perishes, it shall be compensated from the profit accrued. If the perished part exceeds the profit, performer shall not be liable for it.

**Article 1278:**

Costs of transportation of performer from one place to another for carrying out affairs of Muzarebat, to a reasonable extent, shall be paid from the Muzarebat property.

**Article 1279:**

- (1) Muzarebat shall be terminated with expiration of the period mentioned in contract or with death of one of the parties or with loss of capacity of performer.
- (2) If performer dies prior to administration of partnership properties, rights of owner of capital shall be paid from inheritance of the deceased.

**Article 1280:**

Owner of capital shall be obligated to inform performer of his intention to remove him. Thereafter, performer may not take action on Muzarebat property, unless the purpose of such action is conversion of Muzarebat goods to cash.

## **Topic 2 — Partnership in Work**

**Article 1281:**

Partnership in work is that two or more persons undertake to perform a work or fulfill a promise for another person in such a way that fee shall be divided between them equally or differently.

**Article 1282:**

Partners shall be considered as agents of each other in accepting work, and employer may claim performance of work from each of partners. Each of partners may claim remaining part of fee from employer and if employer pays the fee to one of partners, he shall be considered acquitted.

**Article 1283:**

One of partners shall not be obligated to perform work alone. He may assign the concerned work to one of the other partners or to a person other than partners, unless employer has stipulated that the work shall be performed by one specified partner.

**Article 1284:**

Profits shall be divided among partners as agreed. Equality or difference in performing work and payment of fee may be stipulated.

**Article 1285:**

As soon as Partner guarantees work he shall be entitled to the profit, even though he has not practically performed any work.

**Article 1286:**

If subject of work is destroyed or defected by act of one of partners, employer may compel any of partners he chooses to pay compensation. The loss shall be divided among partners in proportion to their guarantees.

**Article 1287:**

In work partnership, some of partners may provide the workplace and some other may supply work equipment and perform it.

## Chapter 4 — Loan

**Article 1288:**

Loan is a contract whereby one of the parties transfer ownership of cash or certain fungible property to the other party so that the other party returns its similar in quality, quantity and attribute to lender at the designated deadline.

**Article 1289:**

- (1) Borrower shall own the object after taking delivery of it and shall be liable for its similar, not the very object, even if the object is existent. Lender may obligated borrower to return the similar before the designated deadline.
- (2) If the object perishes after conclusion of contract but before it is taken delivery of, borrower shall not be recognized liable.

**Article 1290:**

- (1) If a hidden defect appears in the borrowed object, and borrower does not decide to return it, he shall only be obligated to return price of the defected object.
- (2) If lender has intentionally concealed the defect, borrower may claim repair of the defect or its replacement with a sound one.

**Article 1291:**

If the object is taken away due to entitlement, provisions of sale shall be applied to it, otherwise provisions of loan shall be observed.

**Article 1292:**

Borrower shall be obligated to return similar of the object, quantitatively and qualitatively, at the agreed place and time.

If time and place of return is not designated in advance, borrower may return it at the place of contract at any time he wishes.

**Article 1293:**

If measurable or weighable objects or coins or banknotes are subject of loan, borrower shall be obligated to return similar of it, even if the rates may have gone down or up.

**Article 1294:**

If similar of the object of loan, after the consumption of the object by borrower, is not found in the market, lender may wait until it is found in the market again or claim price of the day of delivery.

**Article 1295:**

Interest on loan shall not be permissible, unless law states otherwise.

**Article 1296:**

If incapacitated person borrows something and consumes it, he shall be considered liable for what he has used. If the mentioned property perishes by itself, borrower shall not be liable for it and if the property remains in a defective form, lender may take it back.

## Chapter 5 — Compromise

### Section 1 — General Provisions

**Article 1297:**

Compromise is a contract that resolves dispute and ends conflict on the basis of consent of parties.

**Article 1298:**

- (1) In compromise contract, the right from which the compromise originates shall have to be a right of compromiser himself and be established and relate to the subject for the purpose of which compromise is made and taking consideration for it be permissible.
- (2) Obtaining consideration for compromise shall be permissible.

**Article 1299:**

- (1) Consideration for compromise may be valued owned property that is deliverable or specified profit.
- (2) If consideration for compromise requires taking and giving delivery, it shall have to be specified.

**Article 1300:**

Person entering into compromise contract shall have to have the legal capacity to take action on rights that are subject of compromise.

**Article 1301:**

Minor who is permitted to conduct commerce may make compromise with his debtor on the debt on which no judicial ruling is issued and there has been no witness for its proof or on the debt proved against bankrupt debtor.

He may also compromise with his debtor on deferment of payment of debt within a designated period of time.

**Article 1302:**

- (1) Guardian and executor of non-pubescent minor may not make compromise with minor's debtor on the debt that debtor confesses to it or is proved by ruling of court or there is witness for its proof, unless the mentioned debt has been created by the contract of guardian or executor. In this case, guardian or executor shall be liable towards the minor for the amount of the debt. If the compromise is made in exchange for another property, in case value of the property is equivalent to or a little more than the debt, it shall be permissible, unless it is involved with gross lesion.
- (2) If guardian or executor fears that all debts may not be proved, where there is no witness and denying debtor is prepared to take oath, he may make compromise on part of debt with the permission of court.

**Article 1303:**

If a debt claim is filed against discerning minor and if claimant has witness to prove his claim, executor or guardian may, with permission of court, make compromise with claimant in exchange for an object and pay the remaining part. If claimant does not have witness, guardian or executor may not make compromise.

**Article 1304:**

Attorney may not make compromise on conflict case. If person who is appointed as attorney to advocate in a conflict makes compromise without permission of his client, the compromise shall not be valid.

**Article 1305:**

If claim is on a specific object and defendant confesses to it and claimant makes compromise with him on a specific period of profit in exchange for consideration, this shall be valid and shall be considered as lease. If the object perishes during the designated period, the compromise shall become invalid.

**Article 1306:**

If claim is on a specific property and defendant confesses to it, compromise on it in exchange for a specific property shall be valid and such a compromise shall be considered as sale.

**Article 1307:**

If person claims against a property in possession of another person, whether or not it is specific, and the other party claims against a property that is in possession of claimant, compromise on what they have in possession shall be valid and such a compromise shall be considered as swap. Validity of such compromise shall not be subject to validity of knowledge of considerations.

**Article 1308:**

If claimant makes compromise on part of claim with defendant, such a compromise shall be considered as obtaining part of his right and extinguishment of another part of it.



**Article 1309:**

If compromise includes donation, sale or another contract, provisions of the contract on which agreement has been made shall be observed on validity and its effects.

**Article 1310:**

Compromise on personal status and public order shall not be permissible, but compromise on financial rights deriving from personal status or commission of crime shall be permissible.

**Article 1311:**

Compromise shall only be proved by a written evidence or its registration by notary public office.

## **Section 2 — Effects of Compromise**

**Article 1312:**

Compromise shall end the included disputes and none of the parties shall have a right to revert from it.

**Article 1313:**

When compromise is made in the desired way, claim shall stop and ownership of consideration for compromise shall transfer to claimant and defendant shall not have the right to take it back.

**Article 1314:**

- (1) When consideration for compromise is a fungible object and of the same quality as the claimed one and it perishes partially or completely before its delivery to claimant or it is taken away by entitlement, compromise shall remain at it is, defendant shall be obligated to deliver the similar of what has perished, whether compromise has been made by defendant's confession or his denial or his silence.
- (2) If consideration for compromise is not a fungible object and it perishes completely or partially before delivery or it is taken away by entitlement, if compromise has been made by confession, claimant shall be obligated to pay all or part of the claimed object and if the compromise has been made by denial or silence of defendant, he shall refer to the conflict.

**Article 1315:**

Compromise shall recognize the included rights, not create them and this effect shall be limited to rights that are subject of the dispute.

**Article 1316:**

Words of compromise shall have to be interpreted in a strict way and be related to the subject of dispute.

**Article 1317:**

If compromise is subject to provisions of swap, parties may mutually agree to terminate it. In such a case, the subject of dispute shall belong to claimant and consideration for compromise shall belong to defendant.

**Article 1318:**

If compromise results in extinguishment of some of rights, it may not be terminated by mutual agreement.

## **Section 3 – Nullity of Compromise**

**Article 1319:**

Objection to compromise due to misunderstanding of law shall not be permissible.

**Article 1320:**

Compromise shall be considered void in the following cases:

- 1 – Compromise shall become void due to termination by mutual agreement, rejection of consideration for compromise and options of defect and sight and if one of the compromise considerations is taken away by entitlement.
- 2 – If deception in papers on which compromise is based is proved.
- 3 – If a final ruling has already been issued on the dispute included in compromise and both or one of the parties do not have knowledge of issuance of the mentioned ruling.

**Article 1321:**

Compromise is indivisible. Nullity of part of compromise shall cause nullity of all of it, unless text of contract or circumstances indicates that concluding parties have agreed with independence of parts of contract from each other.

# **Title 2 – Utilization Contracts**

## **Chapter 1 – Lease**

### **Section 1 – General Provisions**

#### **Topic 1 – Elements of Lease**

**Article 1322:**

Lease contract shall mean transfer of ownership of the concerned profit of the leased property by lessor, to lessee in exchange for a consideration that is replaceable.

**Article 1323:**

Lease contract may be concluded on profits of movable and immovable properties and also on permissible actions.

**Article 1324:**

In lease contract, in addition to general conditions of validity of contract, the following conditions shall have to be met: determination of lease property, mention of its profit in a way that does not result

in a dispute, mention of period of utilization and determination of amount of rent, otherwise, lease shall be considered void.

**Article 1325:**

Person who is solely authorized to administer the property may not fix the period of lease for more than three years. If is fixed for more than three years, it shall be reduced to three years, unless law provides otherwise.

**Article 1326:**

Unauthorized lease contract shall be subject to permission by owner. If owner is minor or incapacitated and fee has been determined according to the market, conclusion of lease contract shall be subject to permission by guardian, executor or protector.

**Article 1327:**

Permission stated in Article (1326) of this Law shall be valid when contracting parties and the subject of contract are present and consideration is other than cash.

**Article 1328:**

- (1) Provisions on options of condition, sight and defect shall be observable on lease property.
- (2) Provisions related to options of differentiation, division of contract, description of consideration, lesion, misrepresentation, betrayal and determination shall be observed on consideration for rent.

**Article 1329:**

If option has been stipulated for both lessor and lessee, lease contract shall be rescinded by revocation by either within the designated period. Option of either shall extinguish by his permission and option of the other shall remain at it is until the end of the designated period.

**Article 1330:**

Period of option starts from the time of conclusion of contract and period of lease shall begin since the time of extinguishment of option, unless otherwise agreed.

**Article 1331:**

Lease of share of a shared property by partner or non-partner shall be permissible.

**Article 1332:**

If property changes into a shared one after conclusion of contract, it shall not invalidate contract.

## **Topic 2 — Property to be Leased**

**Article 1333:**

- (1) Lease of a property that cannot be utilized without being destroyed shall not be permissible.
- (2) Lease of action shall be permissible if it is permissible and the worker is not legally obligated to perform it.
- (3) Lease of an object that cannot be really or legally utilized shall be void.

**Article 1334:**

If property has been leased, by a person who is entitled to utilization, to another person, the lease shall end when the owner does not permit it upon expiration of the right to utilization, provided that the designated period for notification of evacuation and necessary period for transfer of crops of agricultural land are observed.

**Article 1335:**

Lessee shall have a right to option of sight within a specified period, but lessor who leases a property before seeing it shall not have this right.

**Article 1336:**

If person leases a property which he has already seen, he shall not have the right to option of sight, unless the mentioned property has changed from its previous state.

**Article 1337:**

Right to option of sight of lessee shall extinguish in the following cases:

- 1 – In case of confession of lessee, in contract, to seeing the property that is being leased.
- 2 – In case of such description of property in contract that could be substituted for seeing and proof of the property with the mentioned description.
- 3 – In case of issuance of such word or action from lessee that nullifies the option.
- 4 – In case of expiration of such adequate time within which lessee has been able to see the property (without seeing it).
- 5 – In case of death of lessee.

## **Topic 3 – Rent**

**Article 1338:**

- (1) Rent may be cash, property, profit or permissible undertaking.
- (2) Agreed rent involved with gross lesion shall be modified to marker rent. Market rent shall be determined by competent authorities or by ruling of court.

**Article 1339:**

Renewal of rent according to usage of the leased property shall be permissible.

**Article 1340:**

Rent shall be enforceable upon utilization or being able to utilize.

**Article 1341:**

Deferred and Immediate payment of rent and payment by installments within specified periods shall be permissible.

**Article 1342:**

If immediate payment of rent is stipulated, lessee shall be obligated to pay it during conclusion of contract, and lessor may refrain from delivering property to lessee until the time of receipt of rent.

**Article 1343:**

If deferred payment of rent is stipulated, lessor shall be obligated, when contract is concluded on profit of properties, to deliver property to lessee. In such a case, rent shall not become enforceable prior to the due date.

**Article 1344:**

If lessee, without any agreement of lessor on quantity and quality of rent, takes delivery of and utilizes the property that is being leased, he shall be liable for payment of market rent.

## **Topic 4 — Period**

**Article 1345:**

Period of lease shall commence as of the date fixed in contract.

If it is not fixed, it shall be valid as of the date of contract.

**Article 1346:**

If period of lease is not explicitly stated in contract, lease shall be valid for the designated period for payment of rent, according to the current custom on the subject of lease. Lease shall end with expiration of this period, provided that an advance notice has been given on evacuation prior to the last half of the designated period.

## **Section 2 — Effects of Lease**

**Article 1347:**

Lessor shall be obligated, after taking delivery of the designated rent that is stipulated to be paid immediately, to deliver the property that is being leased, together with its supplements, to lessee according to the prior agreement in such a way that utilization of the leased property, according to its nature, shall be possible.

**Article 1348:**

- (1) If the property that is being leased is delivered in a state that is not capable of being utilized as stated in lease contract or its utilization is with great loss, lessee may claim rescission of contract or reduction of rent proportional to the extent of loss.
- (2) Lessee may, in both above cases, claim compensation, if required.

**Article 1349:**

If the property that is being leased is in a state that inflicts great risk on health of lessee or that of people who live with him or of his employees or workers, lessee may claim rescission of contract, even if he has already waived this right.

**Article 1350:**

Regarding obligation to deliver the property that is being leased, those provisions shall be applied that apply to obligation to deliver the object of sale.

**Article 1351:**

Lessor shall be obligated to adjust and repair defects inflicted on the leased property that impede desired utilization of it.

**Article 1352:**

- (1) If lessor refuses to do the adjustment and repair stated in Article (1351) of this Law, lessee may either rescind the lease or personally adjust or repair it with permission of court and then refer to lessor proportional to the amount of costs or deduct that amount from rent.
- (2) Lessee may, without permission of court, perform those urgent and simple repairs on the leased property that lessor has not performed within a reasonable time after notification. Lessee shall deduct costs of repairs from rent according to the documents.

**Article 1353:**

Lessor shall be liable for duties and taxes on the leased property, but lessee shall be liable for costs of water, electricity and anything related to his utilization, unless the contrary is agreed.

**Article 1354:**

- (1) If the leased property completely perishes during the period of lease, the lease shall automatically be rescinded.
- (2) If part of property perishes or it falls in such a state that is not capable of being utilized as intended, according to lease contract or great loss is inflicted on utilization without lessee's fault, while lessor does not take measure to return it to the original state within a reasonable time, lessee may, depending on the circumstances, claim reduction of rent or rescission of lease with no prejudice to his right to initiate adjustment and repair on the basis of provision of Article (1352) of this Law.
- (3) In both above cases, if destruction or defect of property has not happened due to fault of lessor, lessee may not claim compensation.

**Article 1355:**

Lessee may not prevent lessor from performing urgent repairs that are necessary for preservation of property. If performing such actions interrupt utilization, lessee may claim rescission of contract or reduction in rent and if lessee stays in the leased property until completion of the mentioned activities, his right to claim reduction of rent or rescission of contract shall extinguish.

**Article 1356:**

Lessor may not, during the lease period, violate utilization of the leased property by lessee or change it in a way that it prevents utilization of property or causes interruption of gaining a profit on which lease has been concluded.

**Article 1357:**

Not only shall lessor be liable for his own or his relatives' actions, but he shall also be recognized as liable for any violation on the leased property by another lessee or person who has gained, due to legal reasons, a right from him.

**Article 1358:**

If another person claims such a right that conflicts with rights of lessee, lessee shall be obligated to notify lessor of opposing the claim. If, as a result of the claim, lessee is deprived of utilizing the property, he may rescind the lease and, if required, claim compensation as well.

**Article 1359:**

- (1) If the leased property is usurped and lessee is not able to remove dominance of usurper, he may rescind the contract and claim compensation.
- (2) If lessee fails to remove dominance of usurper, despite his ability to do so, and does not notify lessor of usurpation, rent shall not extinguish but he may claim compensation.

**Article 1360:**

Lessor shall be recognized as liable for those defects that prevent utilization of the leased property or cause general loss in utilization. Lessor shall not be recognized as liable for those defects that lessee had knowledge of them during conclusion of lease or he could easily gain knowledge of it, unless lessor has declared the leased property as faultless.

**Article 1361:**

If such a defect occurs upon the leased property that causes liability, lessee may claim rescission of contract or reduction of rent and compensation thereof it has inflicted harm on, unless lessor proves that he has not had knowledge of the defect.

**Article 1362:**

- (1) If several persons lease a single property, preference shall be given to the person who has, without cheat, possessed the property prior to everyone else. If one of the lessees has, before possessing the leased estate by any other lessee person or before renewal of the lease contract, registered the contract, he shall be given priority over others.
- (2) If there is no reason for preference of one of the lessees, they may compensation.

**Article 1363:**

If great loss is incurred on utilization of the leased property due to legal actions by a governmental agency, lessee may claim rescission of contract or reduction in rent. If actions by the governmental agency originates from causes for which lessor is liable, lessee may also claim compensation, unless the contrary is agreed.

**Article 1364:**

If lessor has deceitfully concealed cause of liability, any agreement on exemption from or limit of liability of lessor for compensation or defect shall not be valid.

**Article 1365:**

Exceeding rights of utilization established by contract shall not be permissible.

**Article 1366:**

Lessee shall utilize the leased property in a way on which agreement is made. If no prior agreement is made, current custom shall be valid.

**Article 1367:**

Lessee may not make such modification on the leased property that causes harm. If he violates limits of his obligations, he may be obligated to restore the property to its original condition and, if required, pay compensation.

**Article 1368:**

Installation of equipment of water, gas, electricity, telephone, radio and the like on the leased property, in a way that does not damage it, shall be permissible.

**Article 1369:**

Lessee shall be obligated to make minor repairs required by custom, unless the contrary is agreed.

**Article 1370:**

Lessee may claim from lessor those costs of repairs that he has made on the property with the permission of lessor with the purpose of its improvement and preservation, even if referring resort to lessor has not been stipulated. If the repairs are made to ensure interests of lessee, he shall not have a right to refer, unless referring has been stipulated.

**Article 1371:**

The leased property shall be considered in trust with lessee. Lessee shall be obligated to take care of it and liable for its perishing and those defects that are not caused by normal utilization.

**Article 1372:**

Lessee shall be obligated to inform lessor of anything that requires his action.

**Article 1373:**

- (1) Lessee shall be obligated to pay designated rent on agreed times. If there is no prior agreement, local custom on payment time shall be valid.
- (2) Rent shall be paid at the domicile of lessee, unless custom or agreement of parties requires otherwise.

**Article 1374:**

Payment of one installment of rent shall be considered as indication of payment of other previous installments, unless evidence to the contrary appears.

**Article 1375:**

Lessee shall be obliged to return the leased property at the end of the lease period. If he keeps the mentioned property without legal cause, he shall be bound to pay lessor an exchange, in the amount of



which price of rent must be observed, and compensation. If the keeping is due to emergency or a cause in which lessee is not involved, he shall only be obligated to pay lessor the market rent.

**Article 1376:**

- (1) Lessee shall be obligated to return the leased property in the same condition delivered to him, except for destruction or defect in which lessee is not involved.
- (2) If the leased property is delivered without description of its attributes, it shall be assumed that the property has been delivered in good condition, unless evidence to the contrary is found.

**Article 1377:**

At the end of lease period, the leased property shall, like before, remain in trust with lessee. If lessee keeps it with himself despite claim of return, he shall be liable for its destruction.

**Article 1378:**

- (1) If lessee constructs building in the leased property or plants trees or makes other decorations therein that increase price of the estate, lessor shall be obligated, at the end of the lease, to pay at least the costs or the price difference to lessee, unless the contrary is agreed.
- (2) If the mentioned decorations are made without the knowledge of lessor or in spite of his objection, lessor may claim against lessee removal of them with compensation for damages incurred to the estate due to the removal.

### **Section 3 — Assigning Lease and Sublease**

**Article 1379:**

Lessee has the right to assign lease or sublease all or part of things he has leased, unless the contrary is agreed.

**Article 1380:**

Prohibiting lessee from sublease requires prohibition of assigning lease and vice versa, unless lease is especially on real property on which industrial or commercial devices have been built and lessee sells, out of necessity, he mentioned devices.

In this case, court may, despite the prohibition condition, rule on continuation of lease, provided that client presents sufficient guarantee and it does not cause definite harm to lessor.

**Article 1381:**

In case of assigning lease, assignee shall succeed lessee with regards to his relations with lessor on rights and obligations arising from lease contract, but despite that, lessee shall be recognized as guarantor of assignee regarding fulfillment of his obligations.

**Article 1382:**

Sub-lessee shall be obligated, when notified by lessor, to directly fulfill for lessor all of his established obligations towards original lessee and he not resort, against lessor, to the rent he has paid in advance to original lessee, unless this has taken place before the notification, according to the custom and on the basis of an agreement established on the date of sub-lease.

**Article 1383:**

The first lessee shall be recognized as acquitted against lessor in the following cases:

- 1 – When lessor explicitly accepts assigning lease and sublease.
- 2 – When rent is paid by assignee or sub-lessee, without expressing retention of his rights against the first lessee.

## **Section 4 – Termination of Lease**

**Article 1384:**

Lease shall terminate at the end of period specified in contract, without notification of evacuation.

**Article 1385:**

- (1) If, after the end of lease contract, lessee continues to utilize the leased property and lessor does not object despite having knowledge of it, the lease shall be considered renewed for an unknown period with the same prior conditions and provisions of Article (1344) of this Law shall apply to it.
- (2) In case of implicit renewal of lease, enforceable guarantees for the prior lease shall be exactly transferred, except personal or real guarantees that shall not be transferred without the consent of guarantor.

**Article 1386:**

If one of the parties sends a notification of evacuation to the other party, while lessee, notwithstanding the notification, continues to utilize the property after the end of period of lease, this shall not mean renewal of lease, unless evidence to its contrary is presented. In such a case, lessee shall be obligated to vacate and pay the market rent for the period of utilization he has made since termination of lease of the leased property.

**Article 1387:**

Lease shall not terminate with the death of lessor or lessee. However, heirs of lessee may, in case of his death, claim termination of lease contract on the basis that their incomes do not suffice to bear continuation of lease due to death of lessee or that they no longer need the lease, provided that claim to termination has been made within six months since the death of lessee and the designated period of evacuation notification has been observed as well.

**Article 1388:**

If lease has been concluded only due to profession of lessee along with certain other special characteristics of him, claim of rescission of contract may, after death of lessee, be made by lessor and heirs of lessee.

**Article 1389:**

Insolvency or bankruptcy of lessee shall not cause immediate payment of rent that has not become due as yet. Nevertheless, if guarantees are not given within such a reasonable time that guarantee payment of future rent, lessor may claim rescission of lease. Also, lessee may, if he is not permitted to assign the lease or sublease, claim rescission of contract, provided that he pays just compensation.

**Article 1390:**

- (1) If ownership of the leased property is transferred to another person, while it is not proved that the date of lease has been prior to contract for transfer of ownership, lease shall not be valid with regard to the mentioned person.
- (2) Person to whom the ownership has been, according to sub-clause (1) of this Article, transferred may, despite invalidity of contract with regard to him, resort to the mentioned contract.

**Article 1391:**

- (1) Person to whom ownership of the leased property has been transferred and lease is not considered valid for him, may not obligate lessee to vacate, except after notification that has been made in accordance with Article (1346) of this Law.
- (2) If the new owner notifies lessee, before termination of lease contract, of evacuation, he shall be obligated to pay compensation to lessee, unless its contrary is agreed. Lessee shall not be forced to vacate, unless upon receiving compensation from lessor or, as his representative, from person to whom the ownership is transferred.

**Article 1392:**

If person to whom ownership of the leased property has been transferred proves that lessee had had knowledge of transfer of ownership at the time he paid the advance rent to lessor, lessee may not resort to the mentioned rent. In case of inability to prove, owner of the lease property may refer to lessor.

**Article 1393:**

- (1) Lessor may not claim rescission of lease before the end of its period, even if he declares his intention of residence in or personal utilization of the property, unless the contrary is agreed.
- (2) If it is agreed that lessor may rescind lease due to his needs to personally utilize the leased property, lessor shall be obligated to observe provisions of Article (1346) of this Law on giving notification to lessee, unless the contrary is agreed.

**Article 1394:**

If person leases a shop and his business drops afterwards, he may not rescind lease or refuse to pay rent.

**Article 1395:**

If lessee does not directly utilize the leased property or is unable to fully utilize it, this shall be considered as referred to his fault or another reason related to him and he shall be obligated to observe lease contract and all obligations originating from it, provided that the leased property has been given delivery to lessee in such a state that it can be utilized as agreed.

**Article 1396:**

- (1) Each of contracting parties may claim rescission of a lease contract that has a limited period before the end of the period.

This provision shall be applicable if enforcement of contract has become impossible since the beginning or in the middle due to unpredictable events.

Claimant of rescission shall have to observe period of notification stated in Article (1346) of this Law and pay just compensation.

- (2) If lessor has claimed rescission, he may not force lessee to return the leased property, unless he pays necessary compensation to lessee or leaves adequate guarantee with lessee to this purpose.

**Article 1397:**

If lessee is an officer or employee or a person whose work requires relocation of his domicile, he may claim rescission of lease of his time limited accommodation, according to provision of Article (1346) of this Law.

## **Section 5 — Some Kinds of Lease**

### **Topic 1 — Lease of Agricultural Land**

**Article 1398:**

Lease of land for cultivation, with stating what should be cultivated therein or giving lessee the choice of what to be cultivated, shall be valid.

**Article 1399:**

- (1) Lease of a land that is cultivated by another person and time of harvest has not yet arrived and it is not cultivated illegally shall not be valid until the end of harvest, unless the existing crops on the land belong to lessee.
- (2) If crops are ready for harvest, lease of land to a person other than owner of crops shall be without impediment, the owner shall be obligated to vacate the land and deliver it to lessee at an appropriate time.

**Article 1400:**

If land has been cultivated without the right to plant, cultivator shall be obligated to vacate the land and non-arrival of harvest time shall not impede conclusion of lease contract with a person other than cultivator.

**Article 1401:**

Lease of the land that is cultivated by person other than lessee shall be valid and shall be suspended until arrival of harvest time and making land ready for delivery to lessee at a specified time.

**Article 1402:**

Lessee of land shall enjoy rights of stream and way without being mentioned in contract. Other rights shall be subject to agreement and local custom.

**Article 1403:**

If lessee is given the choice of cultivation in a one year lease contract,, he may cultivate it for two seasons.

**Article 1404:**

If the leased land is inundated or its water supply is cut off and its cultivation becomes impossible, rent shall not be enforced and lessee shall have the right to rescind contract, provided that none of this is his fault.

**Article 1405:**

If crops of the leased land perishes due to act of god, lessee shall be liable for part of rent up to the event and he shall be acquitted from the part for the period thereafter, unless lessee is able to cultivate it similar to or less than the period before the event.

**Article 1406:**

- (1) If harvested crops perish, lessee may claim waiving or reduction of rent, provided that agreement has not been made in such a way that lessor has a right over part of crops. In this case, if crops are destroyed due to lessor's fault or after delivery notification, lessor shall be liable proportionate to his own share.
- (2) If, at the time of conclusion of contract, occurrence of damage is predictable and definite, lessee may not claim waiving of rent.

**Article 1407:**

If the period of lease has expired while crops of the land have not yet ripened due to causes beyond will of lessee, the land shall remain in possession of lessee in exchange for the market rent until the harvest.

**Article 1408:**

Lessee shall be obligated to utilize land in a customary way and take such actions on it that it remains suitable for utilization. Lessee may not utilize land, without permission of lessor, in such a way that causes such changes to land that their negative effects shall remain after termination of lease.

**Article 1409:**

Lessee shall be obligated to make such adjustments that normal utilization of the leased land requires.

**Article 1410:**

Lessee shall be obligated to vacate the leased property within such a period that person who will possess the mentioned land after him be able to prepare it cultivation and planting, provided that this does not inflict harm on him.

## **Topic 2 — Farming**

**Article 1411:**

Farming is a contract on cultivation of land between owner and farmer in such a way that harvest shall be divided between them in shares that they have agreed in contract.

**Article 1412:**

Conditions of validity of farming contract are:

- 1 – Readiness of land for cultivation.

- 2 – Determination of person who shall be obligated to provide seeds, fertilizer, pesticides and other essential expenses for cultivation.
- 3 – Determination of person who shall be obligated to provide agricultural tools.
- 4 – Delivery of land that is clean of cultivation to farmer, even if seeds belong to owner of land.

**Article 1413:**

Determination of period of farming according to farming custom is one of the validity conditions of contract. If period of contract is determined, farming shall be valid and credible for one season, unless otherwise stated in a special law.

**Article 1414:**

Explicit or implicit determination of the kind of seeds and share of person who has not provided them is one of the validity conditions of contract. If the kind of seeds is not determined, in case they are provided by owner of land, farming contract shall be valid and if they are provided by farmer, contract shall not be valid, unless determination of the kind of seeds has been given to farmer.

**Article 1415:**

If livestock and tools that are used in agriculture are present on the land at the time of conclusion of contract and belong to owner of land, farming contract shall include them, provided the contrary has not agreed.

**Article 1416:**

- (1) Farmer shall be obligated to take such care of farming and preservation of cultivation that he takes of his own property. Farmer shall be liable for destruction of land during utilization, unless he proves that he has made efforts as much as an ordinary person to preserve and protect it.
- (2) Farmer shall not be obligated to compensate for destroyed livestock and tools that are not depreciated due to his fault.

**Article 1417:**

Farmer may not, without permission of owner of land, sublease it to another person or waive leasing it for another person. In case of violation of this, owner may rescind contract or claim compensation from farmer.

**Article 1418:**

Farmer shall not have a right to conclude, without agreement of owner, farming agreement with another person.

**Article 1419:**

Farmer shall be obligated to preserve buildings of land and irrigation tools and repairs that are necessary for preservation of farmhouse shall be responsibility of farmer, but costs of public rivers and those of construction of new streams shall be borne by owner.

**Article 1420:**

Farmer may not remove or cut healthy trees that are located inside the contractual lands, but he may cut dried trees, with permission of owner, and plant another sapling. Actions of cutting and planting shall be responsibility of farmer and cost of saplings shall be responsibility of owner.

**Article 1421:**

Discharge of taxes shall be borne by owner.

**Article 1422:**

Except what has been stated in this Law, owner shall not have a right to demand, directly or indirectly, any other profit from farmer such as cash or non-cash profit or performance of services.

**Article 1423:**

Parties to contract may, upon mutual agreement, change farming contract into lease contract.

**Article 1424:**

If farmer becomes owner of land and wishes to farm it personally, he may rescind the contract.

**Article 1425:**

If farming contract is not renewed three months before the end of contractual period, the contract shall automatically be extended for another year.

**Article 1426:**

Crops shall be divided between farmer and owner of land in accordance with agreement of parties or with proportion determined by the custom and if no prior agreement is reached and there is no custom, it shall be divided equally.

**Article 1427:**

If crops perish, completely or partially, by acts of god, both parties shall bear the loss equally, they may not refer to each other.

**Article 1428:**

If the period of contract expires before crops are fully grown, cultivation shall remain on the land until it is fully grown and necessary expenses in this period, such as irrigation, reaping and harvesting, graining and threshing shall be responsibility of both of them proportionate to their shares.

**Article 1429:**

- (1) If owner of land dies before crops are fully grown, farmer shall continue his work until crops are fully grown and heirs of the deceased may not prevent him.
- (2) If farmer dies before crops are fully grown, his heirs, if they are able, or his legal agency, as his successor, may continue the work until crops are fully grown, even if owner does not consent to it.

**Article 1430:**

If farming contract is rescinded or considered void, crops shall belong to owner of seeds and the other party shall be entitled to the market fee, unless otherwise agreed.

**Article 1431:**

If legal relations between farmer and owner of land are regulated otherwise by special law, provisions of special law shall apply.

## Topic 3 – Gardening

### Article 1432:

- (1) Gardening contract shall mean giving tree and vine to another person for the purpose of nurturing and utilization in exchange for a specific part of its fruit.
- (2) Tree is a plant that remains and is stable on the ground for one year or more.

### Article 1433:

Special conditions for validity of farming contract shall be observed in gardening contract.

### Article 1434:

Gardening contract shall be valid for a customary period. If contract does not state the period, it shall continue until the first crop of that year.

