

## **THE CIVIL CODE OF THE ISLAMIC REPUBLIC OF IRAN**

Preamble On the publication

Effects and Execution of Laws in General

Article 1 - The Islamic Consultative Assembly's enactments and the results of the referendum, having gone through legal procedures will be notified to the president of the Republic. The President shall within five days sign them and notify them to executors, and issue instruction to have them published, and the Official Gazette shall be required to publish them within 72 hours after notification thereof.

Note: In case of the President's refusal to sign or notify an enactment within the time period referred to in this Article, the Official Gazette shall be required to publish it within 72 hours on the order of the Chairman of the Islamic Consultative Assembly.

Article 2 - The legislative enactments come into force throughout (lie country fifteen days after their publication, unless a specific arrangement has been prescribed in the given legislation itself to the timing of its enforcement

Article 3 - The text of laws must be published in the Official Gazette

Article 4 - A law shall be effective only as from the date of its coming into force, and shall not be retrospective unless special provisions to this effect have been laid down in its text

Article 5 - All inhabitants of Iran, whether of Iranian or of foreign nationality, shall be subject to the laws of Iran except in cases which the law has excepted.

Article 6 - The laws relating to personal status, such as marriage, divorce, capacity and inheritance, shall be observed by all Iranian subjects, even if resident abroad.

Article 7 - Foreign nationals resident territory shall within the limits laid down by treaties, be bound by the laws and decrees of the Government to which they are subject in

questions relating to their personal status and capacity. and similarly in questions relating

to rights of inheritance

Article 8 - Immovable property, of which foreign nationals have taken possession or shall take possession under the terms treaties, shall in every respect come within the scope of the laws of Iran.

Article 9 - Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other government, shall have the

force of law.

Article 10 - Private contracts shall be