### Article 1435:

If the period of gardening is determined for less than the time within which fruit will be fully grown, contract shall not be considered valid.

### Article 1436:

If a period is determined for gardening within which there are possibilities of appearance and non-appearance of fruit, contract shall be considered suspended, in such a way that if fruit appears at the designated period such that its similar is subject of interest in transactions, contract shall be valid and fruit shall be divided according to the prior agreement and if fruit does not appear at the designated period, contract shall be invalid and gardener shall be recognized entitled to the market fee for his work. If no fruit appears at all, none of the parties shall have any rights against each other.

### Article 1437:

Necessary works prior to appearance of fruits, such as irrigation, grafting, fertilization and protection shall be responsibility of gardener and works that are considered necessary after the appearance, such as picking the fruit and the like shall be responsibility of both parties, unless otherwise is agreed.

### Article 1438:

- (1) Gardner may not, without permission of owner, give trees to another person for gardening. In case of infringement, the fruit shall belong to owner, the second gardener shall be considered entitled to a fee similar to that of the first one and the first gardener shall not be recognized entitled to any fee.
- (2) Gardener may not, without permission of owner, cut trees under his nurturing or plant saplings in garden.
- (3) Cultivation of land of garden shall not be permissible without permission of owner. In case of agreeing with cultivation, provisions of farming contract or those of lease contract of agricultural lands shall respectively apply to the case.



**Article 1439:**

If trees, after appearance of their fruits, are taken away due to entitlement, owner of tree shall be obligated to pay the market fee to gardener. If trees, before appearance of their fruits, are taken away due to entitlement, gardener shall not be recognized as entitled to anything.

**Article 1440:**

Whenever gardener becomes unable to perform the service or is not certain about appearance of fruit, rescission of gardening contract shall be permissible.

**Article 1441:**

When the period of gardening expires, contract shall terminate. If there is fruit on trees that are apparently harvestable, gardener shall have the option of continuing, without any fee, his work until the fruit is fully grown or leave the work. Also, owner of trees shall have the option of dividing the raw fruit according to the agreed conditions or paying gardener price of his entitled share or bearing all necessary costs until it is fully grown and then deduct whatever he has spent from the share of gardener of the fruit.

**Article 1442:**

- (1) If owner of land dies at the time new fruit has appeared, gardener shall continue his work as before, even if heirs of owner do not consent to it.
- (2) If gardener chooses to leave the work, he shall not be forced to perform it. Heirs of owner of land may exercise the three options stated in Article (1441) of this Law.

**Article 1443:**

If both owner of land and gardener die at the time new fruit has appeared, heirs of gardener shall have the option to continue the work until the fruit is harvestable or leave it. In this case, heirs of owner of land may exercise options stated in Article (1441) of this Law.

**Article 1444:**

If provisions of this Law conflict with provisions of a special law, provisions of the special law shall be applied.

## **Topic 4 — Lease of Endowment**

**Article 1445:**

Supervisor of endowment shall have the authority to lease the endowed property and endowee shall not have this right, unless he is appointed by endower as custodian or has been authorized by person who has authority to lease such as judge or his supervisor.

**Article 1446:**

Only supervisor is authorized to take delivery of fee, not endowee, unless supervisor has authorized him to take delivery of fee.

**Article 1447:**

Conditions stipulated on endowment shall be observed and custodian may not change the period that endower has determined for lease of endowment.

**Article 1448:**

If the period of lease has not been determined by endower, the period of lease regarding houses and shops shall be one year and as regards lands shall be three years, unless increasing the period for houses and shops and reducing it for lands are considered expedient.

**Article 1449:**

- (1) Except in necessary cases, lease of endowed houses or lands for long periods or continual contracts shall not be permissible.
- (2) If supervisor is forced, out of necessity, to reconstruct the endowed property, he may, with the permission of court, increase the period of lease for more than the limitations stated in Article (1448) of this Law, provided that it does not exceed normal human age.

**Article 1450:**

Supervisor may not lease the endowed property for himself, even if it is for market rent.

**Article 1451:**

Lease for less than market rent shall not be permissible, except for a trivial difference, even if the lessor is the only entitled person who has authority to take action on the endowed property.

**Article 1452:**

- (1) Criterion in lease of the endowed property is the market rent of the time at which lease contract is concluded, later changes shall not affect it.
- (2) If supervisor leases the endowed property with gross lesion, lessee shall be obligated to complete market rent, otherwise the lease shall be rescinded.

**Article 1453:**

- (1) If the endowed building needs construction and lessee takes measure on it, with permission of lessor, on his own account, in case most of the profit of the building accrues to the endowment, lessee may claim supervisor to reimburse those costs out of profits of the endowment, even if claim of lessee has not already been stipulated.
- (2) If most of the profit of the building accrues to lessee, he may not refer to supervisor without existence of prior condition. If lessee or an entitled person, without permission of supervisor reconstructs one of the ruined materials of endowment and the materials are reconstructed in such a way that if they are destructed, no value will remain except the ruined materials, the reconstruction shall be considered as part of the endowment and lessee shall not have the right to refer.

**Article 1454:**

If lessee changes form of endowment in such a way that he destroys it completely or partially and reconstructs it in a different form, in case the change is in the interest of endowment, the building shall remain as it is and lessee shall not be entitled anything for the building, but he shall be entitled to

the market fee for the work. And if the change is not in the interest of endowment, destruction of the building and its reconstruction in its prior form shall be ordered.

**Article 1455:**

Provisions of lease contract shall apply to lease of endowment, unless they contradict provisions of this Topic.

## **Chapter 2 — Lending**

### **Section 1 — General provisions**

**Article 1456:**

Lending is pledge of lender to deliver benefit of a property to borrower without exchange for a designated period or specific purpose, provided that he returns it after use.

**Article 1457:**

Lending shall only be valid if the lent property remains usable after the use.

**Article 1458:**

The lent property shall remain in the ownership of lender.

### **Section 2 — Obligations of Lender**

**Article 1459:**

Lender shall be obligated to deliver the lent property to borrower in the same condition as it was during conclusion of contract and leave it in his possession during the lending period.

**Article 1460:**

Lender shall be obligated to reimburse borrower for expenses he has borne in order to save the lent property from destruction and waste.

**Article 1461:**

- (1) Lender shall not be liable for the lent property being taken away by entitlement, unless he has intentionally concealed the cause of entitlement or accepted the liability on the basis of a special agreement.
- (2) Lender shall not be liable for hidden defects, unless he has intentionally concealed the defect or guaranteed soundness of the property.

### **Section 3 — Obligations of Borrower**

**Article 1462:**

Borrower shall be obligated to look after the lent property the same as he does for his own property.

**Article 1463:**

If lender limits type, time or place of usage of the lent property, borrower may not use it at a time or place other than the designated ones. Also, borrower may not infringe the type of permitted use and he may not exceed the extent to which he is allowed to use it, but he may use it to the permitted extent or less than that.

**Article 1464:**

If use of the lent property is not limited to time, place and type, borrower may use it at any time and place and in any way he wishes, in a normal way. If the lent property perishes due to infringement of borrower, he shall be liable for it.

**Article 1465:**

- (1) If lender gives an absolute permission of use to borrower and does not designate the using person, borrower may use the lent property personally or lend it to another person, whether or not change of user affects the lent property. This provision applies if borrower has not used the property personally and the lent property is of those objects that change of user affects them, otherwise, lending the property to another person shall not be permissible.
- (2) If the using person has been designated by lender, borrower shall be obligated to observe the designation condition, in case of infringement, borrower shall be liable for destruction of the lent property.

**Article 1466:**

If lender prohibits borrower from lending the lent property to another person and he lends it to another person, he shall be liable for destruction of the lent property.

**Article 1467:**

In all cases where borrower is prohibited from lending the property to another person, he may not deposit the lent property with another person in trust. If borrower deposits the lent property with another person in trust and it perishes while in possession of this person, borrower shall be liable for it.

**Article 1468:**

In all cases where borrower has the authority to lend the lent property to another person, he may deposit the lent property with another person in trust. In this case, if the property perishes without any violation by trustee, borrower shall not be considered liable.

**Article 1469:**

Borrower may not lease or give the property as collateral, unless he has borrowed it, with permission of lender, for the purposes of giving it as collateral.

**Article 1470:**

- (1) If borrower leases the lent property to another person without permission of lender and the property perishes while in possession of lessee, lender may claim compensation for the lent property from either borrower or lessee. If he claims it from borrower, borrower may not refer to any other person. If he claims it from lessee, lessee may refer to borrower, provided that he did not have the knowledge, during conclusion of contract, that the property was lent to borrower.

- (2) If the property is given as collateral without permission of lender and it perishes while in possession of holder of collateral, in case of claim of compensation from borrower, a mortgage between the holder of collateral and the other party shall be considered as concluded.

**Article 1471:**

Borrower shall not be liable for the lent property that is perished without infringement and the liability condition in lending shall be considered void. If borrower fails to or neglects in protecting the lent property, he shall be liable.

**Article 1472:**

If the lent property is, due to normal and customary use, defected in such a way that its price decreases, borrower shall not be liable for the price decrease, but in case of extraordinary use, he shall be considered liable.

**Article 1473:**

If borrower is able to prevent destruction of the lent property one way or another and he does not prevent it, he shall be obligated to pay compensation. Also if he fails to remove usurpation of the property, he shall be recognized liable for it.

**Article 1474:**

Financial obligations and expenses of normal protection and returning of the lent property shall be borne by borrower.

**Article 1475:**

- (1) Borrower is obligated to return the property at the end of lending contract in its original conditions. This provision does not interrupt liability for destruction of or damage to the lent property.
- (2) Return of the lent property shall take place at the place in which borrower has taken delivery of, unless the contrary is agreed.

**Article 1476:**

If borrower keeps the lent property in his possession after expiration of the term of lending or does not deliver it at the designated place, he shall be recognized as liable if it perishes.

## **Section 4 — Termination of Lending**

**Article 1477:**

- (1) Lending shall terminate with expiration of the agreed period. If no time is designated, it shall terminate as soon as the purpose, for which lending is made, is realized. If no time is designated, lender may claim termination of lending at any time.
- (2) Borrower may return the property before termination of lending, but if returning the property inflicts harm on lender, he shall not be forced to accept it.

**Article 1478:**

Lender may unconditionally claim termination of lending in the following cases:

- 1 – In case of unforeseen need to the lent property.

- 2 – In case of misuse of the property by borrower or his failure in protecting it.
- 3 – In case of bankruptcy of borrower after or before conclusion of lending contract, provided that lender was not aware of it during conclusion of contract and becomes aware afterwards.

**Article 1479:**

Lending contract shall terminate with the death of borrower and shall not transfer to his heirs.

**Article 1480:**

If borrower dies and the lent property does not exist among his inheritance, it shall be recognized as an obligatory debt on the inheritance.

## **Title 3 – Work Contracts**

### **Chapter 1 – Labour (Muqawala), Manufacturing (Istisna) and Management of Public Services Contracts**

#### **Section 1 – Labour Contract (Muqawala)**

##### **Topic 1 – General Provisions**

**Article 1481:**

Muqawala is a contract on the basis of which one of parties undertakes to make an object or perform an action, in a temporary or non-temporary way, for the other party in exchange for fee.

**Article 1482:**

Contracts to perform those actions or making such objects that are against law or public order shall not be valid.

**Article 1483:**

- (1) Worker may undertake only to perform action and provision of materials that are used in performing action or are utilized shall be borne by employer.
- (2) Undertaking by worker to perform action and provide materials shall be permissible.

##### **Topic 2 – Obligations of Worker**

**Article 1484:**

If worker undertakes to provide all or part of work materials, he shall be responsible for its quality and shall be liable toward employer for them.

**Article 1485:**

- (1) If employer provides materials, worker shall be obligated to use them carefully and observe professional principles therein. Also he shall be recognized as obligated to give account of utilized materials and return remaining materials to employer.
- (2) If some of materials become unusable due to negligence or professional incompetence of worker, he shall be obligated to pay their price to employer.

**Article 1486:**

Worker shall be obligated to provide extra tools that are necessary to perform action on his own account, unless professional custom or agreement of parties is contrary to this.

**Article 1487:**

Increasing the agreed fee by worker and decreasing it by employer shall not be permissible after conclusion of Muqawala, unless law or agreement explicitly states its contrary.

**Article 1488:**

If it becomes apparent that worker performs action incompletely or contrary to contract, employer may warn him that if he does not give up his method of performance within a specific period, employer may rescind contract or entrust it to another person on the account of the first worker.

**Article 1489:**

Worker may not claim the agreed fee before finishing work and delivering it to employer, but employer may pay part of fee in advance or agree to pay it proportionate to progress of work performance, provided that worker is compelled to finish the remaining work, otherwise employer shall finish it on the account of worker.

**Article 1490:**

Construction engineer and worker shall jointly be liable for general or partial destruction, breakage and subsidence of the constructed buildings or their other fixed attachments that they have constructed, even though destruction, breakage or subsidence has happened due to defect of the land or employer has permitted construction of defective building, unless contracting parties have intended to keep the building for less than ten years.

**Article 1491:**

- (1) Defects that endanger solidity, resistance and safety of building shall be subject to liability stated in Article (1490) of this Law.
- (2) The period of 10 years stated in Article (1490) of this Law shall start from the date of delivery of work.
- (3) Provision of this Article shall not apply to the worker who has the right to refer to subcontractor.

**Article 1492:**

Architect of plan and map who does not supervise performance of work shall only be liable for defects of plan and map.

**Article 1493:**

Any stipulation that prevents liabilities of architect, construction engineer and worker shall be void.

**Article 1494:**

Claim of liability in cases stated in Articles (1490-1491-1492) of this Law shall extinguish after lapse of one year since the date of occurrence of destruction, breakage and subsidence and discovery of defect.

### **Topic 3 — Obligations of Employer**

**Article 1495:**

If compensation for general or partial destruction, breakage or subsidence of building has been paid by insurance company, owner of building may not claim it from construction engineer, worker or architect.

**Article 1496:**

Employer shall be obligated to take delivery of work immediately after its completion according to the current custom, otherwise, worker may officially notify him of the delivery within a specific time. In case of expiration of the mentioned time, if employer does not take delivery of it, it shall be considered delivered.

**Article 1497:**

Employer shall be obligated to pay for the measures he has stipulated at the time of delivery, unless its contrary is stated by custom or agreement.

**Article 1498:**

- (1) If, during performance of work, excess of agreed limits is seen, worker shall be obligated to notify employer of the amount of extra work, otherwise his right to claim costs exceeding the agreed price shall extinguish.
- (2) In case of great excess, employer may rescind contract and pay worker fee of what he has performed according to contract.

**Article 1499:**

- (1) If contract is concluded on a fixed fee, worker may not claim increase of fee, even if his work plan has been modified, unless modification has been made on the basis of decision of employer.
- (2) Worker may not claim increase of fee due to increase in rates and fees, unless such exceptional general events occur that could have not been predicted at the time of contract and in consequence of which the criteria on which financial calculation of Muqawala contract is based has changed. In this case, court may rule increase of fee or rescission of contract, unless parties has agreed otherwise.

**Article 1500:**

If fee has not been specified, expenses of performed work shall be determined by experts.



**Article 1501:**

If architect has completed map and measurements or has undertaken to conduct building on the basis of order of its owner in exchange for a specific fee, he shall be considered entitled to that fee.

**Article 1502:**

If employer has not determined fee for architect, he shall be entitled to the market fee which shall be determined according to the custom and the period of his work.

## **Topic 4 – Second Workers**

**Article 1503:**

- (1) Worker may, if the nature of work or text of contract does not prohibit it, obligate another person to perform all or part of the work. In any case worker shall be liable towards employer for the work of the second worker.
- (2) The second worker shall be recognized as liable towards worker.

## **Topic 5 – Termination of Contract**

**Article 1504:**

Muqawala contract shall terminate with completion of the undertaken work and its delivery according to the mutual agreement and provisions of law.

**Article 1505:**

Employer may, at any time he wishes, terminate contract and stop performance of work, provided that he compensate for expenses of worker, fee of the completed work and benefits that would have been accrued by completion of work. Court may, if circumstances require, reduce the compensation.

**Article 1506:**

If performance of the undertaken work becomes impossible, Muqawala contract shall terminate.

**Article 1507:**

- (1) If the object perishes due to unforeseen causes before its delivery to employer, worker may not claim fee of work and expenses, unless he has already given written notice to employer of the delivery. Loss of destruction of materials shall be borne by its provider.
- (2) If destruction or damage of the object is due to mistake of employer or defect in materials provided by employer, worker shall be entitled to fee and, if necessary, he shall be entitled to compensation.

**Article 1508:**

If Muqawala contract is based on personal credibility of worker, it shall terminate with his death. Otherwise, it shall remain as it is, unless there are not enough guarantees for good performance of work in his inheritance.

**Article 1509:**

- (1) If Muqawala contract terminates with death of worker, employer shall be obligated to pay fee of the performed work and expenses incurred for performance of the incomplete part. This obligation shall be proportionate to benefit that accrue to employer out of the work and the mentioned expenses. In return, employer may claim the provided materials in exchange for a just compensation.
- (2) Provision of the above sub-clause shall also apply to the worker who has initiated performance of work but has become unable to complete it due to causes beyond his will.

## **Section 2 — Istisna: Placing Order for Manufacturing an Object**

**Article 1510:**

Istiana shall be a contract for manufacturing a specific object in exchange for a specified price in such a way that contract is based on the object itself, not on the work of manufacturer.

**Article 1511:**

In Istisna contract, substance, kind, quantity and attributes of object shall have to be stipulated.

**Article 1512:**

In Istisna contract, it shall not be necessary to pay price of object immediately.

**Article 1513:**

- (1) Parties to Istisna contract may not withdraw their undertakings if it is concluded, unless parties have agreed otherwise.
- (2) If manufacturer has not fulfilled his obligation in accordance to conditions of contract, orderer shall not be obligated to accept the manufactured object and may claim compensation for the incurred damage.
- (3) If orderer refuses to accept and take delivery of his ordered object without reasonable cause and reasons, he shall be obligated to take delivery of it, otherwise, manufacturer may claim compensation for the loss incurred due to delay of taking delivery or non-discharging of obligations by orderer.

**Article 1514:**

- (1) Manufacturer shall be obligated to manufacture the ordered object in such a way that it has all guaranteed attributes and can be used in the desired way. Also the mentioned object shall have to be free from any defect that reduces its value.
- (2) If the ordered object does not have the agreed attributes and conditions, orderer may claim removal of the defect.
- (3) If manufacturer delays in removing the defect, orderer may remove the defect and claim the costs from manufacturer.

**Article 1515:**

Orderer shall specify a reasonable time for removal of the defect stated in Article (1514) of this Law, including a notice that if the defect is not removed within the designated period, he shall return the

object. Upon expiration of the designated moratorium, orderer may withdraw from the contract or claim a proportionate reduction of price.

**Article 1516:**

If orderer knowingly takes delivery of the ordered object while it is defective, he shall not have the right to refer to manufacturer, unless he has stipulated option of defect for himself.

**Article 1517:**

- (1) Price of the ordered object shall be payable at the time of taking delivery, unless otherwise is agreed.
- (2) If the ordered object is partially deliverable, its price shall be payable in return for delivery of each part.

**Article 1518:**

- (1) If the ordered object perishes before its delivery to orderer, manufacturer shall be recognized as liable for it.
- (2) If the mentioned object perishes at a time after expiration of the designated period and manufacturer has given notice to orderer to take delivery of the manufactured object and he has delayed without a reason, manufacturer shall not be recognized as liable, unless the destruction has happened due to failure of manufacturer or that of his paid workers.

**Article 1519:**

If manufacturer sends the manufactured objects, according to request of orderer, to another place other than his own manufacturing place, in this case, provisions of sale shall apply.

**Article 1520:**

Manufacturer shall have a right to retain the manufactured object in his possession for his contractual credit.

**Article 1521:**

- (1) Orderer and his heirs may claim rescission of contract, even if manufacturer has started manufacturing the ordered object, provided that they pay him fee for the performed work, price of the used material and compensation for the provided materials, unless otherwise is agreed.
- (2) Court may reduce the amount of compensation on the basis of requirements, circumstances and conditions.

**Article 1522:**

- (1) Orderer may, in the following cases and after notifying manufacturer, rescind contract and, in case of incurring damage, claim compensation:
  - 1 – When manufacturer has not started, without a justified excuse, performing his obligation within a reasonable time.
  - 2 – When manufacturer delays giving delivery of the ordered object within the designated time.

- (2) If delay and non-performance of obligation by manufacturer derives from a mistake or an affair related to orderer and he has not performed it despite explicit and written request of manufacturer, manufacturer may rescind contract and claim compensation for the inflicted damage.

**Article 1523:**

If performance of obligation, after commencement, is disrupted due to a cause beyond will of parties, manufacturer may not claim taking delivery of price, except proportionate to the work he has completed before the disruption of performing his obligation.

**Article 1524:**

Workers and laborers who are employed by Muqawala contract shall have the right to claim directly against orderer or person to whose benefit the ordered object has been provided, within the limits of amounts which orderer is obligated to pay manufacturer.

The mentioned persons shall gain the right over the aforementioned amounts after issuance of court ruling. Second contractors shall not have the right directly against orderer on behalf of first contractor or other persons who supply basic materials to manufacturer.

### **Section 3 — Public Services Management Contract**

**Article 1525:**

Public services contract is a contract for managing public services that are beneficial and concluded between government and individual or government and company and according to which utilization of public services shall be given to contractor for a specified period.

**Article 1526:**

Public services contractor shall undertake, based on contracts he concludes with clients, to provide for the other party essential services as usual in exchange for a fee according to explicit contractual conditions and conditions required by the nature of work and provisions of relevant laws.

**Article 1527:**

- (1) Public services contractor shall be obligated to observe absolute equality among his clients as regards services provision and charging. Contractor shall have to observe the designated rates by government in contracts he concludes with clients. Contracting parties may not agree to its contrary. If government considers it necessary to change this rate and changes it, the new rate shall be enforceable since the date of change without retroactive effects.
- (2) Client who has paid more than the designated rate may claim its return. If contractor has collected less than the designated rate may claim its completion and any other kind of agreement contrary to this shall be considered void.

**Article 1528:**

- (1) Contractor for passenger transportation shall be obligated to take necessary precaution for safety of passengers. Contractor shall be liable for the harm inflicting on passengers while boarding, transfer and alighting, unless he proves that the harm has originated from an external cause beyond his will.

- (2) Infliction of harm due to illegal use of certain tools by contractor shall not be considered harm due to external cause.

## Chapter 2 — Labour Contract

### Section 1 — General Provisions

**Article 1529:**

Labour contract is a contract on the basis of which one of the parties undertakes to provide a service for the other party under his guidance in exchange for a specific fee.

**Article 1530:**

- (1) Provisions stated in this Chapter shall not apply to agricultural and domestic workers. Affairs related to them shall be subject to special laws and relevant custom.
- (2) Provisions stated in this Chapter shall apply to other workers and laborers of the government to the extent that they do not conflict with provisions of Law of Labour and Labourer and Employees of the government.
- (3) Legal leaves, sickness, travel and rent allowance, minimum fees for participation in percentage of the earned profit and production, employment conditions, provisions on organizing, categorizing and dividing work, reprimands, retirement and other social and legal securities, privileges and obligations of employer and employee that have not been predicted in this Law shall be subject to provisions of special law.

### Section 2 — Elements of Contract

**Article 1531:**

No particular form shall be necessary in labour contract, unless law has explicitly stated the contrary.

**Article 1532:**

Labour contract may be for specific service with specific or unspecified period.

**Article 1533:**

If period is not specified in contract, each of parties may take measures to rescind contract at any time he wishes, provided that he has informed the other party at least two months earlier.

**Article 1534:**

If period of contract is specified, it shall automatically terminate with expiration of the period and if parties continue their contractual relations after expiration of the period, it shall be considered as renewed for an unspecified period.

**Article 1535:**

If the amount of fee is not stated in contract, a market fee shall be determined according to the current custom. If there is no custom, court shall determine it as justice is met.

## Section 3 — Provisions on Contract

### Topic 1 — Obligations of Labourer

#### Article 1536:

Labourer shall be obligated to the following affairs:

- 1 – Direct performance of work and taking care in it as a normal person.
- 2 – Performing orders of employer within the scope of the agreed work, provided that they do not include works contrary to contract or law or public mores and their performance does not cause any danger.

#### Article 1537:

- (1) If the entrusted work to labourer is of such nature that gives him knowledge of major secrets of the work, parties may agree that labourer shall not, after end of the period of contract, compete with employer or participate in a project that competes with employer.
- (2) In order for this agreement to be valid, the following conditions shall have to be observed:
  - 1 – Labourer shall have attained the legal age at the time of conclusion of contract.
  - 2 – Limits imposed on labourer in terms of time, place and type of work shall be limited to the extent of necessity of protection of legitimate interests of employer.
  - 3 – This agreement shall not have, in economic terms, unjust impact on the future of labourer.
  - 4 – In contract, compensation of damages caused by limits shall be, proportionate to the damages, determined.

#### Article 1538:

If labourer succeeds to make invention during work, privileges and rights of invention shall belong to labourer, unless otherwise agreed or employment of labourer has been made for the purpose of making invention and innovation. Notwithstanding that, employer shall be obligated to pay labourer appropriate rewards and benefits as required by justice.

#### Article 1539:

If penalty is stipulated for infringing of non-competition and the stipulation is in such a way that forces labourer to continue the work with employer for more than the designated period, the mentioned stipulation shall be considered void, and its nullity shall invalidate the non-competition condition as well.

### Topic 2 — Obligations of Employer

#### Article 1540:

Employer shall be obligated to perform the following affairs:

- 1 – Payment of fee of labourer in accordance with provisions of this Law.
- 2 – Provision of necessary means for ensuring health of labourer and protecting him from danger.

- 3 – Awarding certificate at the end of contract period including dates of start and end of labourer work, type of work, amount of fee and his acquittal of contractual obligations.
- 4 – Returning papers and certificates received from labourer.
- 5 – Other obligations stated in special law.

**Article 1541:**

If labourer appears at the designated time to accomplish the duty and announces his readiness to perform the work, but he cannot perform the work due to causes related to employer, he shall be entitled to the fee of that time.

**Article 1542:**

If period of work is specified in contract and employer rescinds the contract before expiration of the period and without any problem or defect on the part of labourer that causes rescission, he shall be obligated to pay fee of all of the whole period and, if required, compensation.

**Article 1543:**

Employer shall be obligated, in addition to fulfillment of obligations stated in Articles (1540-1541-1542) of this Law, fulfill obligations that he is obligated to carry out according to special laws.

### **Topic 3 — Termination of Labour Contract**

**Article 1544:**

With due observation of provisions of Articles (1533 and 1534) of this Law, labour contract shall terminate with expiration of the designated period and completion of the work for which the contract was concluded.

**Article 1545:**

If rescission of contract originates from misuse of rights by one of parties, the other party may claim, in addition to compensation for loss that he is entitled to due to non-notification within the designated time, compensation for loss incurred due to rescission of contract by misusing rights.

**Article 1546:**

If employer, by intervening in such a way that contradicts conditions of contract, forces labourer to quit and labourer is apparently considered the rescinding party, court may condemn employer to pay compensation.

**Article 1547:**

In determining amount of compensation caused by quitting due to misuse of rights, court shall take into consideration current custom, nature of the work for which contract is concluded, period of service of labourer and amount of inflicted loss.

**Article 1548:**

Employer may rescind contract without prior notice in the following cases:

- 1 – When labourer has untruly introduced himself or presented forged certificates or license.

- 2 – When labourer has not been able to gain satisfaction of employer during the trial period, provided that dismissal takes place within three months since the date of his appointment.
- 3 – When labourer commits a deliberate or negligent action with the aim of causing material harm to employer, provided that the competent authority has been informed of the issue within 24 hours since the date of its occurrence and it is proved based on investigation.
- 4 – In case of absence of more than 15 days in a year or one continuous week without reasonable excuse.
- 5 – In case of non-fulfillment of contractual obligations by labourer.
- 6 – When disclosure of industrial or commercial secrets of enterprise by labourer is proved.
- 7 – When labourer is convicted of felony or misdemeanor that contravenes trustworthiness and morality.
- 8 – When commission of crime against mores by labourer inside enterprise is proved.
- 9 – When labourer assaults president or one of the members of the board of directors while performing the work or due to it.

**Article 1549:**

- (1) Labourer may rescind contract and leave the work without prior notice in the following cases:
  - 1 – When employer has cheated on him during conclusion of contract, provided not more than 30 days since his commencement of work has not lapsed.
  - 2 – When employer does not fulfill his obligations to which he has been obligated according to provisions of the law and contract.
  - 3 – When employer commits an act contravening public mores against labourer or one of his family members.
  - 4 – When employer or his representative commits physical assaults against labourer.
  - 5 – When major life or health risk threatens labourer, provided that employer does not take necessary measures despite his knowledge of it.
- (2) If labourer leaves work based on one of the causes stated in the above sub-clause, he shall be recognized as entitled to compensation.

**Article 1550:**

If firm is sold with its installation or it is modified due to its incorporation or merger with other installation, all of labourer contracts that have been enforceable during sale or modification shall remain as they were between employer and labourers. New employer and the old employer shall be jointly liable for payment of fee and rights of compensation.

**Article 1551:**

Labour contract shall not be rescinded with the death of employer, unless personality of employer has been a constituting element of contract, but the contract shall be rescinded with the death of labourer.

**Article 1552:**

If contract is rescinded due to death of labourer or his prolonged illness or another forcing cause that prevents continuation of work of labourer, employer shall be obligated to pay labourer and his wife



or descendant, in case of his death, an amount of compensation that is equal to compensation for dismissal without notice. The amount of damage shall be determined by special laws or agreement.

**Article 1553:**

Claim originating from labour contract shall not be heard after lapse of one year since the date of the end of contract term, unless the claim is regarding fee of sharing in profit and a certain percentage of sale income. In this case, the one year time limit shall start since the date at which employer delivers to labourer statement of his entitlement according to the latest account statement.

## **Chapter 3 – Agency**

### **Section 1 – General Provisions**

**Article 1554:**

Agency is a contract on the basis of which client appoints another person as his successor in his legal and specific actions.

**Article 1555:**

In order for agency to be valid, client shall have to personally have legal capacity to take action on whatever he appoint agent and also agent shall have to a person who knows the meaning of contract.

**Article 1556:**

Agent shall have be aware of agency. If agent declines agency after becoming aware of it, agency shall be rejected and thereafter actions of agent shall not be valid.

**Article 1557:**

Appointing agent in the forms of absolute, limited, suspended to condition or deferred to future shall be valid.

**Article 1558:**

Permission and order shall have considered as appointing agent and dispatch shall not be considered as appointing agent. Subsequent permission shall be considered as prior agency.

**Article 1559:**

Any contract that may be concluded directly by client shall be permitted to be concluded by agent.

**Article 1560:**

- (1) In agency contract that is concluded with general words in an absolute way and no specification of kind of legal action is made, agent shall only be authorized to take administrative actions.
- (2) Administrative actions shall include leasing property of client provided that it does not exceed three years, actions regarding preservation and protection of properties of client, payment of debts and taking delivery of his rights, stopping time limit, registration of contract, mortgage of guarantee, attempt to resolve impossible claim and possession-based claim. Series of legal actions

required by administrative action, such as sale of perishable agricultural crops and purchase of livestock and agricultural tools shall be included in administrative action.

**Article 1561:**

In limited agency, agent shall be limited to perform affairs specified in agency and their ancillaries required by nature of the affairs and current custom.

**Article 1562:**

- (1) It is necessary to limit agency to kind of lawful action in legal actions other than the administrative ones, compromise, confession, umpirage, request of taking oath and filing lawsuit.
- (2) It is necessary to limit agency to type and subject of legal action in gratuitous actions such as donation contract and lending.

## **Section 2 — Provisions on Agency**

**Article 1563:**

Agent may not transgress the determined limits of agency, unless his referring to client has been impossible and circumstances and conditions are such that most of people believe that client would agree if informed. In this case, agent shall be obligated to immediately notify client of his transgression against the limits of agency.

**Article 1564:**

If agency is pro bono, agent shall be obligated to take such precautions in performing agency that he takes in his personal affairs and in no way he shall be obligated to take more care than of an ordinary person.

**Article 1565:**

Agent may not utilize property of his client for his own personal interest, otherwise, he shall be obligated to compensate for the utilization amount since the date of utilization.

**Article 1566:**

Agent shall be obligated to report to client of his performances every now and submit him a statement of accounts at the end of agency.

**Article 1567:**

Several agents with single contract shall have joint liability, provided that agency is not divisible or loss incurred to client has been caused by their shared fault. Transgression of one of the joint liable agents of limits of agency or his faulty performance of duty shall not create joint liability.

**Article 1568:**

If several agents are appointed by one contract and they are not authorized to individually take action, they shall be obligated to collectively perform the action, unless performance of the action, such as payment of debt and the like, does not require exchange of opinion or collective action therein, such as lawsuit, is not possible.

**Article 1569:**

- (1) Agent may not appoint another person as agent without permission of client.
- (2) If agent is authorized to take action, he may appoint another person, with permission of client, as agent. In this case, the second agent shall be considered as agent of client and shall not be deposed with deposal or death of the first agent.

**Article 1570:**

If agency is in exchange for fee, agent shall be entitled to the designated fee by performing the action. If fee has not been stipulated and agent is one of those persons who fulfill duties for a fee, he shall be considered entitled to market fee, otherwise, he shall be considered pro bono.

**Article 1571:**

- (1) If agent, without being permitted, obligates another person as his representative to perform his agency, he shall be liable for actions of the representative and he shall be considered as having personally performed them. Agent and his representative shall have joint liability.
- (2) If agent is authorized to appoint representative without determining a specific person, agent shall only be recognized as liable for fault in choosing representative or guiding him.

**Article 1572:**

Client shall be obligated to pay normal expenses of agent in performing agency.

**Article 1573:**

Client shall be liable for losses inflicted on agent due to normal performance of agency without committing fault.

**Article 1574:**

Provisions on representation stated in this Law shall apply to relations between agent and client or to third persons dealing with agent.

### **Section 3 — Agency for Purchase**

**Article 1575:**

In order for agency for purchase to be valid, it is necessary to specify property or substance or quantity of the object that is being purchased. For determination of quantity of object, determination of price shall be sufficient.

**Article 1576:**

If agent is authorized to purchase unspecific object, such an agency shall be valid and agent may purchase any kind and substance he wishes.

**Article 1577:**

- (1) If agent is authorized to purchase an unspecific object and the un-specificity of object is gross, agency shall not be valid even if its fee has been specified.

- (2) If un-specificity of object is not gross in such a way that its substance is specified but its type is not specified, agency shall be valid even if its fee has not been specified.

**Article 1578:**

If client determines type of object that agent purchases and agent purchases another type, this purchase shall not be considered valid for client.

**Article 1579:**

If agency is limited, agent may not infringes it while purchasing the object, unless it is in the interest of client.

**Article 1580:**

If client has determined the amount of price for purchase of a certain object in cash and agent purchases it on credit, client shall be obligated to accept it and if agent is assigned to purchase on credit and he purchases in cash, agent shall be recognized as bound to it.

**Article 1581:**

If agent, in purchasing, pays price of the object of purchase from his own personal property, he shall have the right to refer to client and may retain the object of purchase with himself until he recover the price from client, even if he has not paid its price to seller.

**Article 1582:**

If agent is assigned to make a deferred purchase, his purchase, in any form it has been made, shall be a deferred one for client and agent may not claim immediate payment against client, unless agent is assigned to purchase the object in cash and client has made a deferred payment for price, agent may claim immediately payment of price against client.

**Article 1583:**

Agent for purchase of a specific object may not purchase it for himself in absence of client, unless he has purchased it for a price higher than the determined one or swapped it with another object.

**Article 1584:**

Agent for purchase may not sell his own property to client.

**Article 1585:**

If agent for purchase finds an old defect in the purchased property, he may return it while it is still in his possession. If he has delivered it to his client, he may not, without permission of client, return it due to defect.

**Article 1586:**

- (1) Object of purchase shall have the status of trust property while in possession of agent for purchase. If it perishes or is damaged without transgression of agent, client shall bear the loss and nothing shall be deducted from its price.
- (2) If agent retains the object with him in order to recover the price and it perishes or is damaged at the same time, payment of its price shall be responsibility of agent.

**Article 1587:**

Agent for purchase may not agree, without permission of client, to mutual rescission of contract.

## **Section 4 – Agency for Sale**

**Article 1588:**

Agent for sale may not sell the object that he is assigned to sell to persons whose testimonies to his interest are not permissible, unless consideration is more than its price.

**Article 1589:**

- (1) If price of object is determined by client, agent for sale may not sell the object for a lower price. In case of violation, the sale contract shall be concluded but suspended to authorization of client.
- (2) If agent sells a property for an amount less than its price without permission of client and deliver the object of sale to buyer, he shall be liable for the price deficit.

**Article 1590:**

Agent may not purchase for himself the object for sale of which he is assigned, even if client has explicitly stated it.

**Article 1591:**

If the object is sold on credit by agent for sale, agent may demand guarantee from buyer, even if client has not directed him to do so.

**Article 1592:**

Taking delivery of price shall be the right of agent for sale, not that of client and buyer may refuse to pay the price to client. If buyer it to client, he shall be acquitted and client may not claim the price against agent.

**Article 1593:**

In immediate contract, agent shall be obligated to deliver the object of sale to buyer upon taking delivery of price.

**Article 1594:**

Agent for sale shall not be obligated to pay the price from his own property until he has not taken delivery of price of what he has sold.

**Article 1595:**

If agency is in exchange for fee, agent shall be obligated to collect the complete price from buyer.

**Article 1596:**

If the object of sale is taken away on the basis of entitlement, in case buyer has paid price, he shall claim its return against agent, whether price is in possession of agent or he has submitted it to client.

And if agent has paid price, he shall refer to client and if buyer has paid price to client, he shall refer to client in case of entitlement claim.

**Article 1597:**

Agent for sale may, before taking delivery of price, make a mutual agreement of rescission of sale, without permission of client, but the contract shall not be considered valid for client and agent shall be bound to pay price to client. Agent may not, after taking delivery of price, make a mutual agreement of rescission.

**Article 1598:**

If buyer sees a permanent defect in the object of sale, he shall claim return of price against agent if it is submitted to client. Claim of return shall be made against client.

## **Section 5 — Agency for Claim (Attorney)**

**Article 1599:**

Agency for claim shall be valid for proving debt, property and other rights of which explicit mention must be made in appointing agent. Agency for claim shall be made by official deed.

**Article 1600:**

Agent for claim shall not have authority to compromise and agent for compromise shall not have authority to file lawsuit without special permission of client.

**Article 1601:**

Confession of agent for claim, if authority to confess has been delegated to him by client, shall be considered valid by court, unless client is prohibited from it according to provisions of the Civil Procedure Code.

**Article 1602:**

If client has prohibited his attorney from confessing against him, attorney shall be dismissed if he confesses against client.

**Article 1603:**

Agent for lease shall have the right, with permission of his client, to file lawsuit on proving the lease and taking delivery of rent and shall be obligated to give delivery to lessee the property that is being leased.

**Article 1604:**

Agency for claim shall not entail agency for taking delivery, unless it is explicitly stated in agency contract. Agency for taking delivery shall not entail agency for claim.

**Article 1605:**

Agent for claim may not donate the subject of claim to defendant nor may he acquit him of it.

## Section 6 — Termination of Agency

### Article 1606:

Agency shall terminate in one of the following cases:

- 1 – In case of completion of action for which agency has been made.
- 2 – In case of lapse of the designated period of agency.
- 3 – In case of the death of agent or client.
- 4 – In case of extinguishment of capacity of agent or client.

### Article 1607:

Client may dismiss his agent from agency at any time he wishes, provided that he notifies the issue to agent, unless rights of other persons are created on agency, in such a case, client may not limit or terminate agency without acceptance of the person to whose interest agency has been concluded.

### Article 1608:

In all cases of termination of agency, agent shall be obligated to bring those actions that he has started to a stage where they will be safe from the risk of destruction.

## Chapter 4 — Deposit

### Section 1 — General Provisions

#### Article 1609:

Deposit is a contract on the basis of which owner delegates authority of preservation of his property to another person and property that is entrusted with another person in order to be preserved shall be called deposit.

#### Article 1610:

Deposit contract shall be valid if the deposited property can be possessed and hold and has been taken delivery of by depositary.

### Section 2 — Obligations of Depositary

#### Article 1611:

Person with whom the deposit property is entrusted (depositary) shall be obligated to take real or legal delivery of the deposit.

#### Article 1612:

Depositary shall be obligated to take such care of its preservation that he takes for preservation of his own property.

**Article 1613:**

Depositary may not claim any fee in exchange for preservation of deposit, unless its contrary is explicitly stated in contract.

**Article 1614:**

The deposited property is trust and depositary shall not be liable for its destruction, unless its destruction has been caused by transgression or fault of depositary in its preservation.

**Article 1615:**

If depositing has been for a fee and the property has been, due to certain causes, destroyed or damaged which may have been prevented, depositary shall be obligated to compensate.

**Article 1616:**

Depositary may not, without permission of owner of the deposited property (depositor), utilize or take advantage of it. In case he utilizes, depreciates or destroys it without permission of depositor, he shall be recognized as liable for it according to the circumstances.

**Article 1617:**

Depositary may not, without permission of depositor, lease, lend or mortgage it to another person. In case of violation, if deposited property perishes while in possession of lessee, borrower or mortgagee, its owner shall have the option to claim compensation against lessee, borrower, mortgagee or depositary.

**Article 1618:**

If owner of the deposited property prohibits depositary from traveling with the deposited property or designates a place for its preservation, in case of violation, if the deposited property perishes, the mentioned person shall be recognized as liable, unless he proves his non-negligence.

**Article 1619:**

If depositary merges the property entrusted to him, without permission of owner, with his own property or that of someone else in such a way that its distinction is impossible, he shall be obligated to pay compensation. If merger of the deposited property has been taken place with permission of owner, depositary shall be considered as joint owner and if the property perishes without his fault, he shall not be recognized as liable.

**Article 1620:**

- (1) Depositary may not, without permission of owner, deposit it with another person. In case of violation, if the deposited property perishes, owner shall have the option to claim compensation against the first depositary or the second. If compensation is obtained from the first person, he shall refer to the second person and if compensation is obtained from the second person, he shall not have any right to refer to anyone.
- (2) If depositary proves that he has deposited the deposited property with another person due to reasonable excuses, he shall not be obligated to compensate.

**Article 1621:**

If owner of deposit becomes permanently absent, depositary shall be obligated to preserve it until he acquires knowledge of life or death of the owner. If the deposited property is of the kind that will



perish if it is kept for a long time, depositary may request court sale of the property and depositing its price in a bank escrow account.

**Article 1622:**

If depositary dies and the deposited property is among his inheritance, the mentioned property shall be considered to be held by the heirs in trust and they shall be obligated to return it to its owner.

**Article 1623:**

If depositary dies and his heirs sell the deposited property to another person and deliver it to buyer and it perishes while in possession of buyer, the owner of deposit may claim against seller or buyer its price, if the property is non-fungible, at the price of the day of delivery under sale and its replace, if it is fungible. Knowledge or lack of knowledge of the heirs of deposit status of the property shall not affect the liability.

**Article 1624:**

Depositary shall be obligated to return the deposited property to owner upon his demand, unless deposit has been for a specific period and this time determination is in the interest of owner of deposit.

**Article 1625:**

Depositary may obligate owner to deliver the deposited property, unless it is apparent from contract that moratorium is in the interest of owner of deposit.

**Article 1626:**

If owner of deposit dies, depositary shall be obligated to return it to heirs of owner, unless the inheritance is indebted. In this case, the deposited property shall returned with permission of competent court. If the deposited property is delivered to heirs without permission of competent court and it perishes or is damaged, depositary shall be obligated to pay compensation.

### **Section 3 — Obligations of Depositor**

**Article 1627:**

If deposit is in exchange for fee, depositor shall be obligated to pay the fee at the end of the period of deposit, unless otherwise is agreed.

**Article 1628:**

Depositor shall be obligated to pay those expenses that are spent by depositary for preservation of the deposited property, provided that expenses do not exceed the price of deposit.

**Article 1629:**

If the deposited property is taken away on the basis of entitlement, and depositary bears its compensation, he may refer to depositor for the amount of compensation.

**Article 1630:**

Depositor shall be obligated to compensate all the loss inflicted on depositary due to deposit, provided that this loss has been caused by fault of depositor.

## Section 4 — Kinds of Deposit

**Article 1631:**

If depositor authorizes depositary to utilize the deposit and deposit is of those properties (such as cash money) that perish with utilization, such contract shall be considered loan.

**Article 1632:**

Administrators of residential apartments, hotels and the like shall be liable for preservation of properties that travelers and guests bring with them, except for cash and valuable items that their compensation exceeds five thousand Afghanis, unless the managers undertake their preservation, despite having knowledge of price of the items, or refuse to take delivery of the items in trust without any legal excuse or cause infliction of loss by his own or his employees gross fault.

**Article 1633:**

- (1) Traveler shall be obligated to inform managers of residential apartments or hotels immediately after becoming aware of theft or loss of items before they leave hotel, otherwise, their right shall extinguish.
- (2) Claims in this regard shall not be heard after expiration of 3 months since the date of leaving hotel or apartment.

## Chapter 4 — Safekeeping

**Article 1634:**

Safekeeping is a contract whereby parties to a dispute deposit movable or immovable or all of disputed properties with another person in order to be preservation and administration until the time of resolution of dispute so that safekeeper returns the property with its yields to the person whose right over the property is proven.

**Article 1635:**

Court may, in the following cases, order safekeeping:

- 1 – In cases stated in Article (1634) of this Law where parties cannot reach an agreement on safekeeping of the dispute object.
- 2 – When the concerned person feels immediate danger due to the object being remained with the possessor.
- 3 – In other cases that law states.

**Article 1636:**

Appointment of safekeeper, voluntarily or judicially, shall be made upon agreement of all persons involved in the dispute. In case of disagreement, safekeeper shall be appointed by judge.

**Article 1637:**

Rights, obligations and authority of safekeeper shall be determined by agreement or ruling of court. If they are not determined, provisions of deposit and agency shall apply to the extent that they do not contradict provisions on safekeeping.

**Article 1638:**

- (1) Safekeeper shall be obligated to preserve and administer the property under safekeeping and it is necessary that he exercises care in this regard as much as an ordinary person.
- (2) Safekeeper may not appoint one of the concerned persons as his own successor without consent of the rest.

**Article 1639:**

Safekeeper may not, except for administrative actions, take any action on properties under safekeeping without permission of all of the concerned persons or that of judge.

**Article 1640:**

Safekeeper may request the competent court determination of fee for safekeeping, unless he has explicitly or implicitly waived it.

**Article 1641:**

Safekeeper shall be obligated to keep organized account books. If safekeeper is voluntarily determined, he shall be obligated to submit statement, according to the documents, to persons involved in the dispute of his administrative actions once a year and if safekeeper is appointed by court, he shall be obligated to submit one copy of the statement to court.

**Article 1642:**

Safekeeping shall terminate upon ruling of court or agreement of persons involved in dispute, and safekeeper shall be obligated to return all of the properties and documents under safekeeping to the person who is determined by agreement of the persons concerned in the dispute or by court.

## **Title 4 — Aleatory Contracts**

### **Chapter 1 — Gambling**

**Article 1643:**

Any kind of agreement on gambling shall be considered void.

### **Chapter 2 — Insurance Contract**

#### **Section 1 — General Provisions**

**Article 1644:**

- (1) Insurance is a contract on the basis of which insurer undertakes to pay the insured person or a person to the interest of whom insurance has been concluded an amount of money or regular

payments or other financial compensation in case of occurrence of accident or a danger that is specified in contract in return for a sum of money that the insured person pays at once or in installments.

(2) Provisions of this Chapter shall apply as far as they do not conflict provisions of special law.

**Article 1645:**

Any kind of legitimate benefit that the insured person gains from taking a certain risk may become subject of insurance.

**Article 1646:**

If one of the following conditions is stipulated in insurance policy, it shall be considered void:

- 1 – Condition that extinguishes insurance right due to contravening provisions of laws and regulations, unless the contravention happens due to intentional felony or misdemeanor.
- 2 – Condition that extinguishes insurance right of the insured person due to delay in reporting the accident or presentation of documents to the competent authority, provided that it become obvious from the circumstances that the delay has been due to reasonable excuse.
- 3 – Any kind of printed condition that does not appear explicitly and relates to one of the circumstances that result in extinguishment or annulment of the outcome.
- 4 – Arbitration condition that is mentioned in the insurance policy among printed general conditions, unless the arbitration condition that is stipulated based on a special agreement and separate from general conditions.
- 5 – Any other imposed condition that it appears that its violation does not affect occurrence of accident for the insured.

**Article 1647:**

Insurer shall not be bound to compensate the insured, except only for the inflicted harm due to occurrence of the risk for which insurance is concluded within the limits of insurance premium.

**Article 1648:**

Claims originating from insurance contract shall not be heard after expiration of two years since the date of occurrence of the incident that is subject of the claim.

**Article 1649:**

Any kind of agreement that is contrary to provisions stated in this Chapter shall be considered void, unless it is to the interest of the insured or beneficiary.

## **Section 2 – Kinds of Insurance**

### **Topic 1 – Life Insurance**

**Article 1650:**

Insured or beneficiary of insurance shall be recognized as entitled, immediately upon occurrence of incident or the due date, to sums that insurer has undertaken in insurance policy to pay the insured

or beneficiary, without considering proof of the inflicted harm, as soon as accident occurs or the date becomes due.

**Article 1651:**

Insuring life of another shall be considered void until the other has not agreed in writing to insurance contract before its conclusion. If the third person lacks legal capacity, written agreement of his legal representative shall be necessary for validity of contract.

**Article 1652:**

- (1) If insured commits suicide, insurer shall not be obligated to pay the insured amount, but, despite this, insurer shall be obligated to pay a sum that is equal to the reserved value of insurance to persons to whom the right belongs. In case the cause of suicide is mental illness in such a way that the patient has lost his will, obligation of insurer shall fully survive.
- (2) If it is stipulated in insurance policy that insurance will be paid despite intentional and willful commission of suicide by person, the condition shall be void, unless the suicide has been committed after expiration of two years since the date of conclusion of the contract.

**Article 1653:**

If life of a person other than the insured person is insured and if insured intentionally causes death of the mentioned person or provokes his death, insurer shall be recognized as acquitted. If insured only commences the death of beneficiary, insurer shall have the right to replace the insured person, even if beneficiary accepts the insured person.

**Article 1654:**

- (1) In life insurance, agreement on payment of the insurance amount to designated persons or persons who will be designated afterwards by the insured person shall be permissible.
- (2) If the insured person mentions in insurance contract that insurance is concluded to the interest of his spouse or children or his descendants including the born and unborn ones or to the interest of his heirs without mentioning their names, insurance shall be valid for the designated beneficiaries. If insurance is concluded to the interest of heirs without mentioning their names, each of them shall be entitled to it, proportionate to his inheritance share, even if he has waived his share of inheritance.

**Article 1655:**

Insured person who has undertaken to pay regular installments, may, whenever he wishes, cancel insurance before expiration of the current period by serving a written notice to insurer. In this case, he shall be acquitted from payment of the remaining installments.

**Article 1656:**

- (1) In contracts that are concluded for the period of lifespan without stipulating a certain period for continuation of the insurance person, also in all contracts in which payment of insurance amount after expiration of a designated period is stipulated, insured may, if he has paid at least installments of three years, replace, out of the paid amount, the original policy with another policy in exchange for a reduction in insurance amount, even if its contrary has been agreed, provided that occurrence of the insured incident is definitive.
- (2) Temporary life insurance contracts shall not be discountable.

**Article 1657:**

- (1) If insured has paid at least installments of three years may settle the insurance, provided that occurrence of the insured incident is definitive.
- (2) Temporary life insurance may not be settled.

**Article 1658:**

Conditions on discount and settlement are part of general conditions of insurance and it is necessary to be included in insurance policy.

**Article 1659:**

Insurance contract shall not be nullified due to erroneous and incorrect statements on age of the beneficiary person, unless the real age of the insured person exceeds the designated limit of age stated in insurance policy. In this case, the amount of money that is payable shall be calculated according to the real age.

## **Topic 2 – Fire Insurance**

**Article 1660:**

In fire insurance, insurer shall be obligated to compensate for damages caused by fire and damages that are considered inevitable results of fire, especially damages that are inflicted on the insured objects due to using equipment to extinguish fire or prevent its expansion. Also insurer shall be liable for destruction of the insured objects and their disappearance during the fire, unless it is proved that the disappearance has been due to theft. Provisions of this Article shall apply only if no agreement has been made to its contrary.

**Article 1661:**

Insurer shall be liable for compensation of damages inflicted due to fire, even if fire has arisen from the insured object.

**Article 1662:**

Insurer shall be liable for damages caused by unintentional fault of insured and also for damages caused by acts of god. But, insurer shall not be liable for damages inflicted on the insured objects caused by intentional acts or cheatings of insured, even if its contrary is agreed.

**Article 1663:**

Insurer shall be considered liable for damages caused by persons for whom insured is considered responsible, regardless of the kind of their faults.

**Article 1664:**

- (1) If the insured object is under possessory mortgage or insurance mortgage or other property insurances, these rights, as insurance contract requires, shall transfer to the compensation to which debtor is entitled.
- (2) If these rights are registered or reported to insurer, even though it is registered through a letter, insurer may not give the insured, without the consent of creditors, whatever it proved to be liable for.

- (3) If the insured objects are under attachment or are under safekeeping, insurer may not, after he is informed of the matter, give the insured person whatever for which it is liable.

## **Title 5 — Security Contracts**

### **Article 1665:**

Security contracts are those contracts that strengthen debt and they are bail, assignment (Hawala) and mortgage.

## **Chapter 1 — Bail**

### **Section 1 — Elements of Bail**

#### **Article 1666:**

Bail is attachment of obligation of bailman to obligation of principal in demanding delivery of person, debt or property.

#### **Article 1667:**

Bail shall not be valid only with offer of bailman, until the person who demands it or his agent, even if unauthorized, accepts it in the contract meeting.

#### **Article 1668:**

Bail for patient suffering from terminal illness whose property is indebted shall not be valid. If debt does not include all of his property and bail is made only after payment of his debt for the remaining one third of property, bail shall be valid and if bail is for more than the remaining one third of property, it shall be valid only for the one third.

#### **Article 1669:**

In order for bail to be valid, it is also necessary that the subject of bail, be it specified debt, property or person, be obligatory on principal and their delivery by bailman be possible.

#### **Article 1670:**

Bail for a property that principal is liable for delivering other than the property itself, shall be valid and that is a property that in case of destruction if it is non-fungible, its price and if it is fungible, its similar shall be obligatory to be delivered.

#### **Article 1671:**

Bail for a property that principal is not liable for delivering other than the property itself shall not be valid and that is a property that in case of its existence, it shall be obligatory to be delivered and in case of its destruction, neither its price nor its similar shall be obligatory to be delivered.

#### **Article 1672:**

Immediate and deferred bail or suspended bail on appropriate condition shall be permissible.

**Article 1673:**

Bail for properties in trust such as deposit, Mozarebat property, partnership, lending and leased property in possession of lessee shall not be valid, unless bail has been made due to necessity of guaranteeing properties.

**Article 1674:**

Bail for property, specified or unspecified, shall be valid. Also, bail for a valid debt that is proved to be an obligation of debtor shall be valid.

**Article 1675:**

So long as obligation of principal is not valid, bail shall not be considered valid.

**Article 1676:**

Bail for invalid debt shall not be valid, unless the debt is the designated alimony of wife that is determined by consent or ruling of court.

**Article 1677:**

If two or more of partners have a common credit on another person, bail by one of partners for the portion of other partner of the debt shall not be valid.

**Article 1678:**

Bail of agent for price of whatever he has sold to buyer, bail of executor for price of whatever he has sold from property of minor and bail of supervisor for price of whatever he has sold from the endowed property shall not be valid.

**Article 1679:**

In order to prove bail, it shall have to be in the written form, even if proof of the original obligation is valid by testimony.

**Article 1680:**

If debtor is bound to put forward bailsman, he shall be obligated to introduce an able person as bailsman. Debtor may, instead of bailsman, submit sufficient property guarantees to creditor.

**Article 1681:**

Person who has bailed for a person with incomplete capacity and the bail is made due to incompleteness of capacity, bailsman shall be obligated to fulfill his obligation if the original debtor does not fulfill his obligation.

**Article 1682:**

Bail shall not be valid for an amount exceeding entitlement of creditor and also for a more difficult condition than original conditions on debtor, but it shall be valid for smaller amount and easier conditions.

**Article 1683:**

Bail shall include supplements of debt and costs of the first claim and costs incurred after claim of bailsman.



## **Section 2 — Personal Bail**

### **Article 1684:**

Subject of personal bail is summoning the person for whom bail is made. If presenting him at a specific time has been stipulated, bailman shall be obligated to summon and deliver him to the demander at the designated time that he demands it. If bailman summons the him at the designated time, bailman shall be acquitted from bail, otherwise, court may sentence him to an intimidatory pecuniary punishment, unless inability to summon person for whom bail is made is proved.

### **Article 1685:**

If person for whom bail has been concluded is absent in a specific place while the demander demands his presence, bailman shall be obligated to summon him. In this case, the demander may, at the time bailman goes to summon him, demand bailman to introduce another bailman for guarantee. If the person for whom bail is concluded is absent and bailman proves that his place is unknown, bailman shall not be obligated to make him present.

### **Article 1686:**

Personal bailman shall be acquitted by delivery of person or by discharging the debt that is subject of bail.

### **Article 1687:**

Bailman shall be acquitted with death of the person for whom bail is made, but with the death of the creditor, the demander shall not be acquitted, his heirs may demand bailman to summon the person for whom bail is made.

## **Section 3 — Effects of Bail**

### **Topic 1—Effects of Bail between Creditor and Bailman**

#### **Article 1688:**

Creditor may demand debt from bailman immediately if debt is urgent or when the designated time becomes due if debt is deferred. If debt is suspended on a condition or is postponed to a time in the future, demand of debt from bailman shall not be permissible before materialization of condition or attainment of the designated date.

#### **Article 1689:**

With materialization of condition, materialization of attribute and qualification shall also be necessary.

#### **Article 1690:**

If several persons become bailmen of one debt and if each of them separately has, by subsequent contracts, bailed for all of the debt, all of the debt may be demanded from each of them and if one of them pays the debt, the rest shall be acquitted. If one of them bails for another of all of the debt, the payer may refer to each of them proportionate to his shares.

**Article 1691:**

If several persons have collectively bailed for a debt in a single contract, each of them may be demanded payment of debt of principal proportionate to his share of it. If each of them has individually pledged for all of the debt that is an obligation of another person, creditor may demand all of the debt from each of them individually.

**Article 1692:**

If principal has a deferred debt and another person bails for it, the debt shall be considered deferred regarding bailman as well.

**Article 1693:**

If person bails for an urgent debt by in a deferred way, deferment shall apply to principal as well, unless bailman has exclusively reserved deferment for himself or creditor, at the time of bail, stipulates deferment only for bailman. In these two cases, deferment shall not apply to principal.

**Article 1694:**

If creditor who is debtor himself grants deferment to principal, this deferment shall be valid for bailman and bailman of bailman. If debt is deferred for the first bailman, deferment shall be valid for the second bailman, it shall not be valid for principal.

**Article 1695:**

Deferred debt shall be payable by bailman, regarding himself, from the date of his death and creditor may obtain debt from his inheritance. If debt is paid to creditor by heirs of bailman, heirs may not refer to principal until the end of the period of deferment.

**Article 1696:**

If the object of sale is taken away due to entitlement, bailman shall be acquitted of the guaranteed price.

**Article 1697:**

If creditor accepts to obtain another object instead of debt, bailman shall be considered acquitted, even if that object is taken away due to entitlement.

**Article 1698:**

If bailman pays bail bond from his own property, he may refer to principal for what he has paid, provided that bail has been made on the basis of order of principal and bailman is of those persons whose confession against himself is considered valid.

**Article 1699:**

Bailman shall be recognized as acquitted of those guarantees that has been allocated for guaranteeing debt and are destroyed due to fault of creditor, even if the mentioned guarantees have been determined after bail or ruling of law.

**Article 1700:**

Bailman may not claim the bailed debt against principal before he pays it to creditor.

**Article 1701:**

If debtor goes bankrupt, creditor shall be obligated to state debt in order to be registered in the letter of bankruptcy, otherwise, his right to refer to bailman, to the extent of loss inflicted on bailman due to negligence of creditor, shall extinguish.

**Article 1702:**

Discharge of bail bond by principal or bailman shall result in acquittal of both principal and bailman.

**Article 1703:**

If creditor acquits principal, it shall cause acquittal of bailman. But acquittal of bailman does not entail acquittal of principal. Thus, if creditor acquits bailman, principal shall not be recognized as acquitted.

**Article 1704:**

If creditor, whose debt has been bailed for, dies and debtor is his sole heir, bailman shall be recognized as acquitted. If creditor has another heir, in addition to debtor, as well, bailman shall be acquitted of the share of debtor, not of the share of the other heir.

**Article 1705:**

- (1) Creditor shall be obligated, while taking delivery of debt from bailman, to deliver to bailman all documents that are necessary for exercising the right to refer to debtor.
- (2) If debt has movable guarantees in the form of mortgage or lockup, creditor shall be obligated to free them for bailman.
- (3) If debt has real property guarantees, creditor shall be obligated to take measures, on account of bailman, to transfer the mentioned guarantees. Bailman shall refer to debtor for the transfer costs.

**Article 1706:**

- (1) Creditor may not refer only to bailman, except only after referring to debtor.
- (2) Claiming payment of debt to creditor from property of bailman shall not be permissible, unless property of debtor, after payment of part of debt, finishes. In case of claiming debt against bailman, bailman shall be obligated to refer to this right.

**Article 1707:**

If debt has a real property guarantee that according to law or agreement is allocated for guaranteeing debt and bail has been submitted after this guarantee or simultaneously with it and bailman is not jointly liable with debtor, claiming of payment of debt from property of bailman before claiming it from the properties allocated for guarantee shall not be permissible.

**Article 1708:**

Jointly liable bailman may not demand separation of debtor from property, but he has the right to refer to what non-joint bailman refers for payment of debt.

**Article 1709:**

If bailsmen are jointly liable among themselves and one of them discharges debt when it is due, he may refer to others proportionate to their shares of debt and their shares of the share of the bankrupt bailman.

## **Topic 2 — Effects of Bail between Debtor and Bailman**

**Article 1710:**

If bailman pays from his own property what he has bailed for, he may claim what he has paid against debtor. In this case, bailman shall succeed creditor in all rights.

**Article 1711:**

If the bailed debt is a deferred one and bailman immediately discharges it to creditor, he may not claim it before its due date against debtor.

**Article 1712:**

With death of debtor, a deferred debt shall be payable in an urgent way, unless otherwise has been agreed. Third party may obtain it from inheritance of debtor, not from bailman.

**Article 1713:**

Bankrupt debtor shall not be acquitted from debt if it is, during his lifetime, supported by bail or mortgage.

**Article 1714:**

Bailman shall be obligated to notify debtor, before paying debt, of the matter, otherwise his right to refer to debtor shall extinguish, provided that debtor pays the debt or, in the event of entitlement, he has certain evidence that indicate annulment or expiration of debt.

**Article 1715:**

If there are several jointly liable debtors for one debt, bailman who has guaranteed all of them may refer to any of them for what he has paid of the debt.

## **Chapter 2 — Assignment**

### **Section 1 — Assignment of Debt**

#### **Topic 1 — General Provisions**

**Article 1716:**

Assignment of debt is transferring debt obligation from assignor to assignee and claiming debt against him.

**Article 1717:**

Assignment shall be either absolute or limited.

**Article 1718:**

Absolute assignment is that debtor unconditionally assigns payment of debt of his creditor to another person. Assignee shall pay it from the debt he owes to assignor or from the debt he owes to him due to deposited or usurped property, or it should be in such a state that assignor and assignee do not have any rights against each other.

**Article 1719:**

Limited assignment is that debtor assigns payment to his creditor of the debt that assignee owes to debtor with such a qualification that assignee pays it from the debt he owes to assignor or from the property deposited with him or from the usurped property.

## **Topic 2 — Conditions of Validity of Assignment**

**Article 1720:**

Consent of assignor, person to be paid by assignment and assignee are considered conditions of validity of assignment. If assignee does not accept assignment, obligation of debt shall not be transferred to him, unless debt is due to alimony of wife that husband is obligated to pay by order of court. In this case, wife may assign payment of the debt without the consent of assignee (her husband) and the husband shall be obligated to pay the debt to the person to be paid by assignment.

**Article 1721:**

Assignment that is made between assignor and assignee shall be subject to acceptance of person to be paid by assignment.

**Article 1722:**

- (1) Indebtedness of assignor to person to be paid by assignment shall be a condition of validity of assignment.
- (2) Indebtedness of assignee to assignor shall not be a condition, whenever assignee accepts assignment, assignment shall become valid and assignee shall be bound to pay the debt to person to be paid by assignment, even though assignee is not himself indebted to assignor.

## **Topic 3 — Debts That Are Payable by Assignment**

**Article 1723:**

Assignment of a debt for which bail is valid shall be valid, provided that it is specified. Assignment of an unspecified debt shall not be valid.

**Article 1724:**

Assignment of debts originally undertaken shall be valid. Also, assignment of debts that are undertaken due to bail or assignment shall be valid.

**Article 1725:**

Person who is entitled to endowment may assign, in a limited way, payment to his creditor to supervisor of endowment out of his share of endowment, provided that outcome of endowment is in possession of supervisor and he accepts assignment. If outcome of endowment is not in possession of supervisor, assignment of entitlement of person shall not be valid.

**Article 1726:**

Father and executor minor may accept assignment of payment of debt of minor to another person, provided that it is to the interest of minor. For example, assignee is richer than assignor. If wealth of them is almost equal or equal, assignment to another person shall not be valid.

## Topic 4 — Provisions on Assignment

**Article 1727:**

If person to be paid by assignment accepts assignment and assignee consents to it, assignor and his bailman, if any, shall be recognized as acquitted from debt and claim and, at the same time, right of person to be paid by assignment over assignee shall be established. Acquittal of assignor and his bailman shall be subject to soundness of right of person to be paid by assignment.

**Article 1728:**

Assignment on the condition of non-acquittal of assignor shall be considered bail. If it is stipulated that assignor gives guarantee or that person to be paid by assignment is given option, conditions shall be valid and person to be paid by assignment may claim the debt against assignor or assignee.

**Article 1729:**

In absolute assignment, claim of assignor on assignee shall not cease, he may claim against him until he has not paid the debt to person to be paid by assignment. If he has discharged debt, he shall be acquitted to the extent he has paid. If assignee is not indebted to assignor and pays the debt on the basis of order of assignor, he shall refer to assignor for the same value and if he pays the debt without the order, he shall be recognized as paying it gratuitously.

**Article 1730:**

In limited assignment, right of assignor to claim payment of debt against assignee shall cease and assignee may not discharge the debt to assignor. In case of violation, he shall be liable towards person to be paid by assignment. In this case, person to be paid by assignment may refer to assignor for the debt.

**Article 1731:**

Debt shall accrue to assignee with the same conditions as it accrued to assignor. If debt is borne by assignor in an urgent way, assignee shall have to discharge it urgently and if debt is deferred, assignee shall not be obligated to discharge it until the payment date becomes due.

**Article 1732:**

If assignment is deferred, death of assignor shall not affect the date of payment. If assignee dies, debt shall become urgent and shall be paid from his inheritance, provided that it is adequate to pay debt. If

inheritance is not sufficient for payment of debt, all of debt or the remaining amount shall be claimed against assignor on its due date.

**Article 1733:**

If assignment is vague and urgency or deferment is not explicitly stated therein, assignment shall be made to assignee as a deferred one. If urgency is proved, assignee shall be obligated to immediately discharge it and if deferment is proved, he shall be obligated to pay it on the due date.

**Article 1734:**

If mortgagor assigns payment of his debt to mortgagee to another person or buyer assigns payment of price to seller to another person, such assignment shall not extinguish right of mortgagee to detain the mortgage and right of seller to detain the object of sale, unless third person has paid the debt and the price.

**Article 1735:**

If mortgagee assigns payment of claim of his creditor to his mortgagee, his right to detain the mortgage shall extinguish. If seller assigns payment of claim of his creditor to buyer, his right to detain the object of sale shall extinguish.

**Article 1736:**

If debtor assigns payment of claim of his creditor to third person with the condition that assignee sells assignor's property that is with him and pay the assigned debt out of its price, assignment shall be valid upon acceptance of assignee and he shall be obligated to sell the mentioned property and pay the debt out of its price. Assignee may not refer to assignor for the debt, unless the option to refer has been stipulated for person to be paid by assignment or assignment is rescinded proportionate to destruction of the assigned property.

**Article 1737:**

Inability of assignee to pay debt or a ruling on his bankruptcy shall not cause annulment of assignment.

**Article 1738:**

Absence of assignee, even if it is permanent, shall not result in referring of person to be paid by assignment to assignor, unless death of the absent is proved.

**Article 1739:**

If a debt that is bound with assignment extinguishes and acquittal of assignee appears before assignment due to certain reasons, assignment shall be considered void and person to be paid by assignment shall refer to assignor.

**Article 1740:**

If a property that is bound with assignment perishes due to an incident occurring after assignment and acquittal of assignee of it is not also proved, assignment shall not be annulled.

**Article 1741:**

- (1) If debtor assigns payment of claim of his creditor to trustee to pay the claim out of the trust property and if the trust property perishes before payment of the debt, without any violation by

trustee, trustee shall be recognized as acquitted and assignment shall be annulled and person to be paid by assignment has the right to claim payment of the debt against assignor.

- (2) If the property is destroyed due to fault or violation of trustee, assignment shall not be annulled and trustee shall be obligated to pay its price, if property was not fungible, and shall be liable to deliver its similar to person to be paid by assignment, if it is fungible.

**Article 1742:**

If a deposit, that has to be paid to another person on assignment, is taken away by entitlement, it shall, like its perishing, nullify assignment and person to be paid by assignment shall refer to assignor.

**Article 1743:**

- (1) If debtor assigns payment of claim of his creditor to assignee, out of the usurped property in possession of assignee and the usurped property perishes while in possession of the usurper assignee before its delivery to person to be paid by assignment, assignment shall not be annulled and assignee shall not be acquitted and shall be liable for its similar or price to person to be paid by assignment.
- (2) If the usurped property is taken away by entitlement, assignment shall be void and person to be paid by assignment shall refer to assignor for his right.

**Article 1744:**

If the object of sale, price of which is assigned to be paid, is taken away by entitlement, assignee may, if he has paid the price, refer to either assignor or person to be paid by assignment, at his choice.

**Article 1745:**

- (1) If assignor dies, while indebted, before person to be paid by assignment collects all of the debt from assignee, whatever the person has taken delivery of from assignee while assignor was alive shall be considered his own and whatever he has not taken delivery of, he shall be considered the same as other creditors of assignor.
- (2) If debt is divided among creditors of assignor, person to be paid by assignment may not refer to assignee for the shares that other creditors have obtained.

**Article 1746:**

If assignor dies before person to be paid by assignment collects debt from assignee while he has heirs, his heirs may demand the debt and add it to the inheritance. In this case, person to be paid by assignment shall obtain the debt out of the inheritance.

**Article 1747:**

If assignee dies while indebted, his inheritance shall be divided among his creditors and person to be paid by assignment proportionate to their shares. If debt to person to be paid by assignment is not fully paid by the division, he may refer to assignor for the remaining part.

**Article 1748:**

If person to be paid by assignment dies and assignee is his heir, whatever assignee owes assignor shall be annulled, even if person to be paid by assignment donates the assigned property to assignee.



## Topic 5 — Acquittal of Assignee

### Article 1749:

Assignee shall be considered acquitted by paying the assigned debt or assigning the assigned debt to another person and its acceptance by the other person.

### Article 1750:

If person to be paid by assignment acquits assignee, debt shall extinguish and assignee shall be considered acquitted.

### Article 1751:

If person to be paid by assignment donates the debt to assignee and he accepts the donation, he shall be considered owner of the debt. In this case, if assignee is indebted to assignor, the debt shall be considered discharged and extinguished. If assignee is not indebted to him, his heirs may claim it against assignor.

### Article 1752:

In limited assignment, acquittal of assignor and donation of debt to him by person to be paid by assignment shall not be valid.

## Section 2 — Assignment of Right

### Article 1753:

If creditor agrees with another person to accept assignment of payment of his debt from debtor, the assignment shall be valid upon acceptance by person to be paid by assignment without agreement of assignee, unless otherwise is agreed by creditor and debtor or stated by law.

### Article 1754:

Assignment of right without consent of debtor shall be valid.

### Article 1755:

Assignment of right for an amount exceeding that is obtainable shall be invalid.

### Article 1756:

Assignment of right of the debtor assignee, assigned by another person, shall not be considered valid, unless he accepts it or the assignment is notified to him and its validity against another person on the basis of acceptance of the debtor assignee shall require that the acceptance has a fixed date.

### Article 1757:

Guarantees of the assigned right shall transfer with its assignment.

### Article 1758:

Creditor who is to be paid by assignment may, before announcement of assignment or its acceptance, take such measures as to protect the right that is transferred to him.

**Article 1759:**

If assignment of right is in return for consideration, assignor shall, at the time of assignment, be liable for the existence of the assigned right, unless its contrary has been agreed.

**Article 1760:**

If assignment of right is not in return for consideration, assignor shall not be considered liable.

**Article 1761:**

If assignor has guaranteed wealth of debtor, the guarantee shall start from the time of conclusion of assignment.

**Article 1762:**

If person to be paid by assignment refers to assignor for the guarantee, assignor shall be obligated to return whatever he has obtained in addition to the costs.

**Article 1763:**

Assignor shall be liable for his violation, even if assignment is not in return for consideration or guarantee is not stipulated.

**Article 1764:**

Assignor shall be obligated to submit to person to be paid by assignment document containing the assigned right with explanations and means that render obtaining the right possible.

**Article 1765:**

In case of plurality of assignments of a single right, assignment of the person that is implemented prior to other assignments shall be preferred.

**Article 1766:**

The debtor assignee may argue against person to be paid by assignment on the basis of defenses that he may have argued against assignor at the time of implementation of the assignment. He may also argue on the basis of defenses that can be inferred from the right of assignment.

**Article 1767:**

If the assigned right, that is in possession of assignee, is attached before the assignment in favor of another person becomes effective, the assignment shall be considered another attachment on the applicant of attachment.

**Article 1768:**

If, after assignment has become effective on the share of another person, another attachment occurs on the attached property, the debt shall be divided among the first applicant of attachment and person to be paid by assignment and the second applicant of attachment, the same as division among creditors. But an amount shall be taken from the share of the second applicant that completes payment to person to be paid by assignment.

**Article 1769:**

If debtor does not accept assignment and pays the debt back to assignor before announcement of assignment, he shall be considered acquitted and if person to be paid by assignment proves knowledge of debtor of the assignment at the time of payment, he shall not be considered acquitted.

## **Chapter 3 — Possessory Mortgage**

### **Section 1 — Elements of Possessory Mortgage**

**Article 1770:**

Possessory mortgage is a contract on the basis of which mortgager undertakes to give his property to possession of mortgagee or another trustee person in exchange for a financial right whose full or partial payment shall have priority over rights of the first degree creditors and creditors of lower degrees.

**Article 1771:**

Property that is mortgaged under possessory mortgage must be present, valuable, deliverable and free of rights of others.

**Article 1772:**

- (1) Subject of mortgage must be a debt established against debtor or a property that may be guaranteed. Mortgage of anything in trust shall not be valid.
- (2) Property mortgaged under possessory mortgage may be movable and immovable.
- (3) If property mortgaged under possessory mortgage is cash money, mortgagee may not use it, unless the use has happened on the assumption of collection of the debt upon notification by mortgager at the due date of discharge of the debt.

### **Topic 1 — Effects of Possessory Mortgage between Concluding Parties**

#### **Subtopic 1 — Obligations of Mortgager**

**Article 1773:**

- (1) In order for mortgage to be valid and enforceable, it is necessary that mortgagee take full delivery of the mortgaged property.
- (2) Mortgager may, before delivering the mortgage to mortgagee, withdraw from it and take actions on the mortgaged property.

**Article 1774:**

Mortgager and Mortgagee may, during contract or thereafter, mutually agree to stipulate depositing the mortgaged property with a trustee person. In this case, with the consent of the trustee, his actions shall be considered the same as actions of mortgagee and the mortgage shall be completed with his taking delivery of the property and mortgager shall be bound by it.

**Article 1775:**

Mortgager shall be responsible for soundness and validity of mortgage and creditor may, on the account of mortgagor, take such measures as needed for preservation of the mortgaged property.

**Article 1776:**

If the mortgaged property is in possession of mortgagee and part of it is taken by entitlement, if the part taken by entitlement is a shared property, mortgage of the remaining part shall be void and if it is specific property, mortgage of the remaining part shall remain as it is and all of the debt shall be detained.

**Article 1777:**

If the mortgaged property comes to the possession of mortgager, mortgage shall expire, unless the creditor mortgagee proves that the referral has occurred due to other causes than expiration of mortgage. This provision shall apply in cases where the third party is not affected.

**Article 1778:**

- (1) If the mortgaged property perishes or is defected and this perishing or defect has happened due to fault of mortgager or force majeure, mortgager shall be liable for it.
- (2) Provisions on perishing or defect of the mortgaged property in official mortgage regarding transference of right of creditor from the mortgaged property to whatever that becomes its legal successor shall apply on possessory mortgage.

## **Subtopic 2 – Obligations of Creditor Mortgagee**

**Article 1779:**

If creditor mortgagee is given delivery of the mortgaged property, he shall be obligated to take care of it the same as he takes care of his own property.

**Article 1780:**

Mortgagee shall be liable for destruction of the mortgage after taking delivery of it and shall be obligated to pay the price of the mortgaged property or the debt, whichever that is less. Price of the day of delivery shall be considered credible, not that of the day of destruction of the property.

**Article 1781:**

If the mortgaged property perishes while in possession of mortgagee and its price is equal to the amount of debt, all of the debt shall extinguish regarding mortgager and it shall be assumed that mortgagee has obtained his right, provided that it is proved that the mortgaged property has been destroyed due to his violation or fault.

**Article 1782:**

If the mortgaged property perishes while in possession of mortgagee and its price exceeds the amount of debt, the debt shall extinguish and mortgagee shall be liable for the remaining price of the mortgaged property, provided that destruction of the property has been caused by his violation or fault.

**Article 1783:**

If the mortgaged property perishes while in possession of mortgagee due to his violation or fault and its price is less than the amount of debt, the debt shall extinguish to the extent of price of the mortgaged property, and he shall refer to mortgager for the remaining part of the debt.

**Article 1784:**

If mortgagee sells harvests of the mortgaged property without the permission of mortgagor, while he is present, or without that of the competent court, while he is absent, mortgagee shall be obligated to pay their price.

**Article 1785:**

Mortgagee may not take advantage of the mortgaged property, movable or immovable, without permission of mortgager. He may lease the mortgaged property, with the permission of mortgager, and pay its rent to mortgager or he may, upon the permission of mortgager, deduct the rent from the original debt, even if the mortgage contract has been annulled.

**Article 1786:**

- (1) If mortgager permits mortgagee to use, take advantage of or lend the mortgaged property for completion of an action and the mortgaged property perishes before the use or activity is started or after their completion, it shall be compensated by debt.
- (2) If the mortgaged property perishes during the use or taking advantage of the property, upon permission of mortgager, or during performance of the action for the purpose of which the mortgaged property has been lent, it shall be considered as deposited property, mortgagee shall not be liable for it and nothing shall be deducted from the debt due to it.

**Article 1787:**

If parties to mortgage have not, regarding the agreed compensation for deferred payment of debt, agreed on the authority of determining the compensation and if they have also been silent on specifying it, it shall be calculated according to legal percentage and shall not exceed the price of harvests.

**Article 1788:**

If no time has been specified for payment of a guaranteed debt, creditor may not claim payment of his right, except by deducting it from the price of harvests, without affecting right of debtor to payment of the debt whenever at his discretion.

**Article 1789:**

The creditor mortgagee shall be in charge of administering the mortgaged property and may not change the way of utilization of the mortgaged property, unless with the permission of mortgager. Also, mortgagee shall be obligated to inform mortgager of all affairs that require his intervention.

**Article 1790:**

If creditor misuses his right of administering the mortgaged property or commits gross negligence, mortgager may demand putting the property under protection or its return in exchange for payment of what he owes.

**Article 1791:**

- (1) Mortgager may not obligate mortgagee, by paying part of the debt, to return part of the mortgaged property. Mortgagee may keep the mortgaged property with himself against the remaining part of the debt, even if it is small.
- (2) If the mortgaged property consists of two separate parts and each of them has been designated for a specific amount of debt and mortgager pays part of the debt that is designated for one of them, he may take that part back, and if the amount of debt has not been designated for each part of the mortgaged properties, he may not take any of them back and both of them shall be detained against all of the debt.

**Article 1792:**

Mortgagee may not be obligated to deliver the mortgaged property to mortgager in order to sell it and pay the debt to him, since rule of mortgage means permanent confinement of the mortgaged property until the time of taking delivery of the debt by creditor.

**Article 1793:**

Provisions of the law on liability of non-indebted mortgager and provisions on stipulating ownership in case of non-discharging and condition of sale without procedures, shall apply to possessory mortgage.

**Article 1794:**

Mortgager may not sell the mortgaged property, unless he is appointed as the sale agent by mortgagee. Also, mortgagee may not deposit, lease, lend and mortgage the mortgaged property without permission of mortgager. In case of taking such actions, mortgagee shall be considered as transgressor, due to which he shall be recognized as liable for paying the price of the mortgaged property, no matter how much it amounts to.

**Article 1795:**

If mortgagee sells the mortgaged property without permission of mortgager and delivers it to buyer and the mortgaged property perishes while in possession of buyer before permission of mortgager is acquired, mortgager shall have the option to refer to buyer or mortgagee.

## **Topic 2 — Effects of Possessory Mortgage on Third Party**

**Article 1796:**

Possessory mortgage shall not be binding on third person, unless the mortgaged property is in possession of creditor or, upon agreement of mortgager and the mortgagee, in possession of another trustee person.

**Article 1797:**

Mortgage contract shall give the creditor mortgagee the right to detain the mortgaged property, without affecting legal rights of third person.

**Article 1798:**

If the mortgaged property is taken out of possession of creditor without his will or knowledge, he may, according to provisions on possession, bring it back to his possession.

**Article 1799:**

Possessory mortgage gives the right to creditor mortgagee to obtain his right, prior to other creditors, out of the price of the mortgaged property, no matter whether the other creditor is ordinary or, according to the priority, be a recent creditor.

**Article 1800:**

The creditor mortgagee may claim his right from the mortgaged property, even if ownership of the property belongs to another person, in such a case, the third person may discharge the debt and succeed mortgagee against debtor.

**Article 1801:**

In addition to the original right, necessary expenses spent in order to protect the mortgaged property, compensation for the harm due to defect of the property, expenses of debt contract, expenses of mortgage contract, confinement and execution thereof, legal or agreed compensations that originating from delay of payment of the debt shall be paid out of the possessory mortgage.

## Section 2 — Termination of Possessory Mortgage

**Article 1802:**

Mortgage shall terminate with termination of the guaranteed debt and the mortgage shall be returned with the removal of the cause due to which the debt has terminated. Rights of persons with good faith whose rights have been obtained during termination and return of the mortgage shall not be affected.

**Article 1803:**

In addition to cases stated in Article (1802) of this Law, possessory mortgage shall terminate with the presence of one of the following causes:

- 1 – With obtaining both of right of possessory mortgage and right of ownership by a single person.
- 2 – With explicit or implicit withdrawal of the creditor mortgagee from right of possessory mortgage.
- 3 – With perishing of the mortgaged property.

**Article 1804:**

Possessory mortgage shall not be nullified with the death of mortgager or mortgagee. It shall remain with heirs.

**Article 1805:**

If mortgager dies, his executor shall, with permission of mortgagee, sell the mortgaged property and pay the debt to mortgagee. If mortgager has not appointed an executor, creditor shall request the court, within whose jurisdiction the deceased used to reside, to appoint a person in order to sell the mortgaged property and pay the debt out of its price.

**Article 1806:**

If the creditor mortgagee dies and there is no information about the mortgaged property and it is not found among the inheritance, the price of the mortgaged property shall be considered payable out of the inheritance as an obligatory debt.

## Section 3 — Some Kinds of Possessory Mortgage

### Topic 1 – Mortgage of Real Estate

#### Article 1807:

Possessory mortgage of real estate shall not be binding on third person, unless the mortgage contract has been registered and special provisions on limitations of official mortgage shall apply to this registration.

#### Article 1808:

The creditor mortgagee may lease the real estate for mortgager, without affecting rights of others and it is necessary to explicitly state the price of lease in the mortgage contract. If parties agree on this after the mortgage contract, it is necessary to record it on the margin of the contract.

#### Article 1809:

The creditor mortgagee is obligated to undertake to protect the real estate and to spend necessary costs for preservation thereof. He is also obligated to discharge its customs, taxes and other necessary annual charges.

Creditor may deduct what he has spent from harvests of the real estate or its price within legal limits. Creditor shall be exempted from these commitments if he withdraws from right of mortgage.

### Topic 2 — Mortgage of Movables

#### Article 1810:

- (1) Mortgage of movables shall be binding on third party if it is registered in a fixed dated paper along with the transfer, and in this paper, the sum guaranteed by mortgage and the mortgaged property shall have to be explained in detail.
- (2) The fixed date shall determine the degree of the creditor mortgagee.

#### Article 1811:

Mortgagee with good faith may argue for his right in the mortgaged property, even if mortgager is not able to take action on the mortgaged property. On the other hand, every person with good faith may argue for his right obtained on the mortgaged property, even if this right is obtained after the date of mortgage.

#### Article 1812:

- (1) If the mortgaged property faces the danger of destruction, defect or value decrease, in such a way that the risk of its non-sufficiency to guarantee the right of creditor occurs and mortgager does not also claim its exchange with another thing that succeeds it, creditor or mortgager may request court permission to sell it in a public auction or according to the current rate of market.
- (2) Court may order depositing price of the sale while authorizing it. In this case, creditor's right to the property shall transfer to its price.



**Article 1813:**

If there is a good opportunity for the sale of the mortgaged property and it is possible with considerable profit, mortgager may request the court permission to sell the mortgaged property, even if the payment of debt has not become due. The court shall, at the time of issuing permission, determine conditions of the sale and order depositing the sale price.

**Article 1814:**

If the creditor mortgagee cannot obtain his right, he shall have the right to request the court sale of the mortgaged property in the form of public auction or according to the current market rate.

**Article 1815:**

The creditor mortgagee may request the court to transfer the ownership of the mortgaged property to him in return for his credit, provided that the transfer of ownership happens on the basis of the price that is specified by experts.

**Article 1816:**

Provisions stated in this chapter shall be applicable to the extent that they do not conflict with commercial laws and provisions of special laws on mortgage of movables.

### Topic 3 - Mortgage of Debt

**Article 1817:**

- (1) Mortgage of debt against debtor shall be considered valid if the mortgage has been notified to him or he accepts the right to do it in accordance with provisions on assignment.
- (2) Mortgage of debt shall be considered valid against others if the document of the mortgaged debt has come in possession of mortgagee. Degree of the mortgage shall be calculated since the date of notification or acceptance.

**Article 1818:**

Mortgage of a debt that cannot be assigned or attached shall not be permissible. Mortgage of official documents shall be conducted in a special method that the law has stated for their assignment, provided that it be mentioned that the assignment has been issued in the form of mortgage. In this case, the mortgage shall terminate without any need to proclamation.

**Article 1819:**

The creditor mortgagee may possess the agreed compensations that he is entitled from the mortgaged debt and whatever he becomes entitled to after the mortgage. He may also possess all regular entitlements of the debt, provided that what he possesses shall be deducted, first, from the expenses, second, from the compensations and, third, from the original guaranteed debt. All of the above shall be observed when their contrary is not agreed upon.

**Article 1820:**

The creditor mortgagee is obligated to protect the mortgaged debt. If he wishes to recover part of the mortgaged debt in return for his credit and without interference of mortgager, it is necessary to do it at a specified time and place and notify it to mortgager.

**Article 1821:**

Debtor under the mortgaged debt may argue against the creditor mortgagee on the basis of all repayment instruments confirming validity of the guaranteed right. Also he may argue on the basis of repayment instruments that he holds against the original creditor. All of the above provisions shall be applicable to the extent that debtor may, under assignment, argue against the assignee.

**Article 1822:**

- (1) If the mortgaged debt becomes due before the due date of the debt guaranteed by mortgage, debtor may not discharge the debt, unless for both of mortgager and mortgagee together and either of these two persons may demand debtor to make deposit what he discharges. In this case, the right of mortgage shall transfer to what has been deposited.
- (2) Mortgager and mortgagee are obligated to assist in what debtor has discharged in such a way that it is more beneficial to mortgager and incurs no harm to mortgagee.

**Article 1823:**

If both of the mortgaged debt and the debt guaranteed by mortgage become payable, in this case, if the creditor mortgagee has not obtained his right completely, he may take delivery of whatever he is entitled from the mortgaged debt or demand sale of this debt or own it according to the provision of Article (1815) of this Law.

## **Topic 4 — Mortgage of the Borrowed Property**

**Article 1824:**

Debtor may borrow property of another person and mortgage it upon his permission. If permission of lender is absolute and with no restriction, debtor may mortgage it to any extent, for any property that he wishes and also to any person in any place he intends.

**Article 1825:**

If lender restricts the permission for the property to an extent, for a property, to a person or a specific place, borrower may not contravene it, unless lender is benefited by the contravention.

**Article 1826:**

If borrower mortgages property of lender on his permission and according to conditions he stipulated, lender may not withdraw his permission after it is delivered to mortgagee; and mortgagee may retain it until the time of discharge of debt.

**Article 1827:**

If lending is restricted to a specific period of time, lender may not demand breakage of mortgage and delivery of the borrowed property to himself before expiration of the specified time. If it is not restricted to a period and also after expiration of the period, he may make such demand.

**Article 1828:**

If lender demands breakage of mortgage and discharges debt to mortgagee, in case the debt is equal to the value of mortgage, mortgagee shall be forced to accept it. In this case lender shall refer to borrower. If the value of the mortgaged property is less than the debt, mortgagee shall not be forced to deliver the mortgage. If what is paid is more than the value of mortgage, payment of the excess of

the value of the mortgaged property by lender shall be considered gratuitous and he may not claim it against borrower.

**Article 1829:**

If borrower of the mortgaged property dies while he is bankrupt, the mortgaged property shall remain retained by mortgagee, and shall not be sold without permission of lender.

**Article 1830:**

If lender dies while indebted, the borrower mortgager shall be ordered to discharge his debt and release mortgage. In case of his inability, the mortgaged property shall remain, with the same status, in possession of mortgagee. Heirs of lender may discharge debt and release the mortgaged property.

**Article 1831:**

In cases where the above provisions on mortgage of the borrowed property do not contradict provisions of possessory mortgage, special provisions of possessory mortgage shall apply to mortgage of the borrowed property.

## **Chapter 4 — Official Mortgage**

### **Section 1 — Conclusion of Official Mortgage**

**Article 1832:**

Official mortgage is a contract on the basis of which creditor gains real right over estate that is allocated to discharge of debt and, due to this, creditor shall have priority right over other ordinary creditors and lower degree creditors and he may recover his credit from the estate in whomever possession it is.

**Article 1833:**

- (1) Official mortgage shall not be concluded, unless on the official paper that is completed by relevant officials.
- (2) Mortgager shall bear the costs of official mortgage, unless the contrary is agreed.

**Article 1834:**

In official mortgage, debtor or another person who mortgages something in the interest of debtor may become mortgager.

**Article 1835:**

Mortgager must be the owner of the mortgaged estate and have the capacity to take action on it.

**Article 1836:**

If mortgager is not the owner of estate, his mortgage shall not be valid, unless permitted by the owner by an official paper.

**Article 1837:**

Mortgage of an estate that comes into existence in future shall not be valid.

**Article 1838:**

If mortgage is issued by an owner whose ownership deed is invalidated, revoked, annulled, decayed or loses its validity due to other reasons, mortgage shall remain in the interest of the creditor mortgagee, provided that the creditor has good faith at the time of conclusion of the mortgage contract.

**Article 1839:**

Official mortgage may not be concluded on anything other than estate, unless the contrary is explicitly stated by law.

**Article 1840:**

- (1) The mortgaged estate must be in such a state that its sale by public auction shall be customarily valid.
- (2) Also, it must be precisely specified in the contract, otherwise, mortgage shall be considered void.

**Article 1841:**

Mortgage shall include those attachments of the estate that is considered estate, especially rights of aggregation, decoration, and installations that produce profit for the owner, unless otherwise has been agreed.

**Article 1842:**

If the notification paper regarding the rate of ownership is registered, harvests and profits of the estate since the date of registration of the paper shall be attached to the estate and provisions on distribution of price of estate shall apply to their distribution..

**Article 1843:**

Mortgage that is issued by all owners of a shared estate shall be valid and any later consequence deriving from division of the estate or its sale in case of impossibility of its division shall not affect validity of the mortgage.

**Article 1844:**

If one of the shared owners of estate mortgages his own share or a specific part of it and later other estates are allocated to him during division, the mentioned mortgage shall be transferred, within the extent of a price equal to that of the estate that was originally mortgaged, to these estates. The mentioned extent shall be determined by the administration. Creditor shall be obligated, within sixty days since the date of registration of the division, to take measures relating to the new limitation and express the extent to which the mortgage has been transferred.

**Article 1845:**

Mortgage may be concluded for guaranteeing the debt suspended to condition or probable debt, provided that the amount of the guaranteed debt is specified in the mortgage contract.

**Article 1846:**

Unless law or agreement explicitly states otherwise, every part of estate or the mortgaged estates shall be considered the guarantee for all of the debt and every part of the debt shall be considered guaranteed by all of the estate or the mortgaged estates.

**Article 1847:**

Mortgage may not be separated from the guaranteed debt. It shall be considered to follow the debt in validity and termination, unless law explicitly provides otherwise.

**Article 1848:**

If mortgager is other than the debtor person, he may argue, besides arguing on the basis of the amounts of special payment to himself, on the basis of whatever debtor owes him out of the payment sums for the debt. Right of the mortgager who is not indebted shall remain, even if debtor denies it.

## **Section 2 — Effects of Official Mortgage**

### **Topic 1 — Effects of Official Mortgage between Contracting Parties**

#### **Subtopic 1 — Effects of Official Mortgage on Mortgager**

**Article 1849:**

Actions of mortgager on the mortgaged estate shall not affect right of the creditor mortgagee.

**Article 1850:**

Mortgager shall have the right to administer the mortgaged estate and take delivery of incomes of the estate until it is associated with the estate.

**Article 1851:**

Lease that is concluded by mortgager shall not be considered effective for creditor, unless its date is fixed before registration of the notifying paper of termination of the ownership. If its date is not fixed, the lease shall be considered effective within the limits of good administration.

**Article 1852:**

Advance payment of fees for a period not exceeding three years and also assignment to it shall not be effective regarding the creditor mortgagee, unless its date is fixed before registration of the notification paper of termination of the ownership. If the mentioned period exceeds three years, its effectiveness shall be subject to its registration before conclusion of mortgage; otherwise, according to provision of this Article, its period shall be reduced to three years.

**Article 1853:**

Mortgager shall be obligated to guarantee the soundness of mortgage and the creditor mortgagee may contest any actions or fault in consequence of which his guarantee becomes greatly defective. He may also take protective measures and claim its costs against mortgager.

**Article 1854:**

If mortgager causes destruction or defect of the mortgaged estate due to his own fault, creditor mortgagee shall have the option to obtain adequate guarantee from him or immediately claim his right.

**Article 1855:**

If destruction of the mortgaged property is due to external causes and creditor does not accept continuation of debt without guarantee, debtor shall have the option to pay adequate guarantee or immediately, before it becomes due, discharge the debt.

**Article 1856:**

If, in any case, certain actions are taken that cause destruction, defect or inadequacy of the mortgaged estate as the guarantee, creditor may request the relevant court to order suspension of such actions and adoption of such measures that prevent infliction of harm.

**Article 1857:**

If the mortgaged estate is destroyed or becomes defective due to any cause, the mortgage shall be transferred to the relevant right in order of priority, such as compensation or the sums of guarantee or the price that is designated in exchange for its expropriation for public benefits.

## **Subtopic 2 — Effects of Mortgage on the Creditor Mortgagee**

**Article 1858:**

If mortgager is a person other than debtor, the relevant of provision may only apply to his mortgaged property. The mortgager does not have the right to obligate only debtor by payment, unless otherwise is agreed.

**Article 1859:**

Creditor may, after notifying debtor of discharging the debt, exercise his right over the mortgaged estate and claim its sale according to the period of time that is specified in the Civil Procedures Code.

**Article 1860:**

If mortgager is a person other than debtor, he may, by evacuating the mortgaged estate according to the provisions on evacuation of the mortgaged estate, release himself from actions he had to take.

**Article 1861:**

- (1) Any agreement that gives creditor the right of ownership of the mortgaged estate in case of non-discharging the debt at its due date, in exchange for a specific price whatever it may be or gives him the right to sell the mortgaged estate without observing the procedures stated by law, shall be considered void, even if this agreement is concluded after the mortgage.
- (2) If after the date of discharging the debt or its installment has become due, an agreement is made that debtor foregoes the mortgaged estate to his creditor in exchange for the debt, such an agreement shall be permissible.

## **Subtopic 3 — Effects of Mortgage on Third Person**

**Article 1862:**

Mortgage shall become effective on third person if third person, before obtaining real right over estate, concludes the mortgage contract or it has been stated in the ruling that establishes the mortgage.

**Article 1863:**

Argument against third person on the basis of the following cases shall not be valid:

- 1 – Delivery of the guaranteed right by record.
- 2 – Right originating from succeeding creditor by the person, according to law or agreement.
- 3 – Foregoing of degree of record to benefit of another creditor, unless it is expressed in the margin of the original record.

**Article 1864:**

On procedures related to recording, renewal, elimination, continuation of elimination and effects of all the mentioned procedures, special provisions of registration of documents of estate properties shall apply.

**Article 1865:**

Mortgager shall bear costs of recording, renewal and its elimination, unless otherwise is agreed.

### **Subtopic 4 – Priority and Pursuit Rights**

**Article 1866:**

The creditor mortgagee shall recover all his claims before ordinary creditor out of the price of the mortgaged estate or of the property substituting the estate, according to their degrees.

**Article 1867:**

The degree of mortgage shall be calculated from the date of its record, even if the debt guaranteed by mortgage is a suspended to condition or a future or a probable one.

**Article 1868:**

In record of mortgage, costs of contract, recording, renewal and compensations entitled upon agreement and their discharge has been delayed shall be entered and it shall implicitly be included until the date of its sale to a person in public auction in distribution and degree of the mortgage itself.

**Article 1869:**

The creditor mortgagee may forego the degree of his mortgage, within the limits of his own credit, to the interest of another creditor who has a recorded mortgage on the estate itself. In this case, he may argue against the other creditor on the basis of all of the payable sums that are considered permissible against the first creditor, except what relates to expiration of the right of the first creditor, provided that this expiration happens after foregoing his degree.

**Article 1870:**

- (1) The creditor mortgagee may, when the payment of debt has become due, take the mortgaged estate out of possession of its possessor, unless the possessor discharges the debt with his own consent or releases the mortgaged real estate or waives the mortgage.
- (2) Any person to whom the ownership of the mortgaged estate is transferred, based on one of the ownership causes or any other real right that may be mortgaged, shall be recognized as possessor

of the mortgaged estate without having any personal responsibility for the debt guaranteed by mortgage.

**Article 1871:**

Possessor may, when the payment of debt guaranteed by mortgage becomes due, personally pay the debt with its attachments and its procedural costs since the date of notification. This right of possessor shall remain until materialization of auction. In this case, possessor may claim all that he has paid against debtor or the previous owner of the mortgaged estate.

**Article 1872:**

Possessor may keep the record of mortgage in which he has become successor of creditor and, if necessary, renew it, unless at the time of registration of the document of this possessor records are eliminated.

**Article 1873:**

If, due to ownership of the estate, possessor is obligated to pay an amount that ought to be paid immediately and it is adequate for payment of claims of all creditors whose rights have been recorded on the mortgaged estate, each of the mentioned creditors may obligate possessor to pay his claim, provided that the document of ownership of possessor has been registered.

**Article 1874:**

If the debt for which possessor is liable is payable immediately or if its amount is less than debts to which creditors are entitled, creditors may claim against possessor discharging of what he is liable for, according to conditions he has pledged to and on the agreed date of payment of debt.

**Article 1875:**

If possessor discharges to the creditors what he is liable for, he shall gain the right to demand elimination of restrictions that are imposed on the estate.

**Article 1876:**

Possessor may, after registration of his document of ownership, clear the estate of the entire mortgage that was recorded before registration of his document. He may exercise this right whenever he wishes and keep it until the time that the list of sale conditions is announced.

**Article 1877:**

When possessor intends to clear the estate, he shall be obligated to send a notification to places of residence of creditors whose rights are recorded that includes a summary of his ownership document, its date of registration, price of the estate and a list of rights recorded before registration of his document and names of rights-holders.

**Article 1878:**

Possessor is obligated to mention in the notification that he is ready to discharge the recorded debts that are immediately payable, notwithstanding the due date of entitlement of the mentioned debts within the limits of price of the estate.



**Article 1879:**

Each creditor whose right have been recorded and similarly the bailsman who has a recorded right may claim sale of the estate whose clearance is desired, within thirty days since the date of the last official announcement. Distances shall be observed in determining the date.

**Article 1880:**

Claim shall be made on the basis of a notice sent to possessor and the previous owner with the signature of claimant or his legal agent. Claimant is obligated to deposit an amount sufficient for costs of sale through auction with the treasury or a bank designated by court.

Claimant may not withdraw his claim after this, unless all of creditors whose rights are recorded and all of bailsmen agree to it.

**Article 1881:**

If sale of the estate is claimed, all procedures of compulsory sale shall be observed and the sale shall be completed for claimant or possessor on the basis of the claim of the person who has immediate interest in it. Person who implements the procedures is obligated to mention, in the sale proclamation, the designated price of the estate.

**Article 1882:**

Person to whom bidding ends up shall be obligated, in addition to paying the price designated in the auction, to pay costs of required by clearance, costs of the ownership document and its registration and costs of proclamation by the possessor who has lost the ownership of the estate, unless otherwise is provided by law.

**Article 1883:**

If sale of estate is not claimed within a designated period and according to relevant conditions, ownership of the estate, in a final form and free from any recorded rights, shall belong to possessor, provided that possessor pays creditors the designated price of the estate, observing their degrees in discharging their rights or deposits the mentioned amount with the treasury or a bank designated by court.

**Article 1884:**

Evacuation of the mortgaged estate shall take place upon submission of petition by possessor to the competent court. Record of the subject on the margin of the registered notification paper for dispossession shall be requested by the petition. The issue of evacuation shall be notified to the direct creditor within five days since the date of submission of the petition for taking relevant measures.

**Article 1885:**

If possessor does not discharge the recorded debts or clear the estate from mortgage or relinquish the estate, the creditor mortgagee may not take measures of dispossession against him according to provisions of the Civil Procedures Code, unless upon notification of discharging the entitled debt or that of relinquishing the estate.

**Article 1886:**

Possessor whose ownership document has been registered and has not become party to the lawsuit in which it is ruled against debtor for debt may argue upon defense methods that are permissible for debtor, provided that ruling on debt has been issued after registration of the document of possessor. He may also, in any case, argue upon the defense on the basis of which debtor, after ruling on debt, has the right to argue.

**Article 1887:**

Possessor may be included in auction, provided that the amount of price he has bidden is not less than the remaining amount of his liability on the basis of the price of the estate on sale.

**Article 1888:**

If ownership of the mortgaged estate gets out of the hand of possessor and later he wins the auction, possessor shall be recognized as the owner of the estate by the original ownership document and if he discharge the final price he has bidden or deposits it with the treasury or the bank designated by court, the mentioned estate shall be cleared from all recorded rights.

**Article 1889:**

If a person other than possessor wins the bidding, the mentioned person may exercise his right against possessor according to the result of auction.

**Article 1890:**

If the price acquired in bidding exceeds the rights of creditors whose rights have been recorded, this excess shall belong to possessor and the creditor mortgagees may claim their rights against possessor.

**Article 1891:**

Easement rights and other real rights which possessor had before the transfer of ownership of the estate to him shall be returned to him.

**Article 1892:**

Possessor shall be obligated to return incomes of the estate since the date of notification for discharging the debt or relinquishing the estate. If the relevant procedures are left for a period of three years, the obligation of returning incomes shall be valid since the date of the new notification.

**Article 1893:**

- (1) Possessor may, through the guarantee claim, refer to the previous owner to the extent that the successor has the right to refer to the person from whom he has obtained the ownership by exchange or gratuitously.
- (2) If possessor discharges more than what, on the basis of the ownership document, debtor is liable for, no matter what the cause of this discharging is, he may refer to debtor. In this case, possessor shall succeed creditors whose rights he has discharged.

**Article 1894:**

Possessor shall personally be liable to creditors for the loss that is inflicted on the estate due to his fault.

## Section 3 — Termination of Official Mortgage

### Article 1895:

- (1) Official mortgage, similar to possessory mortgage, shall terminate with termination of the guaranteed debt, and shall return due to extinguishment of the cause on the basis of which the debt has terminated.
- (2) Return of mortgage shall not affect the rights that persons with good faith have acquired from others within the period of termination of the right and its return.

### Article 1896:

Official mortgage shall finally terminate with completion of clearance procedures, even if ownership of possessor who has cleared the estate extinguishes due to any reason.

### Article 1897:

Mortgage shall terminate with mandatory sale of the estate through public auction or by depositing its final price or by discharging the mentioned price to creditors who are entitled, according to their degrees, to discharging of their rights out of this price.

### Article 1898:

The creditor mortgagee may waive the official mortgage in spite of continuation of the debt.

### Article 1899:

Provisions of non-termination due to the death of mortgager or mortgagee and continuation of the debt with heirs shall apply to official mortgage.

# **BOOK 3 — REAL RIGHTS (ARTICLES 1900-2416)**

## **Title 1 — Principle Real Rights**

### **Chapter 1 — Ownership Rights**

#### **Section 1 — Definition, Scope and Protection of Ownership**

**Article 1900:**

Ownership is a right on the basis of which a thing comes under will and dominance of person and only owner may, within the limits of provisions of law, use and utilize it and take any possessive actions on it.

**Article 1901:**

Owner of a thing shall be recognized as owner of whatever that is considered as its main elements and cannot be separated from the thing without its destruction or perishing or change thereof.

**Article 1902:**

- (1) Scope of ownership of land shall include whatever of depth and height that are customary and permissible.
- (2) According to agreement or provision of law, ownership of surface of land may be separated from ownership of the above and the beneath of it.

**Article 1903:**

Ownership of no person may be taken away except by law.

#### **Section 2 — Restrictions of Ownership**

**Article 1904:**

Owner may take action on his property within the limits of law.

**Article 1905:**

If right of another person accrues to property, owner may not take such action on it that causes harm to the other, unless with permission of the owner of right.

**Article 1906:**

Excessive harm, old or new, shall be eliminated.

**Article 1907:**

Excessive harm is one that causes breakage or destruction of building or prevents principle needs, namely the intended benefit from the property.

**Article 1908:**

Full blockage of light from residence shall be considered excessive harm. No one may construct such building that blocks windows of neighboring residence and causes full blockage of light to it. If such building is constructed, neighbor may claim, if possible, removal of harm, otherwise, demolition of the building with the purpose of removing the harm.

**Article 1909:**

Person who constructs a building shall have to construct it in a way that its window does not cause harm to the already existing neighboring building.

**Article 1910:**

If person constructs at his own costs a source of irrigation or residuary water channel for irrigation of his land, other persons may not use it without his permission.

**Article 1911:**

Determination of right to use the water of public stream and its distribution shall be, with due observation to avoid harm to the public, determined proportionate to the land in need of irrigation.

**Article 1912:**

Owner of lands who irrigates them by irrigation equipment or stream while he does not have the right to let the water pass through lands of others may not force owner of the mentioned lands to allow water passage through the lands.

**Article 1913:**

If person has the right of water passage through land of other, owner of the mentioned land may not prevent passage of water through his land.

**Article 1914:**

Person who irrigates his land in a usual way, to the extent that the land can take it, and in consequence of which water flows into land of another person and destroys his farming, he shall not be considered liable and if he irrigates his land in an unusual way that another person is harmed by it, he shall be considered liable.

**Article 1915:**

Right of water can be inherited and its usage may be willed.

**Article 1916:**

- (1) Right of water of land shall follow land.
- (2) Sale, donation and lease of the excess of need of land owner to right of water of land shall only be permissible for the irrigation purpose.
- (3) Other provisions relating to right of water and irrigation of land that are not anticipated in this Law shall be subject to special law.

**Article 1917:**

Owner of land is obligated to allow sufficient water flow through his land for irrigation of lands distant from the source of water and also allow the flow of residuary water of the mentioned lands to the nearest public stream, provided that just compensation is paid in exchange for it.

**Article 1918:**

If all sharers of water do not voluntarily make necessary repairs on the river or stream, they shall be compelled to do so upon request of any of them.

**Article 1919:**

Owner of the land that is not connected to the public way at all or the way to it is insufficient or difficult, in a way that building sufficient way is not possible without huge expenses or big difficulty, may possess to a necessary extent and use the neighboring land in return for a just compensation, provided that he does not exceed the customary limit and this right may only be exercised on the spot where the intended passage is made with the least harm.

**Article 1920:**

If legal division of real estate causes obstacle to connection to the public way and it is possible to construct sufficient way on different parts of the mentioned estate, claim of right of way shall not be permissible except on those parts.

**Article 1921:**

Each of owners of neighboring lands may compel the other party to determine limits of connected lands. Expenses of determination of limits shall be shared by them.

**Article 1922:**

If a wall is shared between two parties, one of them may not, without permission of the other, change the height of the wall or add another building to it.

**Article 1923:**

Each of sharers may place wood beam or other materials on the shared wall, proportionate to his share, provided that this does not exceed its strength. Adding woods or changing positions of the existing ones, without permission of the other sharer, even with due observation of soundness of the wall, shall not be permissible.

**Article 1924:**

If the shared wall has lost its strength and there is a fear of its destruction, if one of sharers decides to demolish it whereas the other sharer prevents it, the preventer shall be compelled to reconstruct the wall.

**Article 1925:**

If sharers proceed to demolish the shared wall or if the wall falls down while each of sharers have put something on it and one of sharers prevent its reconstruction, the preventing sharer shall be absolutely obligated to reconstruct it. If one of sharers proceeds to reconstruct it upon permission of court, he may claim its costs against the other sharer, proportionate to his share, and prevent the other sharer from using the wall until he pays his share of expenses.

**Article 1926:**

A wall that is the dividing line between two buildings at the time of construction shall be considered the shared wall until the time of separation of the two buildings, unless another reason to the contrary appears.

**Article 1927:**

Neighbor who has not participated in expenses of construction of the wall shall only be recognized as sharer of the wall if he pays half of the expenses of construction of the wall and half of the price of the land on which the wall stands.

**Article 1928:**

Neighbor may not obligate the other neighbor to construct wall or anything else within the limits of his property. Similarly, he may not compel him to transfer part of his wall or part of the land on which the wall is constructed, except within the limits of provision of Article (1927) of this Law.

**Article 1929:**

Neighbor shall not have the right to build window or quasi-window towards his neighbor within the distance of less than one meter. The distance shall be calculated from the back of the wall in which window or quasi-window is located or from the external corner of the wall.

**Article 1930:**

Neighbor may have conterminous window or quasi-window opposite the neighboring real estate that also opens towards the public way.

**Article 1931:**

If there is an opening on the wall whose baseline stands higher than the height of human from the floor of the room and it is built for circulation of air and entrance of light in such a way it is not usually possible to look through it at the neighboring real estate, the extent of distance shall not be a condition.

**Article 1932:**

Factory, business enterprise, well and other constructions that cause harm to neighbors shall have to be constructed in a distance that does not cause harm to neighbors.

**Article 1933:**

If contract or will include a condition on the basis of which taking action on property is prohibited, the mentioned condition shall not be valid unless it is based on a legitimate cause and limited to a reasonable period. The cause shall be considered legitimate if the purpose of prohibition is protection of interest of possessor or person to whom possession is to be given or a third party and the period shall be considered reasonable if it is limited to the life of possessor or person to whom possession is to be given or a third person.

**Article 1934:**

If the stipulated condition in contract or will, on prohibition of taking action on property, is valid according to the provision of Article (1933) of this Law, any action contrary to it shall be considered void.

## Section 3 — Common Ownership

### **Article 1935:**

If ownership of a property is common among two or more people, each of them shall have the right to use it proportionate to his share and may take such action on it that does not cause harm to the other co-owner. Also, if the amount of common ownership is specified, its sale and utilization, while it is still common, shall be permissible and its use shall also be permissible, provided that it does not inflict harm on rights of other co-owners.

### **Article 1936:**

If one of co-owners possesses a certain part of the common property and this part does not fall into his share when the property is divided, right of person to whom possession is to be given shall transfer to the part that belongs to possessor after the division. If possessor proves his ignorance of property being common when he possessed it, he may nullify his possession.

### **Article 1937:**

All co-owners shall have the right to administer the common property, unless otherwise is agreed.

### **Article 1938:**

Co-owners of common property shall follow the majority vote and majority shall be calculated on the basis of the price of shares. If majority vote is not achieved, court may take necessary measures on the basis of request of one of co-owners. Also, court may, if necessary, appoint a person to administer common property.

### **Article 1939:**

Each of co-owners of common property may take necessary measures for protection of the mentioned property, even if other co-owners do not agree with that.

### **Article 1940:**

Each of co-owners shall have the right to reside, proportionate to his share, in common house.

### **Article 1941:**

Share of one of the two co-owners that is in possession of the other shall have the status of trust. If it is destroyed without his fault, he shall not be recognized as liable.

### **Article 1942:**

If common property needs correction and repair, co-owners shall participate therein proportionate to their shares.

### **Article 1943:**

If one co-owner constructs common property, upon permission of other co-owners, he may claim the expenses proportionate to their shares and if he has constructed without permission of co-owners, he shall be recognized as doing it gratuitously and may not refer to the co-owner who has not permitted proportionate to his share.



**Article 1944:**

- (1) If a common property that is not divisible needs correction and repair and one of co-owners is absent, it is necessary to obtain permission of its reconstruction from court. In this case, person who conducts the repair may claim the mentioned expenses against the present co-owners and against the absent co-owner after his presence, proportionate to their shares.
- (2) If the mentioned measure is taken without permission, he may not refer to other co-owners for his expenses.

**Article 1945:**

If an indivisible common property is destroyed and one of co-owners intends to construct it while the other refuses, the refusing party shall not be obligated to construct. If one of co-owners takes measure to construct it without permission of the other co-owner or court, he shall be recognized as doing it gratuitously.

**Article 1946:**

If part of an indivisible common property is destroyed and one of co-owners intends to construct it while other co-owners refuse to do so, in case the co-owner takes measure to construct it upon permission of court, he may prevent other co-owners from benefiting from the mentioned property until they pay their shares of costs and if the co-owner takes measure to construct without court permission, his right to refer to other co-owners shall extinguish.

**Article 1947:**

If an indivisible common property is completely destroyed and flattened, none of co-owners shall be obligated to construct it and its land shall be divided among them.

**Article 1948:**

Each of co-owners shall bear costs of administration, protection, taxes and other obligations incurred or determined relating to common proportionate to his share of the property, unless otherwise is agreed.

**Article 1949:**

Co-owners who own at least three fourths of common property may, upon notifying other co-owners, decide on taking action on the mentioned property, provided that they argue on the basis of old positive causes. The co-owner, who has objection to such a decision, may refer to the competent court within two months since the date of notification. The court may rule on the necessity of the action or reject it.

**Article 1950:**

- (1) Co-owner of movable common property or of aggregate of properties may, before division, claim return of that part of common property that is sold by the other co-owner, provided that this claim is made to the attention of seller and buyer within thirty days since the date of acquiring knowledge of sale or the date of sale notification. In this case, the returner shall succeed buyer in all rights and obligations, provided that he compensates for all of his expenses.
- (2) If co-owners who claim return of the sold property mentioned in the previous Item, each of them may claim its return proportionate to his share.

## **Section 4 — Termination of Common Ownership by Division**

### **Article 1951:**

Division means specifying share of common and its payment upon the consent of all co-owners or court ruling.

### **Article 1952:**

Division by consent in the absence of one of co-owners shall not be permissible. Guardian or executor of minor shall succeed him in the division, provided that the competent court agrees with it according to provisions of law.

### **Article 1953:**

If co-owners are not obligated by law or agreement to retain common property, each of them may request court to divide the common property. Prohibition of division of common property by agreement for a period of five years shall not be permissible and if the period of agreement does not exceed five years, it shall be considered effective on co-owner and his successors.

### **Article 1954:**

Property must be divisible, otherwise, the desired use shall be eliminated by division.

### **Article 1955:**

If property is divisible, court may, when division is requested by one of co-owners, assign one or more experts in order to arrange and divide share of each of co-owners.

### **Article 1956:**

The experts shall divide shares on the basis of the smallest share, even if the division is small. In case this is not possible, they may specify and separate shares of each of co-owners.

### **Article 1957:**

Equation of shares, in accordance with entitlements, in which no great mistake is found, shall be final.

### **Article 1958:**

Common rights of dividers over properties under division shall be observed at the time of dividing.

### **Article 1959:**

Dividing shall be made in two forms: first, by adding common share in every part of parts of common properties which is called addition division, and, second, by determining common shares in one common property which is called subtraction division.

### **Article 1960:**

If one has received more than his share, it shall be permissible for him to pay additional property equal to shortcoming of shares.

**Article 1961:**

In division by consent, option of condition, option of sight and option of defect shall apply according to agreement of parties and provisions of law.

**Article 1962:**

If one of co-owners constructs, without permission of other co-owners, a building for himself on the common property and it conflicts with the share of another co-owner during the division, he shall be obligated to demolish it.

**Article 1963:**

In a division lawsuit, the court of first instance of the jurisdiction wherein properties under division are located shall be recognized as competent.

**Article 1964:**

The court of first instance mentioned in Article (1963) of this Law shall adjudicate disputes arising from determination of shares and other relevant disputes that legally come under its jurisdiction.

**Article 1965:**

If during trial of lawsuit of division by court of first instance other disputes arise, the court shall be obligated to stop the division lawsuit until final resolution of the mentioned disputes.

**Article 1966:**

- (1) If dispute is stopped and shares are specified by way of consent, court shall rule on delivery of specified share of each co-owner.
- (2) In shares are not specified by way of consent, division among co-owners shall be made on the basis of lottery, shall be registered before the court and court shall rule delivery of specified share of each co-owner.

**Article 1967:**

If division of property is impossible or the price of property requested to be divided decreases greatly due to division, the property shall be sold according to provisions of the Civil Procedures Code.

**Article 1968:**

Creditors with recorded rights and creditors who protest against division of property or its sale by auction shall have to be included in division lawsuit, otherwise, the division shall not be effective on their rights.

**Article 1969:**

If a debt appears against the deceased after division of his inheritance, division may be rescinded, unless heirs discharge the debt or creditor acquits heirs of the debt or other property than the divided one has been remained that is adequate for the debt.

**Article 1970:**

Divider of common property shall be recognized as owner of that share that belongs to him by division and does not own anything of the remaining shares.

**Article 1971:**

Dividers shall be liable towards each other for violations or entitlements occurring due to causes before division. Each of them shall be liable, proportionate to his share and according to the price of the day, to pay compensation to person entitled to guarantee. If one of dividers is poor, the amount of guarantee he is liable for shall be distributed among all other well off dividers and the person entitled to guarantee.

**Article 1972:**

Guarantee shall not be required in the following cases:

- 1 – When due to expressed agreement on the basis of special cause from which guarantee has arisen, guarantee is exempted.
- 2 – When entitlement is related to fault of divider.

**Article 1973:**

- (1) Violation of division by consent shall be permissible on the condition that one of dividers prove that division has inflicted on him a loss of more than fifth of price of property by way of lesion. In determination of amount of lesion, the price of day of division of property shall be considered valid.
- (2) After lapse of one year following division, no claim shall be heard and defendant may stop the claim by giving money or a property that compensates for the shortcoming of share of claimant.

## **Section 5 — Distribution of Profits**

**Article 1974:**

Distribution of profits shall be made either time-based or place-based and both of them shall take place by consent or judicially.

**Article 1975:**

In place-based division of profits, co-owners agree that each of them uses a certain part of profit of property that is equal to his share in common property and in turn leave use of the remaining parts of his share for other co-owners. Period of such agreement shall not exceed five years. If the period is not determined, agreement shall continue for one year and if co-owner does not notify his dissatisfaction to other co-owners three months before end of the year, the agreement shall be considered renewed for the next year as well. If division continues like this for a period of fifteen years, division shall be considered final.

**Article 1976:**

- (1) Time-based division of profits is that by which co-owners agree that each of them periodically uses profits of all of common property for a period proportionate to his share.
- (2) If one of co-owners demands division of profits of an indivisible common property while other co-owners refuse to do so, profits shall be divided compulsorily.

**Article 1977:**

Division of profits shall be recognized as subject to provisions of lease contract with respect to permit of resorting to division against others and that of capacity of dividers, their rights and obligations and evidence, provided that the mentioned provisions do not conflict with the nature of this division.

## **Section 6—Mandatory Common Ownership and Ownership of Floors of Buildings**

### **Topic 1 — Mandatory Common Ownership**

**Article 1978:**

If it becomes obvious from the purpose of procurement of common property that the mentioned property must permanently remain as such, co-owners may not demand its division.

### **Topic 2 — Ownership of Floors**

**Article 1979:**

If one owns the upper floor and the other owns the lower floor of building, owner of the upper floor shall have the right of residence on the ceiling and the ceiling shall be recognized as property of owner of the lower floor.

Owner of the upper floor shall have the right to customarily use the compound and owner of the lower floor of the building shall have a right to the upper floor to the extent to protect his rights.

**Article 1980:**

If the entrance door of the upper and lower floors of building is the same, owners of both floors shall have the right to use it in common and neither of them may prevent the other from using it.

**Article 1981:**

If owner of the lower floor destroys the lower floor by violating rights of the other owner, he shall be obligated, by force, to reconstruct the building.

**Article 1982:**

(1) If the lower floor is destroyed without an action of its owner, he shall be obligated to reconstruct it.

If owner of the lower floor refrains from reconstructing it and owner of the upper floor takes measure to reconstruct it with permission of owner of the lower floor or court, he may obtain the expenses of reconstruction from owner of the lower floor.

(2) If owner of the upper floor takes measure to reconstruct without permission of owner of the lower floor or that of court, he may only refer to owner of the lower floor for the price of the building and its price shall be determined on the basis of rating of experts at the price of the day of construction, not price of the day of referral.

**Article 1983:**

Owner of the upper floor may, in both cases stated in Article (1982) of this Law, prevent owner of the lower floor from residing and using the mentioned floor until he pays his right. Also, he may, with permission of court, lease the lower floor and obtain his right out of the rent.

**Article 1984:**

Owner of the upper floor may not, without permission of owner of the lower floor, construct a new floor on top of his floor or increases the height of his floor, unless it is proved that the mentioned actions do not cause any harm to the lower floor. In this case, he may, without permission of owner of the lower floor, construct or raise its height.

## Chapter 2 — Causes of Acquiring Ownership

### Section 1 — Possession

**Article 1985:**

Person who acquires a free movable property prior to others shall be recognized as its owner.

**Article 1986:**

If owner of movable property waives its ownership, it shall become a free property.

**Article 1987:**

Acquisition is either real that occurs by placing hand over thing or legal by providing its cause.

**Article 1988:**

If mine, treasure or ancient relics are found in privately owned lands, their ownership shall belong to government. In addition to rewarding owner of the land, the land shall be expropriated according to laws of expropriation.

**Article 1989:**

Person who finds mine, buried treasure or ancient relics in government lands, they shall be considered properties of government and the competent authorities shall determine appropriate rewards for him.

**Article 1990:**

Rights to hunting in water and on the ground, findings and historical relics shall be regulated by special laws.

**Article 1991:**

Unowned agricultural lands are property of government, acquisition of them without permission of government and in contradiction to provisions of law shall not be permissible.

**Article 1992:**

Unowned barren unusable lands shall be recognized as property of the person who possesses and reclaims it with permission of government. If barren and unowned lands are reclaimed upon permission of government and they are farmed and building are constructed therein, one who has reclaimed the

lands shall be recognized as their owner and shall be obligated to pay taxes, unless otherwise stated by special law.

## **Section 2 — Transfer of Ownership Due to Death**

### **Topic 1 — Inheritance**

#### **Subtopic 1 — General Provisions**

##### **Article 1993:**

Ownership of movable properties, real estate and rights that are inherited by heirs from the deceased shall transfer to heirs according to rules and shares stated in the following Articles.

##### **Article 1994:**

Entitlement of inheritance materializes with the death of testator or when he is considered dead by ruling of judge.

##### **Article 1995:**

Heir shall have to be alive, really or legally, at the time of the death of testator or at the time of issuance of ruling on the death of testator so that his right to inherit is established.

##### **Article 1996:**

If two persons die and it cannot be determined which one died first, they shall not be entitled to inheritance of each other, whether they died in a single incident or in different ones.

#### **Subtopic 2 — Inheritance and its Distribution**

##### **Article 1997:**

The following shall be discharged out of inheritance in the following order:

- 1- Costs of funeral of the deceased and its arrangement until the time of burial.
- 2- Discharging the debts for which the deceased was liable.
- 3- Will of the deceased out of the one-third of the remaining part of inheritance after payment debts.
- 4- Division of the remaining part of inheritance among heirs according to provisions of inheritance.

##### **Article 1998:**

- (1) If, according to provision of Item (4) of Article (1997) of this Law, no person entitled to inheritance is found, the remaining inheritance shall be distributed as follows:
  - 1 - Entitlement of person to whose lineage to other than himself the deceased has confessed.
  - 2 - Will that exceeds limits within which will is effective.
- (2) If the above mentioned persons are not found, inheritance or what has remained of it shall belong to government.

### **Subtopic 3 — Impediments to Inheritance**

#### **Article 1999:**

One of impediments to inheritance is intentional murder of testator whether murderer is the principle actor, accomplice or false witness whose testimony has caused the death sentence and execution thereof, provided that murder has been unjustifiable and without excuse and murderer is sane and have completed eighteen years of age.

#### **Article 2000:**

- (1) There is no entitlement to inheritance between Muslim and non-Muslim, but non-Muslims may inherit from one another. Dispute of two countries between Muslims and non-Muslims shall not prevent inheritance, unless laws of alien country have prohibited inheritance of aliens.
- (2) Aliens may not, based on inheritance stated in Item (1) of this Article, seek right of ownership of real properties.

### **Subtopic 4 — Causes of Inheritance**

#### **Article 2001:**

Causes of inheritance are marriage and blood relationship.

#### **Article 2002:**

Marriage-based inheritance shall only be calculated by quota method and the blood relationship one shall be by quota method, residuary or both or womb or by observation of rules of exclusion and rejection.

#### **Article 2003:**

If one of the heirs is entitled to inheritance from two sides, upon observation of provisions of this Chapter, he may inherit from both sides.

### **Part 1 — Inheritance by Quota**

#### **Article 2004:**

Quota is the specific share of heir. In distribution of inheritance and inheritance shares, quota holders shall be given prior to others. Quota holders shall include father, full forefather, even if in upper degrees, brother from the same mother, sister from the same mother, husband, wife, daughter or daughters of daughter or daughters of son, even in lower degrees, full sister, sister from the same father, mother of full grandfather, even in upper degrees.

#### **Article 2005:**

- (1) Subject to observation of provision of Article (2022) of this Law, if the deceased have father and son or son of son, even in lower degrees, the share of father shall be one sixth.
- (2) Full grandfather is the one in whose lineage to the deceased there is no female and his share, as stated in Article 2004 of this Law, shall be one sixth of the inheritance.



**Article 2006:**

If there is one child from the same mother, son or daughter, his/her share shall be one sixth and if they are several, their shares shall be one third. Male and female of them shall receive an equal part of the share.

In the latter case, if quota holders receive all of the inheritance or children from the same mother, brother or full brothers separately or with sister or full sisters shall share and the one third shall be divided among them in the above order.

**Article 2007:**

- (1) Husband, in case he does not have children or male children, even in lower degrees, shall receive half of the inheritance and in case he has children or male children, even in lower degrees, he shall receive one fourth of the inheritance.
- (2) Wife - even though in the reversible divorce, if the husband dies during her time of waiting - or wives, if they do not have children or male children, even in lower degrees, shall be entitled to one fourth of the inheritance and if they have children or male children, even in lower degrees, they shall be entitled to one eighth of the inheritance.
- (3) Divorcee under an irreversible divorce when the husband is terminally ill shall be considered as wife, provided that the wife did not consent to divorce and that divorcer dies with that illness while the divorcee is still in the period of waiting.

**Article 2008:**

Daughters, subject to observation of provision of Article (2019) of this Law, shall be entitled to inheritance as follows:

- 1 - One daughter shall be entitled to half of the inheritance; two or more shall be entitled to two thirds.
- 2 - Daughters of son, if they do not have daughter or daughter of son, who is higher than her in degree, shall be entitled to the inheritance stated in the above Item. Daughters of son, one or more, in case of existence of daughter or daughter of son who are higher than her in degree, shall be entitled to one sixth of the inheritance.

**Article 2009:**

Full sisters, with observation of provision of Articles (2019 and 2020) of this Law, shall be entitled to inheritance as follows:

- 1 - One full sister receives half and two or more of them shall be entitled to two thirds of the inheritance.
- 2 - In case of non-existence of full sister, half-sisters from the father side shall be entitled to the shares mentioned in the previous Item and with the existence of one full sister; they shall be entitled to one sixth of the inheritance, whether there is one half-sister from the father side or more.

**Article 2010:**

- (1) If mother has children or children of son, even in lower degrees, or two or more brothers and sisters, full or half from the father side or mixed, shall be entitled to one sixth of the whole inheritance, except the case in which she is together with one of the spouses and the father, in this case she

shall be entitled to one third of the remaining part of the inheritance after distribution of shares of husband or wife.

- (2) Full grandmother refers to mother of one of the parents or to mother of full grandfather, even in upper degrees. Grandmother, one or several, shall be entitled to one sixth of the inheritance and it shall be divided among them equally.

**Article 2011:**

If shares of quota holders exceeds the inheritance, it shall be divided proportional to their shares in the inheritance.

## **Part 2 — Inheritance by the Residuary**

**Article 2012:**

The residuary are, according to Sharia, those who are entitled to all of the inheritance in case of nonexistence of quota holders and in case of existence of quota holders, if they are not excluded from the inheritance, the residuary shall receive whatever remains from the inheritance after quota holders receive their shares.

**Article 2013:**

If there is no quota holder or if there are but all of the inheritance does not go to the quota holders, respectively, all of the inheritance or what has remained after distribution among quota holders shall be given to residuary relatives.

**Article 2014:**

Residuary relatives are divided into three groups: the independent residuary, the residuary due to other, and the residuary with another.

**Article 2015:**

The independent residuary are those whose blood relationships with the deceased do not need others and no female enters in the relationship of the independent residuary with the deceased.

**Article 2016:**

The independent residuary have four sides in the following order:

- 1 – Sonship that includes sons and sons of son, even in lower degrees.
- 2 – Fatherhood that includes father and full grandfather, even in upper degrees.
- 3 – Brotherhood that includes full brothers, half-brothers from the father side and their sons, even in lower degrees.
- 4 – Uncle-ness (from the father side) that includes uncles of the deceased, uncles of father of the deceased and uncles of the full grandfather of the deceased, even in upper degrees, whether they are full or half from the father side and it also includes sons and sons of their son, even in lower degrees.

**Article 2017:**

If the independent residuary are of the same side, the one who is closest to the deceased in degree shall be considered entitled to the inheritance. If they are similar in terms of side and degree, the priority

right shall be given to the blood relationship and the person who has two blood relationships with the deceased shall have priority right over the person who has one blood relationship and if they are similar in terms of side, degree and blood relationship, the inheritance shall be divided among them equally.

**Article 2018:**

The residuary due to other are those females who need to others to be considered as the residuary or share with others in the residuary.

**Article 2019:**

(1) The residuary due to other are as follows:

- 1 – Daughters or sons
- 2 – Daughters of son, even in lower degrees, and sons of son, even in lower degrees, if sons are in a parallel degree or lower than daughters and are not entitled to the inheritance in another way.
- 3 – Full sisters with full brothers and half-sisters from the father side with half-brothers from the father side.

(2) In cases stated in the above Item of this Article, male shall receive twice as much of the inheritance as female receives.

**Article 2020:**

The residuary with another are those females who need another female to be considered as the residuary while the other female does not share with her in the residuary.

**Article 2021:**

(1) The residuary with another, are:

Full sisters or half-sisters on the father side with daughters or daughters of son, even in lower degrees. In this case, they shall be entitled to the remaining part of the inheritance after the quota holders receive their shares.

(2) Persons stated in the above Item of this Article shall be given more credence than the other residuary, such as full brothers and half-brothers on the father side. They shall be subject to provisions on the latter group regarding priority right, degree and strength.

**Article 2022:**

If father or grandfather is together with daughter or daughter of son, even in lower degrees, they shall be entitled to the share of the inheritance by the quota method and to the remaining part by the residuary method.

**Article 2023:**

(1) If grandfather is together with full brothers and sisters or with half brothers and sisters on the father side, there shall be two inheritance cases:

- 1 – He shall be entitled to the share of one brother if he is together only with males or with males and females or only with the females who fall in the residuary with the descendant of the heir.

- 2 – If he does not fall in the residuary with sisters or with the descendant female of the heir, he shall be entitled, by the residuary method, to the remaining part of the inheritance after the quota holders.
- (2) If the dividing case or inheritance by the residuary method, in the manner stated in the above Item of this Article, deprives the grandfather of the inheritance or reduces his share to less than the one sixth, he shall be entitled to one sixth by the quota method.
- (3) In case of dividing, children of the father side who have been excluded from inheritance shall not be given credence.

### **Part 3 – Exclusion from Inheritance**

#### **Article 2024:**

Exclusion from inheritance shall mean the case in which person has the capacity to inherit, but due to existence of another heir he shall not be entitled to inheritance. The excluded shall cause exclusion of another heir.

#### **Article 2025:**

There are two kinds of exclusion:

- 1 – Partial exclusion that causes reduction of the entitled share of the inheritance.
- 2 – Total exclusion that totally deprives from the inheritance.

#### **Article 2026:**

Person who is deprived of the inheritance due to one of the impediments to inheritance, he shall not cause exclusion of any of the heirs.

#### **Article 2027:**

Six persons from among the heirs shall never face total exclusion from inheritance. They are father, mother, son, daughter, husband and wife.

#### **Article 2028:**

Partial exclusion shall occur to five persons from among the heirs. They are mother, daughter, son, half-sister from the father side, husband and wife.

#### **Article 2029:**

Father shall exclude grandfather, whether he is entitled to inheritance as quota holder, residuary or both.

#### **Article 2030:**

Mother of the deceased shall exclude grandmothers, whether she is from the father side or that of the mother or from the grandfather side.

#### **Article 2031:**

Son shall exclude son of son. Also, any of son of son whose degree is closer shall exclude son of son whose degree is farther.

**Article 2032:**

Sisters and brothers, whether they are full or half from the father or mother side, shall be deprived of inheritance with the existence of father, son and son of son, even in lower degrees. Also, half brothers and sisters from the mother side shall be excluded with the existence of grandfather.

**Article 2033:**

Half-brother from the father side shall be excluded from inheritance with the existence of full brother and full sister who is among the residuary together with another person.

**Article 2034:**

Son of full brother shall be excluded from inheritance by seven persons from among the heirs. They include father, grandfather, son, and son of son, full brother, half-brother, from the father side, and full sister or half-sister, from the father's side, who is among the residuary together with another.

**Article 2035:**

Son of half-brother from the father side shall, in addition to the seven persons stated in Article (2034) of this Law, be excluded with the existence of son of full brother.

**Article 2036:**

Half-brothers from the mother side shall be excluded from inheritance with the existence of six persons from among the heirs. They include father, grandfather, son, son of son, consanguine daughter and daughter of son.

**Article 2037:**

Full uncle (brother of father) shall be excluded from inheritance with the existence of ten persons from among the heirs. They include father, grandfather, son, son of son, full brother, half-brother from the father side, full sister or half-sister from the father side, provided that both types of sisters become a member of the residuary, and son of full brother or half-brother from the father side.

**Article 2038:**

Son of full uncle (brother of father) shall be excluded from inheritance with the existence of those members of the heirs as mentioned in Articles (2036 and 2037) of this Law. He shall also be excluded with the existence of full uncle (brother of father) and son of half uncle (brother of father) from the father side shall, in addition to the mentioned persons in this article, be excluded with the existence of son of full uncle (brother of father).

**Article 2039:**

If consanguine daughters of the deceased and daughters of son of the deceased are among the heirs, while consanguine daughters inherit two thirds of the inheritance, daughters of son shall be excluded, unless son of son becomes present. In this case, son of son shall make them members of the residuary, provided that he is in the same degree as them or in the lower and this son of son shall exclude daughters of son who are in lower degree than him.

**Article 2040:**

If full sisters inherit two thirds or more of the inheritance, half-sisters from the father side shall be excluded, unless half-brother from the father side exists with them. In this case, they shall fall among the residuary by the half-brothers.

**Article 2041:**

If full sister inherits half of the inheritance, half-sisters from the father side shall not be excluded and shall be entitled to one sixth of the inheritance.

**Part 4 — Redistribution**

**Article 2042:**

- (1) If quota holders do not inherit all of the inheritance and there is no residuary, the remaining part of the inheritance shall be redistributed among quota holders, except husband and wife, proportionate to their shares.
- (2) If one of the relative residuary or one of the quota holders or one of the distant relatives do not exist, the remaining part of the inheritance shall be given to one of the spouses.

**Part 5 — Inheritance of Distant Relatives**

**Article 2043:**

- (1) If no one of the residuary and relative quota holders exists, all of the inheritance or its remaining part shall be given to distant relatives.
- (2) Distant relatives shall include the following four classes who shall be recognized as prior to one another according to the following order:
  - 1 – Children of daughters, even in lower degrees, and children of daughters of son, even in lower degrees.
  - 2 – Non-full grandfathers (i.e. related to the deceased via female), even in upper degrees, and non-full grandmother, even in upper degrees.
  - 3 – Sons of half-brothers from the mother side and their children, even in lower degrees, and children of full sisters or half-sisters from the father or mother side, even in lower degrees, and daughters of full brothers or half-brothers from the father or mother side and their children, even in lower degrees, and daughters of sons of full brother or half-brother from the father side, even in lower degrees, and their children, even in lower degrees.
  - 4 – Some of the members of the following six classes shall have priority rights over others, in the following order, in entitling the inheritance:
    - a. Maternal uncles of the deceased, his aunts (sisters of his father), uncles (mother's brothers), and his aunts (sisters of mother) whether full or paternal or maternal.
    - b. Children of the classes mentioned in Item (a), even in lower degrees, and daughters of uncle (brother of father) of the deceased whether full or half from the father side and their daughters and sons, even in lower degrees and children of all of the people stated in this Item, even in lower degrees.
    - c. Maternal uncles of father of the deceased, aunts (sisters of father), uncles (brothers of mother) and aunts (sisters of mother) of father of the deceased whether full, paternal or maternal and uncles

(brothers of father brothers) of mother of the deceased, aunts (sisters of father), uncles (brothers of mother) and aunts (sisters of mother) of mother of the deceased whether full, paternal or maternal.

d. Children of classes stated in Item (c), even in lower degrees and daughters of full or paternal uncles (brothers of father) of the deceased and their daughters of sons, even in lower degrees, and children of daughters of the mentioned persons, even in lower degrees.

e. Uncles (brothers of father) of father, father of mother of the deceased and uncles (brothers of father) of father of mother of the deceased and uncles (brothers of father) of mother of mother of the deceased and uncles (brothers of father) of mother of father of the deceased and all their aunts (sisters of father), uncles (brothers of mother) and aunts (sisters of mother) whether of the same parents or half on the father or mother side.

f. Children of classes stated in Item (f), even in lower degrees, and daughters of full or paternal uncles (brother of father) of father of father of the deceased and their daughters and sons, even in lower degrees and children of persons included in this Item, even in the lower degree.

#### **Article 2044:**

In the first class of distant relatives preference for receiving inheritance shall be given to those whose degree of relationship with the deceased is closer. If they are equal in degree of relationship, distant relative shall be given priority over children of quota holders and if they are equal in degree and there is no child of the quota holders or if all of them are children of quota holders, they shall share the inheritance.

#### **Article 2045:**

In the second class of distant relatives, the right of priority in receiving inheritance shall be given to person is closer to the deceased in relationship degree. In case they are equal in relationship degree, person who relates to quota holder shall be given priority. If no one relates to quota holder while they are equal in degree or all of them relate to quota holder, the relationship side shall be given credibility. In case of unity of the side, they shall share the inheritance and in case of difference of the side, two third shall be given to those who are of the father side and one third shall be given to those who are of the mother side.

#### **Article 2046:**

- (1) In the third class of distant relatives, priority right shall be given to those who are closer to the deceased in relationship degree. In case of equality of relationship degree, children of the residuary shall be given priority over children of distant relatives and if there is no difference in this respect, the strength of relationship with the deceased shall be given credibility and person who is of the father and mother side shall be given priority over person who is of the father side and person who is of the father side shall be given priority over person who is of the mother side.
- (2) If they are equal in degree and relationship strength, they shall equally share the inheritance.

#### **Article 2047:**

- (1) In the first category of categories of the fourth class stated in Article (2043) of this Law, if relative from the father side is a single person, who includes maternal uncles (brother of father) and aunts (sisters of father) of the deceased or if relative from the mother side is a single one, who includes uncles (brothers of mother) of the deceased and aunts (sisters of mother) of the deceased, strength of relationship shall be given credibility. Accordingly, person who is of the father and mother sides shall be given priority over person of the father side and person of the

father side shall be given priority over person of the mother side. If they are equal in relationship, they shall equally share the inheritance.

(2) If relatives of the both sides exist, two thirds of the inheritance shall be given to relatives of the father side and one third shall be given to relatives of the mother side, and shares of each side shall be divided among them according to the details stated in Item (1) of this Article.

(3) Provisions of Items (1) and (2) of this Article shall apply on the third and fifth categories as well.

**Article 2048:**

(1) In the second category, closeness of degree of relationship with the deceased shall be credible, even if it is not from one side and in case of equality of degree and unity of side, strength of relationship shall be taken into account, whether they are children of the residuary or those of distant relatives.

(2) If some are children of the residuary and some are children of distant relatives, children of the residuary shall be given preference and in case of difference of side, two thirds shall be given to the side of father and one third to the side of mother and shares of every one of them shall be divided among them according to the above mentioned method.

(3) Provisions of Items (1) and (2) of this Article shall also apply to the fourth and sixth categories.

**Article 2049:**

If heir is from among distant relatives, multiplicity of relationship degrees shall not be credible, except in cases wherein difference of side is proved.

**Article 2050:**

In inheritance of distant relatives, the rule of “share of male twice as much as that of female” shall be observed.

## **Part 6 — Person with Lineage Proved by Confession**

**Article 2051:**

(1) If the deceased has confessed to the lineage of a person whose lineage is unknown and lineage of this person to others is not proved and confessor does not withdraw his confession, person with lineage by confession shall be entitled to the inheritance.

(2) In order to be entitled to the inheritance in this case, person for whom confession is made must be alive at the time of death of confessor or the time of issuance of his legal death ruling, otherwise, impediments to inheritance shall be given priority.

## **Part 7 — Miscellaneous Provisions**

### **First — Fetus**

**Article 2052:**

If fetus shares with other heirs or causes partial exclusion of heirs, share of one son or one daughter, whichever that is larger, shall be left for fetus and in case fetus causes total exclusion, all of the inheritance shall be left for fetus.



**Article 2053:**

If fetus is born alive and active, or was alive while most parts of fetus's body were being delivered, fetus shall be recognized as entitled to inheritance. If delivery was given due to crime, fetus shall anyway be entitled to inheritance and others inherit from fetus as well.

**Article 2054:**

- (1) If wife of the deceased or his divorced wife in the waiting period is present after his death, her fetus shall be considered entitled to the inheritance only if fetus is born alive, maximum, within three hundred and sixty five days since the date of the death or that of the separation.
- (2) Fetus may not inherit from anyone else but father of fetus, except in the following two cases:
  - 1 – When fetus is born alive maximum within (365) days since the date of death or separation, while the mother of fetus is in her period of waiting due to death or separation and testator has died during the waiting period.
  - 2 – When fetus is born alive maximum within (270) days since the date of death of testator, provided that father and mother of fetus were married at the time of death of the father.

**Article 2055:**

If the share designated for fetus is less than the share entitled by fetus, the amount of shortcoming shall be taken from shares of persons who have received more than what they were entitled to. And if the designated share is more than what the entitlement, the extra share shall be distributed to entitled persons.

Second — Missing Person

**Article 2056:**

- (1) The entitled share of the missing person whose death is not determined according to Article (326) of this Law shall be designated from the inheritance of testator. If he is proved to be alive, he shall take the share and if his death is ruled on, his share shall be distributed to other heirs who were entitled at the time of death of testator.
- (2) If missing person appears alive after judicial ruling on his death, he shall obtain anything of his share that is with heirs.

Third — Neuter

**Article 2057:**

Neuter who may not be distinguished as masculine or feminine shall be entitled to the least of the two shares and the remaining part of the inheritance shall be given to other heirs.

Fourth — Illegitimate and Denied Child

**Article 2058:**

Illegitimate and denied child shall be entitled to inherit from the mother and her relatives. Similarly, the mother and her relatives shall be entitled to inherit from illegitimate and denied child, but father and his relatives may not inherit from the mentioned children.

Fifth — Events of Drowning, Fire and Demolition

**Article 2059:**

Those, who have died in incidents of drowning, fire and demolition while it is not known which one has died before the other, shall not inherit from one another and their shares shall be divided among their living heirs.

Sixth — Ouster

**Article 2060:**

Ouster means compromise of heirs to oust some of them in return for a certain thing. If one heir ousts another heir in the mentioned way, he shall succeed the ousted and be entitled to the share of the ousted of the inheritance. If one of the heirs agrees with the remaining heirs to be ousted by them, and the thing is part of the inheritance, his share shall be divided among the remaining heirs proportionate to their shares of the inheritance and if the thing is out of their personal property and method of division of the share is not determined in the contract, his share shall be equally divided among them.

### **Subtopic 5 — Administration of Inheritance**

**Article 2061:**

If testator does not appoint executor for his inheritance and one of heirs requests administration of the inheritance, court shall choose a person. If all the heirs do not agree on the appointment of the person, court may, upon hearing reasons of the heirs, appoint at its own discretion the person whom shall be, to the possible extent, from among the heirs.

**Article 2062:**

- (1) If testator has appointed executor for the inheritance, court shall be obligated to endorse the appointment of testator.
- (2) All provisions on administrator shall apply to executor of the inheritance.

**Article 2063:**

Financial officer of the court shall regularly record, in a special book, the court orders on appointment of administrator and register in the special form personal information of testator of the inheritance including names of heirs in Abjad letters. The mentioned officer shall be obligated to record all orders on removal and withdrawal on the observation column of the registry form.

**Article 2064:**

Record of the issued orders on appointment of administrator shall have the same effects on those persons who deal with the heirs regarding the real estate inheritance as those of the measures stated in Article (2102) of this Law.

**Article 2065:**

- (1) Once appointed, administrator shall take delivery of the inheritance and administer them under observation and supervision of the court.
- (2) Expenses of administration, including the fee of administrator appointed by the court, shall be paid out of the whole inheritance.

**Article 2066:**

Court shall be obligated to take emergency actions, if necessary, on the basis of request of the concerned persons, the office of prosecution or its own discretion, especially on stamping the properties and depositing cash money and securities with and valuable things with bank.

**Article 2067:**

- (1) Administrator shall be obligated to immediately change a part of the inheritance to cash that is sufficient for costs of funeral and the mourning family of the deceased proportionate to his status. He shall also be obligated to request the judge in charge of urgent affairs issuance of order on maintenance expenses of family of the deceased who are heirs for a customary amount out of the inheritance until the end of administration. Maintenance costs of each of the heirs shall be deducted from his entitled share of the inheritance.
- (2) All disputes related to these expenses shall be dealt with by the judge.

### **Subtopic 6 — Isolation of Inheritance**

**Article 2068:**

- (1) Creditors may not, since the issuance date of order on appointment of administrator, take any action on the inheritance or continue the previous measures made, except in the presence of administrator.
- (2) Measures that have been begun on the basis of statements against testator while the final list is not sealed shall be stopped on the basis of request of one of the concerned persons until the time of administration of all debts of the inheritance.

**Article 2069:**

Heir may not take action on the inheritance prior to receiving the inheritance entitlement document. He may also not obtain credits of the inheritance or discharge his debt by the credit of the inheritance.

**Article 2070:**

Administrator shall be obligated to make such arrangements that protection of the inheritance requires and take such actions that administration of the mentioned property requires. He shall also be obligated to represent the inheritance against claims against it and take measures to obtain credits of the inheritance.

**Article 2071:**

Liability of administrator shall be the same as that of paid agent, even if he is not paid in return for his work. Judge shall be obligated to demand administrator periodical administrative statements.

**Article 2072:**

Administrator shall be obligated to invite, by an announcement published in one of the newspapers and fixed on the announcement board of court and entrance of police stations, creditors and debtors of the inheritance to state their rights and duties on the inheritance. Creditors shall be obligated to state what is requested within two months since the date of publication of the announcement.

**Article 2073:**

Administrator shall be obligated to provide the court officer with statement list of rights and duties of creditors and debtors of the inheritance within three months since the designated date and inform all concerned persons about it. Administrator may, if necessary, request the court to renew this period.

**Article 2074:**

Administrator may seek assistance of experts and skilled persons on description of the inheritance and determination of price of its properties.

**Article 2075:**

If a person acquires something of the inheritance by cheating, even though he is an heir, he shall be sentenced to the punishment for breach of trust with fraudulent intention.

**Article 2076:**

Disputes over validity of the statement (of the inheritance) shall be filed within thirty days since the date of issuance of the announcement of submission of the list to court. If court, after investigation, finds the dispute serious, it shall accept it. It shall be dealt with in accordance with provisions of the civil procedures law.

## **Subtopic 7 — Settlement of Debts of Inheritance**

**Article 2077:**

Administrator shall, after expiration of the period of dispute, upon permission of court, begin to pay undisputed debts. Disputed debts shall be paid after issuance of the final ruling.

**Article 2078:**

If administrator is certain about of insolvency of the inheritance or its possibility is conceivable, he shall stop payment of debts until the time of issuance of final ruling on disputes over debts of the inheritance, even if there is no dispute over some of the debts.

**Article 2079:**

Administrator shall discharge debts of the inheritance, respectively, out of incomes of rights of the inheritance, money and price of the movable properties of the inheritance. If they are not sufficient for the payment of debts, the debts shall be paid out of price of real properties of the inheritance.

**Article 2080:**

Sale of movable and real properties of the inheritance, if they ruled to be put in public auction, shall be made according to rules of the compulsory sale, unless all heirs agree on their sale by another method. If the inheritance is completely in debt, agreement of creditors shall be necessary as well and heirs may participate in the auction.

**Article 2081:**

Court may, upon request of all heirs, rule on urgent payment of deferred debts and determination of the amount to which creditor is entitled.

**Article 2082:**

If all the heirs do not agree on requesting urgent payment of deferred debts, court shall deal with distribution of the mentioned debts and that of properties of the inheritance and allocate to each heir a part of the debts and a part of the inheritance in a way that thereupon they become equal to his net share of the inheritance.

**Article 2083:**

Court shall arrange sufficient guarantees for each of creditors over real or movable properties in a way that the guarantees designated for each of creditors remains as they were. If such an arrangement is not possible, court shall arrange the guarantee over all of the inheritance.

**Article 2084:**

Each of heirs may, upon distribution of deferred debts, discharge the part allocated to him before its due date.

**Article 2085:**

Creditor who cannot acquire his rights since they are not inserted in the statement list and he does not have real guarantee over the inheritance as well, he may not refer to those persons who have acquired real rights over the mentioned properties with good faith, but he may refer to heirs due to their richness.

**Article 2086:**

Upon discharging debts of the inheritance, administrator shall undertake to execute the will and perform other obligations.

## **Subtopic 8 – Delivery and Distribution of Inheritance**

**Article 2087:**

Upon discharging obligations on the inheritance, the remaining thereof shall be distributed among heirs according to their legal shares.

**Article 2088:**

Administrator shall be obligated to deliver to each of heirs his share of the inheritance.

**Article 2089:**

Heirs may, after expiration of designated periods for the disputes stated in the statement list, take temporary delivery of those properties and cash moneys that are not considered necessary in administration of the inheritance or they utilize some of it with or without presenting guarantee.

**Article 2090:**

Court shall issue a document, including proof of his rights to the inheritance and relevant explanations on the share and determination of what belongs to him from the inheritance, for each of heirs who submits to the court a Shar`i reason or its substituent for his inheritance.

**Article 2091:**

Each of heirs may request administrator to separately deliver him his share of the inheritance, unless the mentioned heir is obligated, by agreement or provision of law, to remain in common.

**Article 2092:**

If acceptance of request for division is final, administrator shall amicably take measures to divide it, unless this division shall not be considered final until all of the heirs collectively confirm it.

**Article 2093:**

If all of heirs do not agree collectively on the division, administrator shall be obligated to file the division claim, according to provisions of law, at the expense of the inheritance. Costs of the claim shall be deducted from the shares of heirs.

**Article 2094:**

Rules of division, especially those on guarantee of transgression, entitlement and lesion, shall apply to division of the inheritance.

**Article 2095:**

If one of heirs, at the time of division, is designated to pay debt of the inheritance while after the division the debtor becomes insolvent, other heirs shall not be considered guarantors of that heir, unless its contrary is agreed.

**Article 2096:**

Making a will for division of the inheritance properties among heirs of the testator in a way that for each of heirs an amount equal to his share is allocated shall be permissible.

**Article 2097:**

Reverting a division that is made after the death shall be permissible, unless it is considered binding after the death of testator.

**Article 2098:**

If division at the time of death does not include all of the inheritance properties, properties left out of the division shall belong to all of heirs in common according to provisions of inheritance.

**Article 2099:**

If one or more of probable heirs of testator are included in the division but they die before the death of testator, the designated share allocated to them shall belong to the other heirs in common according to provisions of inheritance.

**Article 2100:**

All provisions on general division, except provisions of lesion, shall apply to the after death division.

**Article 2101:**

If division does not include debts of the inheritance or, in case of inclusion, creditors do not agree with the mentioned division, each of heirs may, if discharging of debts has not been made on the basis

of agreement of creditors, demands observation of the division that is willed by testator and that of credentials based on the mentioned division, as much as possible.

**Article 2102:**

If the inheritance has not been administered according to the previous provisions, ordinary creditors of the inheritance may impose their rights or what has been referred to them on real estates of the inheritance that are in their possession or on real estates on which real rights are imposed in the interest of others, provided that guaranteed of debt has been made according to provisions of law.

## **Topic 2 — Will**

### **Subtopic 1 — General Provisions**

**Article 2103:**

Will is taking action on the inheritance in a way that it become effective after the death of testator.

**Article 2104:**

Will shall be concluded by word or in writing. If testator is not able to write or speak, it could be concluded by well-known signs as well.

**Article 2105:**

Will shall be valid if it is not sinful and its cause does not contradict purposes of God.

**Article 2106:**

Will of non-Muslim shall be valid, unless the mentioned will is forbidden by his own religion and by Islamic Sharia or laws have explicitly stated its invalidity and unenforceability.

**Article 2107:**

Conditional, suspended or condition-related will, subject to observation of provisions of Articles (2105) and (2106) of this Law, shall be valid.

**Article 2108:**

Testator shall have to have legal capacity to donate and completed the age of maturity.

**Article 2109:**

Person for whom the will is made shall have to be known and specific when it is being made.

**Article 2110:**

Making will for God and charitable causes, without determining the intention, shall be valid and it shall be spent for charitable affairs. Also, making will for mosques, charitable organizations and other directions, scientific institutions and public interests shall be valid. In these cases, the testamentary properties shall be spent on construction, benefit of the poor and other related purposes, unless methods of spending may be determined on the basis of custom or indication.

**Article 2111:**

Making will for one of specific charitable causes that shall be existent in the future shall be valid. If they do not come into existence, the testamentary property shall be spent on similar charitable causes.

**Article 2112:**

- (1) Making a will by persons of different religion and nationality shall be valid. Also difference of country shall not make a will invalid, unless testator is citizen of an Islamic country and the person for whom the will is made is non-Muslim and citizen of a non-Muslim country while laws of his country do not allow his will in such cases.
- (2) Aliens may not gain ownership rights of real estates on the basis of a will mentioned in Item (1) of this Article.

**Article 2113:**

Object of will must have the following conditions:

- 1 – Be of those objects on which inheritance may be applied or could become subject of contract when testator was alive.
- 2 – If subject of will was property, it must be a valuable one with the testator.
- 3 – If subject of will is an object that is naturally specific, it must be belong to testator at the time of making will.

**Article 2114:**

- (1) Making a will on rights that are transferrable by inheritance shall be valid.
- (2) Making a will on profits of leased properties, even if it is after the death of lessee, shall be valid.

**Article 2115:**

Making a will for lending a specific amount of property to the person for whom the will is made shall be valid. If its amount exceeds one third of the inheritance, the exceeding amount shall not be enforced, unless heirs who have completed eighteen years of age permit it.

**Article 2116:**

If testator is completely insane and dies while insane, his will shall become void. Also, if person for whom the will is made dies before the death of testator, the will shall become void.

**Article 2117:**

If subject of will is a specific object and it perishes before acceptance of the person for whom the will was made, the will shall become void.

**Article 2118:**

Will of a person whose properties are completely in debt shall be considered void, unless creditors acquit the debt or permit the will.

**Article 2119:**

- (1) A will for the intentional murderer of testator, voluntarily or mandatory, shall be considered void, whether the murderer is the principal murderer or the complicit or untruthful witness whose



testimony has caused an effective death sentence of testator, provided that the murder took place unlawfully and illegitimately and the murderer was sane and had completed (18) years of age.

- (2) Deprivation of murderer from being entitled to the will as stated in the first Item of this Article shall not extinguish with permission of heirs or consent of the murdered person before his death.

**Article 2120:**

Incapacity to make a will due to imbecility or forgetfulness shall not make the will void.

### **Subtopic 2 — Reversion from Will**

**Article 2121:**

Testator may, explicitly or implicitly, revert from all or some of the will.

### **Subtopic 3 — Acceptance or Rejection of Will**

**Article 2122:**

- (1) Will shall become binding after the death of testator upon expressed or implied acceptance of the person for whom it is made.
- (2) If the person for whom the will is made is fetus, minor or incapacitated, acceptance or rejection of the will shall be made by the person who has guardianship rights over his properties based on permission of court.
- (3) If the will is made for organizations, institutions, companies and the like, acceptance or rejection shall be made by persons who represent them. If there is no representative, the will shall become binding with no need for acceptance.

**Article 2123:**

If person for whom will is made dies before acceptance or rejection of will, his heirs shall be recognized as his successors.

**Article 2124:**

If heirs of testator or person who has the authority to execute the will notify person for whom the will is made by official announcement which includes all details of the will and demand his intention of expression of acceptance or rejection of the will therein, while the mentioned person does not reply in writing within thirty days since the date of announcement without reasonable excuse, the will shall be considered void.

**Article 2125:**

If person for whom the will is made accepts part of the will and rejects another part, it shall be considered binding for the accepted part and void for the rejected part.

Also, if some of the persons for whom the will is made accept it and some other reject it, the will shall be considered binding for the persons who have accepted it and void for those who have rejected it.

**Article 2126:**

- (1) A will shall not become void due to its rejection before the death of testator.

- (2) If person for whom the will is made rejects, after the death of testator, all or part of the will and one of heirs accepts the rejection, the will shall be rescinded, but if none of heirs accepts the rejection, rejection of person for whom the will was made shall be considered void.

**Article 2127:**

- (1) If person for whom the will is made be present at the time of death of testator, he shall be entitled to the testamentary property at that time, unless entitlement to the testamentary property has been fixed for a specific time after the death in the text of will.
- (2) Extras of the testamentary object shall be considered property of person for whom the will was made since the time of acceptance and the mentioned person shall be obligated to bear costs of the testamentary object. Extras of the object shall not be included in calculation of the will and its payment out of one third of the inheritance.

## **Subtopic 4 — Effects of Will**

### **Part 1 — Person for Whom the Will is Made**

**Article 2128:**

- (1) Making will for innumerable persons shall be valid and shall be allocated for needy persons. Distribution of the testamentary property among needy persons shall be made by authorized executor or the relevant court.
- (2) In the above case, executor or the relevant court shall not be obligated to observe generality or equality.

**Article 2129:**

If a will is made for a specific tribe with such words that include all its individuals without specifying any name while there are individuals among them for whom, at the time of death of testator, a will may not be made, all the testamentary objects shall belong to those individuals for whom, at the time of death of the testator, a will may be made.

**Article 2130:**

If a will is made for both specific persons and a population or a cause or for both a population and a cause or for specific persons and a population and a cause, each of the specific persons and members of the population, be it one or more, and the cause shall get a share from the testamentary object.

**Article 2131:**

If a will is made for specific persons, share of those persons for whom a will may not be made shall be returned to the inheritance of testator.

**Article 2132:**

If a will for specific persons or a population becomes void, the testamentary property shall be returned to the inheritance of the deceased.

**Article 2133:**

A will for fetus shall be considered valid in the following cases:

- 1 – If testator has confessed the existence of fetus at the time of making will and the fetus is born alive and active within three hundred and sixty five days or less since the date of the will.
- 2 – If testator has not confessed the existence of fetus, but the fetus is born alive within 270 days since the date of the will, provided that the pregnant person, at the time of the will, is not in waiting period of death or waiting period of full divorce, otherwise, if the fetus is born alive within 365 days since the date of death or the date of full divorce, the will shall be considered valid.

**Article 2134:**

If a will is made for fetus by a specific person, in addition to conditions stated in Article (2133) of this Law, proof of lineage of the fetus with that person shall also be necessary for the validity of the will.

**Article 2135:**

Harvests of the testamentary object shall be preserved until the fetus is born alive and active, when they shall belong to the born baby.

**Article 2136:**

- (1) If the pregnant woman gives birth to two or more alive children simultaneously or within less than six months, subject of the will shall be distributed among them equally, unless the contrary is expressly determined in the will.
- (2) If one of the twin or more than twin is born dead, all of the subject of the will shall belong to the living children.
- (3) If one of the children dies after birth, if the subject of will is property, his/her share shall belong to his/her heirs and if the subject of will is profit, his/her share shall belong to heirs of testator.

## **Part 2 — Subject of Will**

**Article 2137:**

A will up to one third of the inheritance, for heirs and non-heirs, shall be valid and shall be executed without permission of heirs. It shall also be valid for the excess of one third, but its execution shall be subject to permission of heirs after the death of testator, provided that those who permit have the capacity to donate and be aware of the subject of the permission.

**Article 2138:**

Will of a person who does not have any heir and is not in debt as well shall be immediately executed regarding all or part of the property with permission of representative of the treasury of the government.

**Article 2139:**

Will of a debtor whose property is completely in debt shall be valid, but shall not be executed until he is acquitted by discharging the debt. If debtor is acquitted of part of the debt, or his property is not completely in debt, the will shall be executed on the remaining part of the property after payment of the debt.

**Article 2140:**

If the debt includes all of the inheritance and all or part of it is paid out of the testamentary property, person for whom the will is made may, for the amount of the discharged debt, make a claim on one third of the inheritance after payment of the debt.

**Article 2141:**

If a will is made equal to the share of a specific heir of testator, the person for whom the will is made shall be entitled to the share of that heir in addition to his quota entitlement.

**Article 2142:**

If the will is made equal to the share of a non-specific heir, in case of equality of heirs in rights, the mentioned person shall, in addition to his quota share, be entitled to the share of one of them and, in case of difference of rights, the mentioned person shall, in addition to his quota share, be entitled to the share of the person whose entitlement from the inheritance is less.

**Article 2143:**

If will is made equal to a specific amount of money or property and a debt or property is absent from the inheritance, if the subject of will is taken out of the one third of the existing inheritance property, the person for whom the will is made shall be entitled to it, otherwise, he shall be entitled to this very one third and the remaining part shall belong to heirs. And whenever the property becomes existent, the person for whom the will is made shall be entitled to one third of it until his right is paid thoroughly.

**Article 2144:**

If the will is made and a debt or property is absent from the inheritance, the person for whom the will is made shall obtain his share out of the present property and whenever the absent property becomes present, he shall obtain his rights out of it.

**Article 2145:**

If a will is made on a specific type of property of the inheritance as a common share and a debt or property is absent from it, the person for whom the will is made shall obtain his share from this present type, provided that the mentioned share could be taken out of the present one third of the inheritance, otherwise, the person for whom the will is made shall be entitled to his share to the extent of this one third and the remaining part shall be the right of heirs. Whenever the property becomes present, the person for whom the will is made shall be entitled to one third of the testamentary type, provided that it does not inflict harm on heirs and if they are harmed by it, the person for whom the will is made shall obtain price of the remaining part of his share until completion of his right out of the one third of the testamentary type.

**Article 2146:**

- (1) If in the cases mentioned in the above Articles the inheritance includes a dischargeable debt by one of heirs and the mentioned debt is in whole or in part of the same substance as that of the present inheritance, an amount equals to the share of the heir shall be discharged out of the same property and, in this way, the mentioned debt shall be considered as part of the present properties.
- (2) If the dischargeable debt by heir is not of the same substance as that of the present property, discharge shall not be made and, in this case, if the debt is equal to or less than the share of the mentioned heir of the present inheritance property, it shall be considered as part of the present

properties and if it is more than that, it shall be, to the extent that is equal to the share of the mentioned heir, considered as present.

- (3) In the case of Item (2) of this Article, the heir may not possess his share of the present property and the inheritance until he discharges his debt. If the mentioned heir does not discharge his debt, judge shall sell his share and discharge the debt out of its price.

**Article 2147:**

If a will is made on properties of the inheritance or on a specific type of it and the subject of will perish or are taken by entitlement, the person for whom the will has been made shall not be entitled to anything. If part of it perishes or is taken by entitlement, the mentioned person shall be entitled to the remaining part, provided that it does not exceed one third of the inheritance and if it exceeds one third of the inheritance, he shall only be entitled to the one third.

**Article 2148:**

If a will is made on a specific common share and the mentioned object perishes or is taken by entitlement, the person for whom the will has been made shall not be entitled to anything and if part of it perishes or is taken by entitlement, the mentioned person shall obtain all of the testamentary property out of the remaining part, provided that the remaining part is sufficient for it and is within the limits of one third of the inheritance property, otherwise, he shall be entitled to anything that can be obtained from the one third of the property or he shall be entitled to an amount of it that does not exceed one third of the inheritance.

**Article 2149:**

If a will is made on a common share and a specific type of the inheritance properties while they perish or are taken by entitlement, the person for whom the will has been made shall not be entitled to anything and if part of them perishes or is taken by entitlement, the mentioned person shall obtain his share out of the remaining part, provided that it does not exceed one third of the remaining property, otherwise, he shall only be entitled to one-third of it.

**Article 2150:**

A will on a common share in a specific type of properties shall be the same as that on a common share of it.

### **Part 3 — Will on Benefits**

**Article 2151:**

- (1) If a will is made on benefit for a specific person and for a period of time with specific start and end, the mentioned person shall benefit for the said benefit within that specific period. If the mentioned period expires before the death of testator, the will shall be considered as void. If part of the mentioned period expires, the mentioned person may benefit during the remaining period.
- (2) If the period of benefit is specific but its start date is not specified, the mentioned period shall start from the date of death of testator.

**Article 2152:**

- (1) If one of heirs prevents the person for whom the will is made from benefiting the property during the whole period or some of it, he shall be obligated to compensate for the benefit with its similar,

unless all the heirs agree on postponing benefiting from property to another time equal to the testamentary period.

- (2) If all of heirs prevent him, the person for whom the will is made shall have the option to benefit from the property at another period or receive compensation for the benefit with its similar.
- (3) If prevention from benefit is caused by testator or by an excuse intervening between benefiting from the property and the person for whom the will is made, it shall have to be compensated by substituting it with another period after the removal of prevention.

**Article 2153:**

- (1) If a will is made on benefit for a tribe that cannot be counted and its extinction is not conceivable or if it is made charitable causes, in a limited or absolute form, persons for whom the will is made shall be entitled to benefit permanently.
- (2) If a will is made on benefit, permanently or temporarily, for a tribe that cannot be counted and its extinction is conceivable, entitlement of persons for whom the will is made shall continue until the time of their extinction.
- (3) If the will is made for a specific period, whether or not its start and end dates are stated, provisions of Articles (2151) and (2152) shall be applicable.

**Article 2154:**

If a will is made on benefit for a specific period and for a specific tribe and later for their successors and extinction of the mentioned tribe is not conceivable or if it is made for a charitable cause while within 33 years since the date of death of testator or within the specific benefit period none of the specified individuals become present or they become present within the mentioned period and extinguish before the end of the period, in all or part of this period, as the case may be, the benefit shall belong to the cause that is more beneficial among charitable causes.

**Article 2155:**

If a will made on the benefit of a property that may be benefited and utilized in a way other than the way specified by the will, the person for whom the will is made may use it in the desired way, provided that it does not inflict harm on the mentioned property.

**Article 2156:**

If a will is made on crops or harvests, the person for whom the will is made shall be entitled to the crops or harvests that existed at the time of death of testator and what that will exist in the future, unless a reason to the contrary appears.

**Article 2157:**

- (1) If a will is made on sale or lease of property within a specified period and fee for a person while the mentioned price or fee is less than a customary price or fee in a grave lesion way but it could be obtained from the one third or is less than a customary price in a simple lesion way, the will shall be executed.
- (2) If the grave lesion is more than the one third, the will shall not be executed regarding the excess without the permission of heirs, unless the person for whom the will is made pays the exceeding difference.

**Article 2158:**

Benefit shall be distributed by division of the crops or harvests among heirs and the person for whom the will is made proportionate to share of each of them or shall be distributed by division on the basis of time and place or division of the property, provided that the mentioned property can be divided without being harmed.

**Article 2159:**

If benefit of property is willed for one person and the property is willed for another, obligations of paying taxes of the mentioned property and what is considered necessary for benefiting from it shall be borne by the person for whom the benefit is willed.

**Article 2160:**

A will on benefit shall extinguish with the death of person for whom the will is made, before acquiring all or part of the testamentary benefit and with the purchase of the mentioned property by the person for whom the will is made and with the extinguishing of the right by heirs, in exchange for a compensation or without it, and also by acquirement of the property through entitlement.

**Article 2161:**

Heirs of testator may sell their shares of the property or of its benefit without the permission of the person for whom the will is made.

**Article 2162:**

If the will is made on benefit in a permanent or absolute way or limited to the life of a specific person, the mentioned person may use the mentioned benefit during his lifetime, provided that his entitlement to the benefit arises within 33 years since the date of death of testator.

**Article 2163:**

- (1) If the will is made on all of the benefit of property or some of it in the permanent or absolute way or limited to the lifetime of the person for whom the will is made or for a period of more than 10 years, it shall be evaluated according to the price of all or some of the profit of the testamentary property.
- (2) If the will is made for a period of less than 10 years, it shall be evaluated according to the price of the benefit of the testamentary property during that period.

**Article 2164:**

If will refers to one of rights of the property, its value shall be evaluated on the basis of difference between the price of property with such rights and its price without the rights.

## **Part 4 — Will on Sustenance**

**Article 2165:**

- (1) A will on sustenance out of capital for a specific period shall be valid and shall be paid from the property of testator to an extent that can guarantee execution of the will and in a manner that does not inflict harm on heirs.

- (2) If the property that is preserved for guaranteeing the execution of will exceeds one third of the inheritance and heirs do not permit the exceeding amount, it shall be paid within the one third and the will shall be executed on the mentioned one third and on its harvests until the person for whom the will is made obtain his right within the price of the one third of the inheritance or the period of will ends or the person for whom the will is made dies.

**Article 2166:**

If the will is made on sustenance for a specific period out of harvests of the inheritance or harvests of one of the properties of the inheritance, the inheritance or the mentioned property shall be priced, firstly, without the testamentary sustenance and, secondly, with it and the amount of difference between both prices shall be considered as the amount of the testamentary thing. If it does not exceed one third of the property, the will shall be executed and if it does exceed the one third while heirs do not permit it, it shall be executed to the extent of the one third and the exceeding amount of the sustenance or what equals it in the inheritance or the equal property shall be considered the right of heirs of testator.

**Article 2167:**

If a will on sustenance is made for a specific person out of capital or the harvests in an absolute or permanent way or for the lifetime of the person for whom the will is made, the lifetime of the person shall be calculated by medical doctors. If the will is made out of capital, an amount that is within the limits of provision of Article (2165) of this Law and can guarantee execution of the will may be reserved and if the will is out of the harvests, an amount that is within the limits of provision of Article (2166) of this Law and suffices the testamentary sustenance shall be reserved.

**Article 2168:**

In the case stated in Article (2167) of this Law, if the person for whom the will is made dies before the time calculated by medical doctors, the remaining period of the will shall be granted to his entitled heirs or to the person for whom he has made a will. If the reserved property finishes or if he lives more than the calculated time, he shall not have the right to refer to heirs.

**Article 2169:**

If harvests of the reserved inheritance is not sufficient execution of the will on sustenance, an amount of it that is sufficient for the sustenance shall be sold. If the mentioned harvests exceed the sustenance, the excess shall belong to heirs of testator.

**Article 2170:**

If harvests exceed the amount of the testamentary sustenance, the exceeding amount shall be preserved until the end of the period of benefiting. If the reserved inheritance for executing the will in other years does not, due to drought or similar factors, come to such fruition that is sufficient for the will, the remaining right of the person shall be paid out of the preserved harvests.

**Article 2171:**

If it is explicitly stated in the will or is obvious from indications that the sustenance must be paid yearly, the excess of each year shall be paid to heirs of testator.

**Article 2172:**

- (1) If a will on sustenance is made in such a way that includes a permanent characteristic, absolute or limited, an amount of properties of testator whose harvests can guarantee execution of the will



shall be preserved, provided that it does not exceed the one third. If it exceeds it, permission of heirs is needed for the amount exceeding the one third.

- (2) If the reserved property brings more harvests than the testamentary sustenance, the testamentary cause shall be entitled to it and in case of shortcoming of harvests, there shall be no right of reference to heirs.

**Article 2173:**

In cases stated in Articles (2165) to (2171), heirs of testator may possess or take action on the reserved properties for executing the will, provided that, with the consent of the person for whom the will is made or by the decision of judge, all of the testamentary sustenance is deposited in cash that is appropriate for execution of the will. If the person for whom the will is made dies before the deposited sum is finished, the remaining sum shall be returned to heirs of testator.

**Article 2174:**

All of the rights of the person for whom the will is made shall extinguish immediately after depositing and allocation of the inheritance.

**Article 2175:**

Making a will on sustenance out of capital or harvests for persons other than the existent ones, according to the first category of the persons for whom a will may be made, at the time of death of testator, shall not be valid. Lifetime of the existent persons shall be calculated by medical doctors and the will shall be executed for the specific persons according to provisions of will.

## **Part 5 — Provisions on Increase in Object of Will**

**Article 2176:**

If testator changes the attributes of the object of will or if he makes an increase in it, such as repairing it, that is not independent by itself, the mentioned property, along with its increase, shall be recognized as the object of will.

**Article 2177:**

If the increase in the property is independent by itself, such as trees and buildings, heirs of testator and the person for whom the will is made shall, within the limits of the value of the increase, share all of the mentioned property.

**Article 2178:**

- (1) If testator demolishes the testamentary property and reconstructs it to the previous state, even with changes to its attributes, the mentioned property, in the new state, shall be considered as the testamentary property.
- (2) If the building is reconstructed to a state other than the previous one, heirs, within the limits of the value of the increase, shall share the whole property with the person for whom the will is made.

**Article 2179:**

If testator demolishes the testamentary property, annexes its land to another land that he owns and constructs a building on them, the person for whom the will is made shall be considered as sharing with heirs all the building and land, to the extent of the value of the testamentary land.

**Article 2180:**

Except for provisions of the previous Articles, what is paid by testator for the testamentary property or is added to it and that is customary or it is inferred from indications that the addition has been made by testator; the mentioned increase shall become united with the testamentary property.

**Article 2181:**

If testator makes one single building out of the testamentary building and another building of his own, in such a way that separate sale or delivery of the testamentary property becomes impossible due to the mentioned unification, the person for whom the will is made shall be considered partner with heirs up to the value of the testamentary property.

## Subtopic 5 – Obligatory Will

**Article 2182:**

If the deceased does not make a will for descendant of his son who died when the deceased was alive or died, really or legally, simultaneously with the deceased, on an amount equal to the share to which the mentioned son would have been entitled had he been alive at the time of his death, a will for the mentioned descendant, proportionate to the mentioned amount of entitlement, within the limits of one third of the inheritance, shall be obligatory, provided that the descendant is not and heir and that the deceased, when alive, did not gratuitously give him a property by another action that was proportionate to the obligatory portion. If he gave him the property but it is less than the obligatory share, he shall be entitled, through obligatory will, to an amount that will complete the mentioned share.

**Article 2183:**

The will stated in Article (2182) of this Law shall be for the first category of children of full daughters and for children of full sons, even in lower degree, in an order that each ascendant shall exclude his descendant without another descendant, and the share of each ascendant shall be divided to his descendants, even if the division of inheritance goes lower in its degree, such as if ascendant or ascendants, through whom the person relates to the deceased, have died after him and their death have happened in order of categories.

**Article 2184:**

Observation of provisions of Articles (1999) and (2000) of this Law in obligatory will shall be imperative.

**Article 2185:**

In entitlement to obligatory will, descendant shall not be entitled to a share more than what his ascendant would have been entitled to if he had been alive after the death of testator. Also, person entitled to obligatory will may not be entitled to a share more than those of persons who have the same degree of relationship with the deceased as he has.

**Article 2186:**

- (1) If testator makes a will for a person entitled to obligatory will more than his share, the exceeding amount shall be considered optional and if the will is made for less than his share, the completing amount shall be mandatory.
- (2) If a will is made for some of the persons entitled to obligatory will and not for the others, persons for whom the will is made shall be entitled to their shares.
- (3) Share of person for whom a will is not made and the remaining amount of shares of those for whom a will is made for less than their obligatory shares shall be paid out of the remaining part of the one third and if the one third is not sufficient, it shall be paid out of the one third and what is allocated for optional will.

**Article 2187:**

Obligatory will shall be recognized as prior over other wills.

**Article 2188:**

If a will is not made for persons entitled to obligatory will while it is made for others, the person entitled to obligatory will shall be entitled, by way of obligatory will, to an amount proportionate to his share from the one third of the remaining part of the inheritance, if it is sufficient. If the one third of the remaining is not sufficient for their share, they shall be paid out of the one third of the remaining and what have been willed for others.

**Article 2189:**

In all cases stated in Articles (2186), (2187), (2188) of this Law, what has been remained from the optional will shall be divided, according to the relevant provisions, among the entitled persons proportionate to their shares.

## **Subtopic 6 — Conflict of Wills**

**Article 2190:**

If the will exceeds one third of the inheritance and heirs authorize it or the inheritance is not sufficient for all of the wills or heirs do not authorize it and one third of the property is not sufficient for the will, as the case may be, the one third and the inheritance shall be divided among the persons for whom the will is made, proportionate to their shares, provided that the person for whom a will is made on the property receives his share out of the same specified property on which the will is made.

**Article 2191:**

If a will is made for religious causes and they entirely include rituals or obligatory or recommended religious acts while testator has not specified shares for each of the mentioned causes, the testamentary property shall be equally divided among them. If he has specified different shares for each of them while the testamentary property is not sufficient for them, it shall be divided proportionate to shares of each of them.

**Article 2192:**

If the property is divided equally among the different causes while for each cause certain kinds are specified and the testamentary property is not sufficient for all of them, rituals shall have priority over

the obligatory acts and the latter over the recommended ones and share of each cause shall be divided equally among its kinds.

**Article 2193:**

If the will for religious causes are united with the will in other ways, without specifying the shares, the testamentary property shall be divided equally among the mentioned causes.

**Article 2194:**

If a conflict appears in the will on sustenance and some of the entitled persons die or one of the entitled causes ceases to exist, the mentioned shares shall belong to heirs of testator.

## **Subtopic 7 — Miscellaneous Provisions**

**Article 2195:**

- (1) Any legal action taken by a person at the time of terminal illness which is a gratuitous one, it shall be considered valid for after the death and provisions on will shall apply to it. Notice shall not be taken of the verb form and words.
- (2) Burden of proving whether the legal action took place at the time of terminal illness shall be borne by heirs and they may use all methods and instruments of proof in this respect. Resort to the date of document against heirs, if the date is not fixed, shall not be credible.

**Article 2196:**

If heirs prove that the legal action of their testator was taken at the time of terminal illness, the mentioned action shall be considered gratuitous, unless the person for whom the action is taken proves the contrary. This applies when there exist no other provisions to its contrary.

**Article 2197:**

If person takes an action in the interest of one of his heirs and keeps possession and utilization of that property one way or another for himself during his lifetime, the mentioned action shall be attributed to the after death and provisions on will shall apply to it, unless another reason is provided on that.

## **Topic 3 - Attachment**

### **Subtopic 1 — Attachment to Real Estates**

**Article 2198:**

If a new land is created as a result of flooding of a river attaching to the land owned by a person, the new land shall be property of the state.

**Article 2199:**

Lands that are newly discovered around still waters shall not be recognized as properties of owners of the adjacent lands at all. But they shall not lose ownership of the land that is submerged under water due to flow of waters.

**Article 2200:**

Lands discovered on both sides of rivers shall be recognized as property of the state.

**Article 2201:**

Ownership of lands that are created due to change of rivers path and islands that are created in that path shall be regulated by special law.

**Article 2202:**

All buildings, planted trees and other constructions that are created by actions of owner of land shall be recognized as his property.

**Article 2203:**

Any building or planted trees or constructions that are newly built by owner of land with materials belonging to others shall be considered property of owner of land and he shall be obligated to pay their price and, in case of existence of justified reason, he shall be obligated to pay compensation as well, provided that recovering the material from the land shall not be possible without inflicting grave damage to the mentioned constructions.

**Article 2204:**

If person constructs buildings or other constructions with his personal materials on land of another person while he is aware of ownership of the other person and without his consent, the land owner may demand its removal at the expense of the constructor and compensation as well, in case of existence of justified reason. If its removal is not possible without inflicting grave damage on the land, the land owner may own the removable properties in return for paying their price.

**Article 2205:**

If the person who constructed the building or the constructions stated in Article (2204) believes, with good faith that he is rightful in constructing the mentioned buildings, the land owner may not demand their removal but he may either pay the price of the material with fees of the workers or the amount of increase in the price of the land due to constructions, whichever he wishes, provided that the owner of buildings does not demand their removal.

**Article 2206:**

If building or constructions stated in Article (2205) of this Law is so big that the land owner is not able to pay their price, the land owner may demand transfer of ownership of his land to the owner of buildings in return for a reasonable compensation.

**Article 2207:**

If person has constructed the buildings with his own materials upon permission of the land owner, even if no agreement has been made on details of the buildings, the land owner may not demand their removal, rather, he shall be obligated to pay their price as they remains, unless the owner of buildings demands their removal.

**Article 2208:**

If person plant seeds in land of another person without the permission of its owner and the seeds grow, the crops shall belong to the land owner.

## **Subtopic 2 — Attachment to Movable Properties**

### **Article 2209:**

If two movable properties are owned by two different persons unite with each other, with good faith and without prior agreement of the owners, in such a way that they cannot be separated without their destruction, owner of the majority of the movable property shall be considered owner of the united property in return for the price of the other movable property.

## **Topic 4 — Contract**

### **Article 2210:**

Ownership and other real rights over real estate and movable properties shall be transferred by contract, provided that the contract has been concluded in a valid, definite, effective and binding form.

### **Article 2211:**

Ownership of a movable property that cannot be specified without description of its kind shall not transfer, unless it is separated according to provisions of law.

### **Article 2212:**

Ownership of real estate and other real rights, on which the conditions stated by law on registration of documents are not observed, shall not transfer.

## **Topic 5 — Preemption**

### **Subtopic 1 — General Provisions**

### **Article 2213:**

Preemption is the right of acquisition of ownership of all or part of a sold real estate in return for its price and the expenses made, even if by coercion.

### **Article 2214:**

Cause of preemption is attachment of property of preemptor to the sold real estate, either the attachment is due to partnership or adjacency.

### **Article 2215:**

Partnership under preemption is of two kinds: partnership in the sold property itself and partnership in its rights.

### **Article 2216:**

Partnership in the sold real estate itself means that preemptor has a common share in the property.

### **Article 2217:**

Partner in the land of surrounding wall of building shall be considered partner in the real estate itself.

**Article 2218:**

Partnership in rights of a sold real estate is partnership in the right of the appropriated water and the appropriated easement, whether the mentioned appropriation is exclusive to one or to several.

**Article 2219:**

The joint adjacent of the sold real estate shall be recognized as preemptor.

**Article 2220:**

If the lower floor of a building is owned by one person and the upper floor is owned by another person, they shall be recognized as joint adjacent of each other.

**Article 2221:**

- (1) In case of convergence of causes of preemption, the stronger cause shall be referred. On this basis, partner in real estate itself shall have priority right over partner in the shared surrounding land and partner in the shared surrounding land shall have priority right over partner in special rights over the sold real estate and in special rights over the sold real estate shall be given priority over adjacent neighbor.
- (2) If one of the mentioned persons in the above Item of this Article relinquishes the preemption or his right extinguishes, the preemption right shall transfer to the person that comes immediately after his degree.

**Article 2222:**

Entitlement of partners to preemption shall be credible on the basis of their number, not on the amount of their shares in the property. Thus, if one partner sells his share to another partner, the mentioned person shall be considered one of partners and the sold share shall be divided among them.

## **Subtopic 2 — Proof of Preemption**

**Article 2223:**

Preemption shall be proved after the sale and while causes creating preemption exist.

**Article 2224:**

Sale in which preemption is proved must have the following conditions:

- 1 – It must be an owned real estate, even if it is indivisible.
- 2 – The sale must be valid and effective or if it is void, the relevant right of rescission must have extinguished and it is free of option to the interest of seller.
- 3 – The exchange for the object of sale must be property.

**Article 2225:**

The real estate by which preemption is proved must be owned by preemptor at the time of purchase of the real estate that is acquired through preemption and he has not given, explicitly or implicitly, his consent to the sale.

**Article 2226:**

There is no preemption in the following cases:

- 1 – In gratuitous donation, charity, inheritance, will, or in real estates whose consideration is not property.
- 2 – In movables fixed in land and trees, if they are sold without the land on which they stand. If they are sold with the land, preemption shall be proved on them.
- 3 – In building and trees that stand on lands owned by the state.
- 4 – In endowment and for endowment.
- 5 – In division of real estate among partners.
- 6 – In a sale in which seller has option rights, unless seller relinquishes the rights and the sale becomes mandatory.
- 7 – In the object of sale that is sold through an open auction or according to legally permitted procedures by the government.
- 8 – In the object of sale that is sold between ascendants and descendants or between husband and wife or between blood relatives up to the fourth degree or among relatives up to the second degree.
- 9 – In an object of sale that is sold for ownership with the purposes of building mosque or attaching to it.
- 10 – Other cases stipulated by special law.

### **Subtopic 3 – Demand of Preemption**

**Article 2227:**

Preemption is demanded in three ways:

- 1 – By immediate exercise of the right.
- 2 – By asking witnesses to testimony.
- 3 – By filing a lawsuit.

**Article 2228:**

Immediate exercise of preemption right means that preemptor, immediately exercises the preemption right in the session where he acquires knowledge about sale, buyer and price without issuing anything that indicates his withdrawal and asks witness for his exercise of the right due to fear of denial of buyer.

**Article 2229:**

- (1) Asking witness to testify means that preemptor asks witness to testify on seller if real estate is in his hands or on buyer even if real estate is not in his hands or at the time of sale on claiming preemption, even if the demand is not made in writing or through a messenger and if he is able to ask witness to testify and he does not, preemption shall become void.
- (2) If preemptor while immediately exercising preemption rights asks a witness at the presence of seller or buyer to testify, this shall mean both ways of the demand.



**Article 2230:**

- (1) Filing a lawsuit means claiming before court.
- (2) If preemptor is not able to acquire the object of sale through immediate exercise of the right or by asking witness to testify, he shall be obligated to give an official notice to both of seller and buyer, within one month since the date of acquiring knowledge, indicating his intention to buy the property by preemption, otherwise, his preemption right shall extinguish.

**Article 2231:**

The official notice stated in Article (2230) of this Law must include the following items:

- 1 – Adequate description of the real estate to be acquired by preemption right.
- 2 – Description of price and official expenditures and sale conditions and names of seller and buyer with their surnames and professions and places of residence.

**Article 2232:**

- (1) Announcement of intention of acquitting by preemption shall not be authentic for others unit it is not registered.
- (2) If buyer refuses to accept preemption, preemptor shall be obligated, before filing lawsuit with the court and within 30 days since the announcement deposit the price of the sale with the treasury or a bank in whose jurisdiction the real estate is located, otherwise, right of preemptor to acquire by preemption shall extinguish.

**Article 2233:**

- (1) Lawsuit of preemptor against seller and buyer shall be filed within thirty days since the announcement stated in Article (2232) of this Law with the court in whose jurisdiction the mentioned real estate is located, otherwise, the right of preemptor shall extinguish.
- (2) Preemption lawsuit shall be tried immediately.

**Article 2234:**

If the object of sale is in possession of seller, testimony of witness shall not be heard on him so long as buyer is not present. If preemption is proved with all its conditions and causes, judge shall rescind the purchase of buyer and shall rule the preempted real estate for preemptor.

**Article 2235:**

The ruling that is issued in a final form in proving preemption shall be recognized as the ownership document of preemptor. This shall not contravene rules on registration of documents.

## **Topic 4 — Provisions on Preemption**

**Article 2236:**

Preemptor shall succeed buyer on all rights and obligations in relation with seller.

**Article 2237:**

Acquiring ownership of real estate, judicially or upon consent, shall be considered a new purchase by preemptor. He may exercise options of sight and defect, even if buyer or seller has stipulated extinguishment of these two options.

**Article 2238:**

If the object of sale is ruled for preemptor and buyer has to pay the price on a deferred payment method, preemptor shall be obligated to immediately pay it. If the price is paid to seller, buyer shall not be liable for the payment and if it is paid to buyer, seller may not claim it against buyer before the agreed due date.

**Article 2239:**

If the real estate that is possessed through preemption is then taken by another person by entitlement, preemptor may only refer to seller.

**Article 2240:**

Preemptor may reverse all actions taken by buyer by making the preempted real estate as endowment or as a mosque, unless the sale contract was concluded for this purpose in the beginning.

**Article 2241:**

If, after the official notice by preemptor, buyer constructs building on the preempted land or house or plants saplings therein, preemptor may leave the preempted land or house or take it by paying the customary price and price of materials of the building or the trees or obligate buyer to remove the building and trees.

**Article 2242:**

If buyer makes an increase in the preempted real estate before the official announcement of preemptor, preemptor shall have the option to leave the real estate or take it in return for the price and payment of price of the increase.

**Article 2243:**

If buyer or another person demolishes the building of the preempted real estate or removes its planted trees, preemptor may take the mentioned real estate for the price of the remaining part.

**Article 2244:**

- (1) If the preempted house is ruined by itself or trees of the preempted garden dry with no fault, preemptor may take it for customary price.
- (2) If buyer has used the ruined materials or dried woods, their price shall be reduced from the original price.

**Article 2245:**

If part of the preempted real estate is destroyed due to natural events or the like, the destroyed part shall be deducted from the original price.

**Article 2246:**

If preemptor constructs building or plant trees in the preempted real estate after acquiring it by preemption and it is then taken by entitlement, preemptor may only refer for the price of the mentioned real estate, not for the loss incurred due to the removal of the building and trees.

**Article 2247:**

- (1) Preemption shall not be divisible. Preemptor may not take part of the preempted real estate and leave the other part for buyer.
- (2) If there is one seller and several buyers, preemptor may acquire shares of some of them and relinquish shares of some others.

## **Subtopic 5 — Extinguishment of Preemption**

**Article 2248:**

Preemption shall extinguish with relinquishing immediate exercise of the right or with violation of one of the validity conditions thereof. It also extinguishes with relinquishing the demand for witness, expiration of the period of notice or filing a lawsuit.

**Article 2249:**

If preemptor, who has the priority over others based on cause, relinquishes his right of preemption and leave the real estate before issuance of court ruling, his right shall extinguish and other preemptors of lesser degree may, if they have demanded preemption with all of its conditions, acquire the real estate. If the preemptor relinquishes his right after the issuance of the court ruling, his right shall not extinguish and the other preemptors may not be obtain the right.

**Article 2250:**

Preemption shall not extinguish with the death of buyer.

**Article 2251:**

Preemption shall not extinguish with the death of preemptor before acquiring ownership of the preempted real estate, judicially or upon consent, whether preemptor has died before or after the demand. In this case, the right of preemptor shall transfer to his heirs.

**Article 2252:**

If the strong preemptor buys the preempted real estate from buyer, his preemption right and that of other persons of lesser degrees or of the similar degree shall extinguish.

**Article 2253:**

If preemptor leases the preempted real estate or participates in the auction for its sale or lease or demands its sale by buyer for a price similar to the first one, his preemption right shall extinguish.

**Article 2254:**

- (1) If preemptor is informed of a price higher than the actual one and he relinquishes his right and later it is proved for him that the amount of price is actually less than what he was already informed of, his preemption right shall not demise.

- (2) If preemptor acquires knowledge of the name of buyer and relinquishes his preemption right and it is then proved that buyer is a different person than the one he was informed of or if he is informed of sale of a part of the preempted real estate and thus he relinquishes his preemption right and it then becomes clear that all of the preempted real estate was sold, his preemption right shall not extinguish.
- (3) In all cases stated in the above Items of this Article, the periods of notice and filing the claims stated in this Chapter shall be observed.

**Article 2255:**

In all cases, the preemption right shall extinguish after expiration of 4 months since the date of registration of the sale contract.

## **Topic 6 — Possession**

### **Subtopic 1—Acquisition, Transfer and Extinguishment of Possession**

**Article 2256:**

Possession is an actual state that originates from domination of person over property or over one of the rights to the property as owner of property or holder of the right to the property.

**Article 2257:**

Person who makes an object permissible may revert from it. This permissibility shall not be recognized as a reason for lack of possession of the person who made the permissibility.

**Article 2258:**

If possession is associated with duress or is made secretly or is involved with deception, it shall not affect the person on whom duress is imposed or from whom the possession is kept secret or whom is deceived, except since the date of removal of the mentioned defects.

**Article 2259:**

Undiscerning minor may acquire possession through the person who is legally recognized as his representative.

**Article 2260:**

If another person directly takes possession under the name of possessor, possession shall remain in its own state, the mentioned person shall have the status of subordinate and shall be obligated to obey orders of possessor in affairs relating to the possessed object or rights.

**Article 2261:**

Possession shall transfer from possessor to another person if the parties have agreed on it and the mentioned person has the capacity to possess the possessed object or rights.

**Article 2262:**

Transfer of possession without material delivery shall be permissible if possessor continues his possession on the account of the person whom he is representing or the person to whom possession is transferred continues his possession on his own account.

**Article 2263:**

Possessor of real estate may add the period of possession of the person from whom the real estate has been transferred to him to his own period of possession, whether the transfer is being made due to sale, donation, will, inheritance or other causes. In this case, if the total period of possession amounts to a limit that prevents hearing of claims, claims of absolute ownership, inheritance and endowment shall not be heard against possessor.

**Article 2264:**

Claims of auction, deposit, lease, loan and donation shall be considered as confession of lack of ownership of the claimant. Those claims on the object itself against possessor shall not be heard, even if the time limit that prevents hearing of case has not been expired.

**Article 2265:**

- (1) Possessor who possesses the real estate by lease or loan may not resort, against lessor or depositor, to the time limit of possession that prevents hearing of case.
- (2) If person denies lease or loan during the period of possession and claimant relinquishes the claim despite presence and possibility and existence of the opportunity of claim, his claim shall not be heard after expiration of the mentioned period.

**Article 2266:**

If possessor relinquishes his dominance over the object or rights or loses this dominance in another way, possession shall extinguish.

**Article 2267:**

Possession shall not extinguish due to temporary obstacle, unless the mentioned obstacle continues for a complete year and the result is a new possession that has happened against the will of possessor or without his knowledge. Start of the year, if possession has been made publicly, shall be counted since the date of start of the new possession and if the possession has been made secretly, the start of the year shall be counted since the date in which the first possessor acquires knowledge about it.

## **Subtopic 2 — Protection of Possession**

**Article 2268:**

- (1) If person loses possession of real estate, he may claim its return within one year since the loss of possession. If the loss of possession has happened secretly, start of the year shall be counted since the date of discovery of loss of possession.
- (2) Person who holds possession as an agent of another person may also claim return of the possession.

**Article 2269:**

Person who at the time of losing possession has had the possession for less than a year may not claim return of possession against the person who holds possession on the basis of legal document.

**Article 2270:**

- (1) If none of possessors have legal document or their documents are equivalent, preference for possession shall be given to the person whose document has older date.
- (2) In the cases stated in the above Item, if legal documents have the same date, priority shall be given to the possession that has older date.

**Article 2271:**

Possessor may file a lawsuit on the return of possession within the legal deadline against the person who has acquired possession of a usurped property, even if the aforementioned person has good faith.

**Article 2272:**

Person who has acquired real estate possession and his possession continues for one complete year and then his possession is violated, he may file a claim to prevent this violation within one year.

**Article 2273:**

Person who has had real estate possession for one complete year and, on the basis of reasonable causes, is afraid of new violating action that threaten his possession, may present the subject to the competent court and request prevention of such actions, provided that the mentioned actions have not finished and one year has not passed since the start of the mentioned actions that result in inflicting harm, otherwise, he may file the claim of prevention of violation.

**Article 2274:**

If many persons dispute over possession of a single right, possession of that person shall be temporarily given credence who has material possession, unless his possession appears defective.

**Article 2275:**

Person who is in possessor of a right, he shall be recognized as its owner, unless the contrary is proved.

**Article 2276:**

- (1) Person who, without knowledge of infringing right of other, takes possession of a right shall be considered as having good faith, unless his ignorance derives from grave fault.
- (2) If possessor is a legal person, intention of its legal representative shall be taken into consideration.
- (3) The good faith shall always be presupposed, unless a reason to its repudiation is raised.

**Article 2277:**

Good faith shall be repudiated if possessor knows that his possession is an infringement of right of another person or defects of his possession are announced to him by notification or copy of suit of claimant.

**Article 2278:**

Possession shall remain the same as it was at the time of acquisition until a reason contrary to it is provided.

**Subtopic 3 — Effects of Possession****Article 2279:**

Ownership claim, except inheritance, shall not be heard against person who has possessed real estate or other objects continuously for fifteen years without interruption and has taken action on them without any dispute or conflict.

**Article 2280:**

- (1) Inheritance claim against person who has possessed real estate and taken action on it for 33 years without any dispute shall not be heard without Shar`i reason.
- (2) Ownership of properties of the government, ancient relics and endowed properties shall not be permissible on the basis of lapse of time.

**Article 2281:**

If withdrawal of ownership or inheritance or endowment claim has been due to Shar`i reasons such as absence, negligence or insanity, and there is no guardian or executor, the claim shall be heard. But it shall not be heard if the absent becomes present, negligent turns becomes mature and insane turns sane and then withdraw the claim during the designated period.

**Article 2282:**

Ownership claim against possessor by children, blood relatives of husband and wife of seller, who have been present at the time of sale of the real estate to possessor, became aware of the sale and kept silent shall not be heard, even if 15 years has not passed since the date of sale.

**Article 2283:**

If possession of person has been proved to exist during a limited time in the past and is proved so at the present as well, this status shall be considered as indication for continuous possession of possessor during the time between the two times, unless a reason to the contrary exists.

**Article 2284:**

No one may acquire rights contrary to his document based on lapse of time. On this basis,, no one may personally, to his own interest, modify the cause of his possession or the principle upon which this possession is based.

**Article 2285:**

Provisions of claim barring lapse of time shall apply to rights acquiring lapse of time on what relates to calculation of the period, its stop and interruption and reference to it before court and also on what relates to withdrawer from it and agreement on its modification, provided that the mentioned provisions do not conflict with the nature of rights acquiring lapse of time and provisions of Articles (2286) and (2287) of this Law.

**Article 2286:**

Rights acquiring lapse of time shall stop, no matter how long its length has been, as soon as the creating causes come into existence.

**Article 2287:**

If possessor relinquishes his possession or loses it, even if die to act of others, rights acquiring lapse of time shall stop, unless possessor, within one year since the date of interruption, restores his possession or files a lawsuit for restoration within this period.

### **Subtopic 4 — Owning Movable by Possession**

**Article 2288:**

- (1) Person, who possesses, based on valid causes and with good faith, movable property or real right on movable property or document that is valid for its holder, shall be recognized as its owner.
- (2) Valid cause shall mean a document that is issued by person other than the owner or other than the right holder.

**Article 2289:**

Owner of a movable property or holder of a document that is valid for it holder may, in case of loss or theft, demand its return since the date of loss or theft from the person who has possessed it with good faith.

**Article 2290:**

If the stolen or lost property is found in possession of a person and the person has bought it with good faith from the market through public auction or from a merchant who does business with properties similar to it, he may claim the paid price against the seller, if it is stolen, and against the person who returns it, if it is lost.

### **Subtopic 5 — Owning the Products**

**Article 2291:**

- (1) Possessor with good faith shall be recognized as owner of the products and what is in his possession.
- (2) Natural or industrial products shall be considered as taken delivery of since the date of collection, but civil products shall be considered as taken delivery of on a daily basis.

**Article 2292:**

Possessor who has bad faith shall be considered liable, since the date of occurrence of bad faith, for all products that he has taken delivery of or has failed to take delivery of them.

### **Subtopic 6 — Return of Expenses**



**Article 2293:**

Owner to whom ownership is returned shall be obligated to pay possessor all necessary expenses he has paid with good faith and regarding beneficial expenses provisions of Articles (2205) and (2206) of this Law shall apply.

**Article 2294:**

Possessor may not demand from owner expenses that are considered as taxes, but he has the right to remove anything new he has built and return the property in its previous state, unless owner agrees on its remaining by paying its price.

**Article 2295:**

If person takes possession from the previous owner or previous possessor and proves that he has paid the expenses to his predecessor, he may claim the mentioned expenses against the person to whom the property is being delivered.

**Article 2296:**

Court may specify the amount of expenses and determine its payment in periodic installments with necessary securities.

### **Subtopic 7 — Liability for Loss of Objects under Possession**

**Article 2297:**

If possessor uses the object with good faith to an extent that he considers it within his right, he shall not be considered liable for any compensation due to such use to the person that he is obligated to return the object. Also, he shall not be considered liable for consequences of destruction or perishing of the mentioned property, except to the extent that he has obtained benefit from it.

**Article 2298:**

If possessor has bad faith, he shall be recognized as liable for destruction and perishing of the object, even if it is caused by unforeseeable causes, unless it is proved that had the object been in possession of its owner it would have been destroyed or perished.

## **Chapter 3 — Rights Deriving from Right of Ownership**

### **Section 1 — Right to Utilization**

#### **Topic 1 — General Provisions**

**Article 2299:**

Legitimate utilization means the right of utilizer to use and take advantage of the property until it remains in its original state, even though it is not owned by him.

**Article 2300:**

Utilizing properties without owning them, immovable or movable, shall be permissible.

**Article 2301:**

Utilization, in exchange for compensation or without it, shall be permissible.

**Article 2302:**

Right to utilization shall be acquired through legal action, preemption or lapse of time.

**Article 2303:**

Making a will on the right to utilization, in accordance with provisions and rules stated in the Chapter of Will, shall be permissible.

**Article 2304:**

Conditions stated in a gratuitous contract creating a right of utilization, with due respect to rights and obligations of the utilizer, shall have to be observed.

**Article 2305:**

Products of an object that is being utilized shall be considered the right of utilizer during the period of utilization. Also existent natural products at the start of period of utilization shall be considered the right of utilizer, without infringing acquired rights of others. But products existing at the end of period of utilization shall be considered the right of owner, provided that each of them pays expenses of the other.

**Article 2306:**

- (1) If utilization contract has been concluded in absolute form and without any restriction, utilizer shall be obligated to utilize the object in an ordinary way.
- (2) If the contract is restricted, utilizer shall have the right to utilize it according to orders of owner or similar to them or less than them and exceeding the limits shall not be permissible.

**Article 2307:**

Owner of the object may protest against utilizer regarding his illegitimate utilization or utilization against the nature of object. If utilizer does not accept it, court may take the mentioned object out of possession of utilizer and give it to another person to undertake its administration. Also it may rule on termination of the right of utilization without infringing rights of others.

**Article 2308:**

- (1) Necessary expenses for administration and protection of the property that is being utilized shall be borne by utilizer.
- (2) Unusual obligations and main repairs that are not derived from fault of utilizer shall be borne by owner and utilizer shall be obligated to pay the interest that is acquired from the expense. If utilizer has paid for the mentioned expenses, he may claim their return against owner at the end of period of utilization.

**Article 2309:**

If the property that is being utilized is destroyed without violation and fault of utilizer, he shall not be liable for it.

**Article 2310:**

If utilization is limited to a specific period and utilizer retains the property after expiration of the mentioned period and does not return it to owner while it is destroyed, utilizer shall be obligated to pay its price, even if he did not utilize the mentioned property after expiration of the period of utilization and even if owner did not demand its return.

**Article 2311:**

Utilizer shall be obligated to take care in preservation of the property he utilizes.

**Article 2312:**

If the object perishes or needs to main repairs which are considered to be undertaken by owner or arrangements have to be made that save the property from occurrence of unforeseeable risks, in this case, utilizer shall be obligated to immediately inform owner, also, he shall be obligated to inform owner of claim of others on having rights over the mentioned property.

**Article 2313:**

Utilizer may destroy the movable property he has borrowed if its utilization is not possible without its destruction. In this case, utilizer shall, after utilization, be obligated to return the similar property or the price of the mentioned property to owner. Also, if the mentioned property perishes before utilization , utilizer shall be obligated to pay compensation, even perishing did not happen due to his fault.

## **Topic 2 — Termination of Right to Utilization**

**Article 2314:**

Right to utilization shall terminate with expiration of the designated period for utilization, death of utilizer and destruction of the property that is being utilized.

**Article 2315:**

If the designated period for utilization expires or utilizer dies during the mentioned period while the land is under an implantation that is not completed yet, it shall be entrusted to utilizer or his heirs until it is completed and harvested, in return for a customary fee.

**Article 2316:**

Right to utilization shall terminate with lapse of 15 years without exercising the right.

## **Section 2 — Right of Usage and Residence**

**Article 2317:**

Right of utilization shall sometimes be limited to use or reside and sometimes it includes both.

**Article 2318:**

Scope of right of usage or residence shall be considered limited to the extent of need of the right holder and his family members, notwithstanding that, what is included in the right document shall be observed.

**Article 2319:**

- (1) Person who obtains right to reside in a building based on a will contract may, if the value of building does not exceed one third of the property of testator, the mentioned person may, if the will is absolute, reside there with his family throughout his lifetime, and if the period is specified, he may reside there until expiration of the mentioned period and then right of residence shall transfer to heirs of testator. If the value of building exceeds one third of the property of testator, person for whom the will is made may reside in that part of it that does not exceed the one third and heirs shall use the part that exceeds the limits of one third, unless heirs authorize the will on all the building.
- (2) In the case stated in the above Item, heirs of testator may not sell that part of building that they possess, but they may divide its usage based on time in a periodic form.

**Article 2320:**

If the house that has been designated for right of residence needs construction, its construction shall be undertaken by the person who holds the right of residence over it so that he takes action on that on his own expense and what he constructs out of his own property shall be recognized as property of his and heirs. If the right holder refuses to construct it, any concerned person may request court to compel him to construct it or obtain permission of court to lease the mentioned building to another person in order to construct the mentioned construction with the rent money and return it back to the right holder after expiration of the lease period.

**Article 2321:**

Relinquishing right of usage or right of residence to the benefit of another person shall not be permissible, except based on explicit stipulation with strong reason.

**Article 2322:**

Provisions relating to right to utilization shall also apply to right of usage and right of residence so long as they do not contradict stated provisions of this Part and nature of these two rights.

## **Section 3 — Right of Long Term Lease (Hokr)**

**Article 2323:**

Right of Hokr means a real right in order to maintain land for construction and planting or one of these two in return for specific fee.

**Article 2324:**

Period of Hokr shall not exceed 50 years. If period of Hokr is determined for more than 50 years or it is not determined at all, it shall be considered valid for 50 years.

**Article 2325:**

Hokr contract shall not be permissible except due to necessity or expediency and permission of court of the province wherein all or the main part of the land, in terms of value, is located. Contract shall be written in the presence of president of the court or a member who is appointed by the president. Guarantee shall be arranged afterwards according to provisions of law.

**Article 2326:**

Hokr right holder may take such actions on the land under his Hokr as transfer of ownership or utilization. In all these cases, land with its buildings, trees and other immovable properties shall be returned, upon termination of Hokr right, to the original owner or his heirs with due observation of provision of Article (2324) of this Law.

**Article 2327:**

Hokr right holder may take actions on possession and plantation, alone or together with Hokr right.

**Article 2328:**

Hokr right holder shall be obligated to pay the designated rent to owner on due dates on which agreement has been made.

**Article 2329:**

Hokr contract shall not be permissible for less than the customary rent. Increase or decrease of rent may only be made when the customary rent has been changed more than one fifth, in terms of increase or decrease, and 5 years have passed since the date of last calculation.

**Article 2330:**

In calculation of increase or decrease, reference shall be made to the price of lease of land at the time of calculation and location of land and level of demand of people for land shall be observed. Existence of building, trees or what the Hokr right holder has constructed or rights and losses of the Hokr right holder shall not be given credibility in calculation of the rent.

**Article 2331:**

New calculation shall be valid since the date of agreement of parties or the date of filing legal claim on calculation.

**Article 2332:**

Hokr right holder shall be obligated to take such instruments that are necessary for productivity of land and with that the agreed conditions, nature of the land, the purpose for which land is made ready and customary requirements of the region shall be observed.

**Article 2333:**

- (1) Hokr right shall terminate with expiration of the designated period.
- (2) Before expiration of the period, Hokr right shall only terminate that the right holder dies before constructing building or planting trees on the mentioned land, unless all of heirs request continuation of Hokr right.

**Article 2334:**

If Hokr has been made on an endowed land and endowment is removed from the land by withdrawal of endower from endowment, the Hokr right shall terminate and if the period of endowment is reduced by endower, in case the remaining period is less than the Hokr period, Hokr shall continue until the end of endowment, otherwise, it shall continue until the end of Hokr period.

**Article 2335:**

If Hokr right holder does not pay the rent of the land lease for two consecutive years, owner of land may claim rescission of the contract.

**Article 2336:**

Owner of land, at the time of rescission of the contract or end of the Hokr period, shall have the option to remove the building and planted trees by Hokr holder or keep them in return for the least of prices of removal or keeping, unless otherwise has been agreed.

**Article 2337:**

If Hokr right is not exercised within 15 years, it shall be considered terminated.

**Article 2338:**

Provisions of Hokr contract stated in this Law shall also apply to the Hokr on a land that is established at the time of enforcement of this Law.

**Article 2339:**

- (1) Alien persons, natural or legal, may not use the Hokr right stated in this Law.
- (2) Procedures that the government of Afghanistan holds on real estates of diplomatic missions of friendly countries and international organizations residing in Afghanistan shall not be subject to provisions of Hokr right.

## **Section 4 — Abstract Rights**

### **Topic 1 — Right of Easement**

**Article 2340:**

Easement is a right over a real estate for the benefit of the real estate of another person.

**Article 2341:**

Right of easement may be held over public property, provided that it is not contrary to the designated usage of the mentioned property.

**Article 2342:**

Right of easement may be acquired through legal undertaking or inheritance. It may be acquired by lapse of time, except for the easement such as right of way.

**Article 2343:**

Apparent easement may also be held by allocation of the original owner.

**Article 2344:**

Allocation by the original owner may only be created that owner of two separate real estates builds visible signs between the two estates on the basis of which such subordinate sign is created between two lands that if they are assumed as properties of two persons they indicate existence of easement right and this must be proved by one of the proving methods. In this case, if ownership of the two mentioned real estates transfers to two other persons, without any modification and in the original

status, the mentioned easement right shall be considered established between the two real estates, to the interest or detriment of new owners, unless there is an explicit condition to the contrary.

**Article 2345:**

- (1) If restrictions are stipulated that limit rights of owner of the real estate in constructing a building such as limit of height of building or of scope of construction, the mentioned restrictions shall be considered as easement rights over the real estate to the interest of other real estates that are made for its improvement, unless otherwise has been agreed.
- (2) If the stipulated restrictions are violated, its exact correction may be requested from court and court shall have the authority, in case there are proving evidence, rule only on compensation.

## **Topic 2 – Right of Water**

**Article 2346:**

Right of water is turn of using water for irrigation of crops or trees.

**Article 2347:**

Water of rivers and their tributaries are considered public property. Everyone has the right to irrigate his lands by that water or draw a stream for irrigation purposes, unless that is contrary to public interests or special laws.

**Article 2348:**

Person who builds special stream in his own property for irrigation of his own land, he shall have the right to use it in any way he wishes and other persons may not use it without the builder.

**Article 2349:**

Right of usage of water from public streams and its distribution shall be exercised with due observation of prevention of harm to public interests and proportionate to the lands that is intended to be irrigated.

**Article 2350:**

Owner of a land who irrigates by tools and instruments or directly through stream may not compel owners of lands under water to let the water pass through their lands, unless he has a right of passage of water through those lands.

## **Topic 3 – Rights of Way, Passage and Watercourse**

**Article 2351:**

- (1) If rights of way, passage and watercourse are old, they shall remain so, unless they are originally illegitimate. In this case, their oldness shall not be given credibility and they shall be terminated if there is obvious harm.
- (2) If watercourse of a house is built on a public or private way by which harm is inflicted to people, the mentioned harm shall be removed, even if it is old.

**Article 2352:**

If rights of way, passage and watercourse of a person is on the land of another person, the land owner may not deprive him of these rights.

**Article 2353:**

No one may build a watercourse, without a right to do so, from his newly built construction through house of another person, unless he has obtained his permission.

**Article 2354:**

Construction of gutter or digging cesspool and rain sewerage and etc. on public way, while it inflicts harm on the public, shall not be permissible. Likewise, construction of the above mentioned items on the private way shall not be permissible without permission of the municipality or dwellers of the street.

## **Topic 4 – Provisions on Easement**

**Article 2355:**

Easement right holder may take such actions that are necessary for exercising his right of easement or are essential for protection of the mentioned right and he must exercise the mentioned right in a manner that it does not cause harm.

**Article 2356:**

Owner of a real estate that has the right of easement shall not be obligated to perform any action, unless ordinary exercise of the right of easement requires it.

**Article 2357:**

Expenses of actions that are considered essential for exercising the right of easement or obligations for its protection shall be borne by the easement right holder, unless its contrary is stipulated. If the mentioned actions are also beneficial to owner of the real estate that allows easement, obligations of its protection shall be divided proportionate to the amount of benefit that each of them gains from it.

**Article 2358:**

If owner of the real estate that allows easement is obligated to perform the actions stated in Article (2357) of this Law on his own account, he may release himself from this obligation at any time he wishes by transferring all or part of the real estate that allows easement to the easement right holder.

**Article 2359:**

Owner of the real estate that allows easement may not take such actions that would harm exercising the easement right, also he may not change location of the mentioned right, unless its location changes, due to events, in a way that increases the obligations of the easement right or exercise of the right prevents improvements to the real estate that allows easement. In this case, owner of the real estate may demand transfer of the easement right to another location.



**Article 2360:**

- (1) If the real estate that holds the easement right is partitioned, each part shall be entitled to the easement right, provided that this does not inflict extra obligations on the real estate that allows easement.
- (2) If the easement right is actually beneficial to one part, not to all parts, owner of the real estate may demand extinguishment of the mentioned right on other parts.

**Article 2361:**

- (1) If the real estate that allows easement is partitioned, the easement right shall remain over all of the parts.
- (2) If the easement right is not actually exercised over some parts of the real estate and its exercise is not possible as well, owner of the mentioned parts may demand extinguishment of the mentioned right on his own parts.

## **Topic 5 — Termination of Easement**

**Article 2362:**

- (1) The easement right shall terminate with expiration of designated period, complete destruction of the real estate that allows easement or the real estate that holds the easement right and with merger of ownership of both real estates by one person.
- (2) If merger of ownership is withdrawn due to certain causes that affect the past, the easement right shall return.

**Article 2363:**

If the easement right is not exercised within a period of 15 years, it shall terminate.

**Article 2364:**

If a real estate that holds the easement right is commonly owned by partners, exercise of the easement right by one of them shall interrupt the time limit against the rest of partners. Also, stop of the time limit to the interest of one of partners shall be stopped to the interest of the remaining partners.

**Article 2365:**

If status of objects change in such a way that exercise of the easement right becomes impossible, the easement right shall be considered terminated. If the objects returns to a state by which exercise of the easement right becomes possible, the easement right shall return as well, unless it is lapsed due to non-exercise.

**Article 2366:**

Owner of the real estate that allows easement right may release himself from all or part of the easement if profit of the real estate that owns easement right has completely eliminated or a limited benefit has remained of it that is not proportionate to obligations inflicted on the real estate that allows easement right.

# Title 2 — Subordinate Real Rights

## Chapter 1 — Right of Retention of Property

### **Article 2367:**

Except the cases stated on possessory and official mortgages in this Law, such as contract that creates subordinate real rights, and except provisions on the right to retain property as one of the means of guaranteeing the enforcement, the following provisions shall be special and have priority on rights of retention:

### **Article 2368:**

Right of property retention is a subordinate right over property for guaranteeing debt.

### **Article 2369:**

Seller may argue on the basis of right of property retention when he refers to buyer and against all creditors.

### **Article 2370:**

Lessee may retain the leased property, in case the lease is rescinded while he has paid the rent and the advance payment, until the payments are returned.

### **Article 2371:**

Mortgagee may retain the mortgage until repayment of the debt for which he has obtained mortgage, even if the mortgage contract is void. He may not retain the mortgaged property for another credit that he holds on the mortgagor before the mortgage contract.

### **Article 2372:**

Person with whom a property is deposited may retain it until he receives the expenses he made for its protection.

### **Article 2373:**

Joint laborer, the result of whose act has remained on property, may retain the mentioned property until he receives his fee from the person who has ordered the work.

### **Article 2374:**

Person who is a purchase agent may retain the purchased property until his client pays him back the invoice.

### **Article 2375:**

Right of retention shall terminate upon payment of the subject of retention or its price.

# Chapter 2 — Appropriation Right

## Section 1 — Creation of Appropriation Right

### Article 2376:

- (1) Any creditor who holds an enforceable ruling on obligating debtor on a certain property may obtain appropriation right on real estates of debtor for guaranteeing the original debt and expenses.
- (2) Creditor may not argue based on appropriation right on real estate of the inheritance after the death of debtor.

### Article 2377:

Obtaining appropriation right based on compromise ruling or agreement by conflicting parties shall be permissible, unless it may not be obtained based on the ruling regarding authenticity of signature.

### Article 2378:

Obtaining appropriation right may only be permissible on the real estates that are, at the time of record of the mentioned right, specified and under the ownership of debtor and its sale through open auction is permissible.

### Article 2379:

Creditor who intends to obtain appropriation right over real estates of his debtor shall be obligated to present a petition, along with a copy of the court ruling in this regard, to the chief of provincial court within whose jurisdiction the mentioned real estates are located. The petition must include name, surname, profession, residence of creditor and debtor, the date of issuance of the ruling, the authoritative court and the amount of debt. Also, the concerned real estates must be specified and explained with a precise detailed description, their location must be specified and documents on the basis of which price of the real estate can be determined must be attached to it.

### Article 2380:

The chief of the court shall write his order on appropriation at the end of the petition and shall be obligated to observe, respectively, proportionality of the amount of debt and price of the mentioned real estates and, if required, he may make the appropriation exclusive to some of the real estates, provided that the designated amount according to his opinion is sufficient for payment of the debt and expenses.

### Article 2381:

- (1) Writing board of court shall be obligated to record the issued order on the copy of the ruling that is presented as the attachment of petition.
- (2) Creditor shall be obligated to notify debtor of the subject of the mentioned order, within seven days since the date of its issuance.

### Article 2382:

Debtor may appeal against the issued order on appropriation to the person who has issued it or to the specialized provincial court and all of the procedure shall be registered on the margins of record of the order or the court may rule on revocation of the mentioned order.

**Article 2383:**

Creditor may protest against the issuance of order of rejection of appropriation right to the specialized court of the relevant province.

## **Section 2 — Effects of Reduction and Termination of Appropriation Right**

**Article 2384:**

- (1) If appropriation is established on properties whose price exceeds the sufficient guarantee, the concerned persons may request its reduction to a proper limit so that it is limited to part of the real estate or estates or is transferred to another real estate whose price is sufficient for guaranteeing the debt.
- (2) Necessary costs of request of reduction shall be borne by its claimant.

**Article 2385:**

Creditor who obtains the appropriation right shall have the same real rights as those of official mortgage. All of provisions on official mortgage shall apply to appropriation right, provided that they do not violate special provisions on appropriation right.

## **Chapter 3 — Priority Rights**

### **Section 1 — General Provisions**

**Article 2386:**

Priority shall mean the superiority that the law grants for a certain right on the basis of to its description. Priority right of priority shall be proved on the basis of explicit provision of law.

**Article 2387:**

If law has not limited determining priority of rights, they shall come after all of those rights whose priority degrees are explicitly stated in this Chapter.

**Article 2388:**

If certain rights are similar in terms of the priority degree that is explicitly stated in law, they shall be paid proportionate to the amount of each of them, unless law has provided to the contrary.

**Article 2389:**

General priority rights shall apply to all movable and immovable properties of debtor, but special priority rights shall refer to specific property.

**Article 2390:**

- (1) Priority right shall not affect person who possesses movable property with good faith.

- (2) Lessee of real estate shall be considered possessor with good faith regarding existing movable properties on the leased real estate and the hotel owner shall be considered possessor with good faith regarding properties that are deposited by passengers with the hotel.

**Article 2391:**

If creditor fears that, on reasonable basis, debtor would divide the movable property on which priority right is established for creditor, he may demand to get the mentioned property under his protection.

**Article 2392:**

Provisions of official mortgage shall apply to priority rights over real estates, to an extent that they do not contradict the nature of the mentioned rights. In this regard, special type of priority of provisions on cleaning and registration of effects on registration and those on renewal and elimination shall be observed.

**Article 2393:**

- (1) Guarantee for general priority rights are not considered necessary, even if their subject is real estate and right of research is not proved over it. Also, security for priority right over real estate that are established for guaranteeing rights of the government shall not be considered necessary.
- (2) These rights shall be considered prior in degree over all other priority rights over real estates and any type of right of official mortgage, notwithstanding its date. Among the priority right that is established to guarantee the right of the government and other general priority rights, it shall be considered prior.

**Article 2394:**

Provisions that are observed on destruction or perishing of property in official mortgage shall also be observed regarding priority rights.

**Article 2395:**

Provisions on expiration of official mortgage and possessory mortgage shall be applied on priority rights in the same manner, unless law has explicitly provided the contrary.

## **Section 2 — Types of Priority Rights**

**Article 2396:**

Rights stated in the following Articles, along with rights that are prioritized by special laws, shall be considered prior.

**Article 2397:**

- (1) Expenses that court makes in order to protect and sell properties of debtor in the interest of creditor shall have priority in being paid out of the price of the mentioned properties.
- (2) Expenses mentioned in Item (1) of this Article shall be paid prior to any other right even if it has priority right or is guaranteed by official mortgage, including rights of creditors to whose benefit the expenses have been made and expenses that are made in the process of selling the mentioned properties shall have priority over expenses that are made for execution of distribution.

**Article 2398:**

- (1) The sum that belong to the government through customs and taxes and other duties, with due observation of the relevant laws and regulations, shall have priority right.
- (2) Except for expenses stated in Article (2397) of this Law, the sum stated in the above Item of this Article shall be obtained, on the basis of sale of properties in whoever hand it may be, prior to all other debts, even if they have priority or are guaranteed with official mortgage.

**Article 2399:**

- (1) The sums that are spent for protection and repair of movable properties shall be considered prior over other debts.
- (2) The sum stated in the above Item of this Article shall be obtained from the price of the mentioned property immediately after acquisition of the expenses stated in articles (2397) and (2398) of this Law. If these rights are several, each of the expenses shall be paid in a reverse order of dates.

**Article 2400:**

- (1) The following rights shall have priority over all movable and immovable properties of debtor:
  - 1 – The sums that staff, workers and other laborers are entitled to for their salaries and fees of the recent 12 months.
  - 2 – The sums that must be paid for providing essential goods during the last six months, food and clothing of debtor and people whom debtor is responsible for their alimony.
  - 3 – Alimony of the recent six months of relatives of debtor for which debtor is liable.
- (2) The sums stated in the above Item of this Article shall be obtained immediately after obtaining the expenses stated in articles (2397), (2398) and (2399) of this Law. In case of plurality, proportionality of each of them shall be considered.

**Article 2401:**

- (1) The sums spent on cultivation, fertilizer and other strengthening materials for soil and the sums spent on insecticides and drugs that protect the crops and animals from diseases and the amount spent on cultivation and harvesting labor shall have priority over the sums spent on its production and all of them shall have the same degree.
- (2) The sums stated in the above Item of this Article shall be paid after payment of the above rights.
- (3) The sums that are considered payable for agricultural instruments shall be given priority over the mentioned instruments in the same degree.

**Article 2402:**

The two year rent of buildings and agricultural lands or rent of the whole period of its lease if it is for less than two years and all other rights of lessor that are undertaken by lessee based on the lease contract, shall have priority over the movable properties of the lessee that are attachable and exist on the leased property and over the agricultural harvests.

**Article 2403:**

Priority right stated in Article (2402) of this law, in case the mentioned movables are property of wife or husband of lessee or property of others, shall still be considered established, provided that lessor does not have knowledge of existence of rights of others over the property at the time he places the

mentioned properties on the real estate. This shall not affect provisions related to movables that are stolen or lost.

**Article 2404:**

Priority right shall also hold over movables and products that are owned by sub lessee, provided that lessor has explicitly forbidden subletting. If subletting is not explicitly forbidden, priority right shall only apply to the sums that are proved to be the entitlement of the original lessee for which sub-lessee is liable, after the notice that is issued in this regard by lessor to him.

**Article 2405:**

Rights stated in Article (2402) of this Law shall be collected out of the price of properties that have priority right after payment of the rights stated in Articles (2397) to (2401) of this Law, unless the rights stated in Articles (2397) to (2402) are considered unenforceable on the lessor due to having good faith.

**Article 2406:**

- (1) If properties over which priority right is established is transferred from the leased property notwithstanding the objection of lessor or without his knowledge and sufficient properties do not remain in the mentioned property for guaranteeing the prior right, the right of priority shall remain over the transferred properties, but the continuation of existence of this right shall not harm the rights of others who have acquired them with good faith over the mentioned properties.
- (2) If lessor acquires attachment order within the legal deadline, priority right shall remain for three years. Nevertheless, if the mentioned property is sold to buyer with good faith in an open market or an open auction or by a specialized merchant selling the same properties, lessor shall be obligated to pay its price to buyer.

**Article 2407:**

The sums to which hotel owner is entitled due to rent, services and expenses of passenger shall have priority over properties of passenger that exist in the mentioned hotel or its related places.

**Article 2408:**

Hotel owner shall have priority right over any property that passenger brings into the hotel, even if it is not owned by passenger, provided that it is not proved that the hotel owner had knowledge of properties being owned by others at the time they were taken into the hotel or that the mentioned properties are not stolen or lost properties of others. The hotel owner may object transfer of properties of passenger until he completely obtains his rights. If the properties are transferred notwithstanding his objection and without his knowledge, his priority right over them shall remain, but this right shall not affect rights of third person who has obtained them with good faith.

**Article 2409:**

Right of hotel owner shall have the same degree of priority as that of lessor and if the two rights are accumulated, the right that has earlier date shall be preferred, unless it is not enforceable as compared with the other.

**Article 2410:**

What the seller of movable property is entitled to through the price and its attachments shall have priority right over the sold property until the time that the sold property preserves its quality. The

mentioned priority shall not, with due observation of special provisions on commerce, affect the rights of third person who has acquired them with good faith.

**Article 2411:**

The priority right stated in Article (2410) of this Law shall be in lesser degree of priority compared with priority rights stated in the previous Articles over movable properties, but notwithstanding that, it shall apply to rights of lessor and hotel owner whose knowledge of sale at the time of placing the object of sale in the leased property or hotel is proved.

**Article 2412:**

- (1) Partners who divide the movable property among themselves shall have priority right over it in order to secure the right to refer to each other on the basis of the mentioned division and acquisition of the price.
- (2) Priority of divider and that of seller shall be at the same degree and in case of accumulation of both rights, the one with prior date shall be preferred.

### **Section 3 — Priority Rights over Real Estates**

**Article 2413:**

- (1) Price of the real estate and its attachments to which seller is entitled shall have priority right over the mentioned real estate.
- (2) Priority right must be recorded, even if the object of sale is registered, and its degree shall be valid since the date of recording.

**Article 2414:**

- (1) The sums that are entitlement of contractors and construction architects who are entrusted with the responsibility of construction of a building or other constructions or reconstructing building or its repair or protection, to the extent that the price of the mentioned real estate increases due to these actions at the time of its sale, shall be given priority over the mentioned constructions.
- (2) The right must be recorded in official document and amount of the sums must be stated therein. Also, the document must be registered according to provisions of law of registration of documents. Degree of this priority shall be valid since the registration date.

**Article 2415:**

If partners divide the common real estate among themselves, a priority right shall be granted to each of them in order to secure their shares by the right of referring to each other. Right of claim proportionate to amount of the share shall also be included in this right. This right must be recorded and its degree shall be valid since the date of record.

**Article 2416:**

This Law shall be enforceable 30 days after publication in the official gazette. Upon enforceability of this Law, the Law of Marriage published on 17-5 (Asad) 1350 shall be considered abrogated.



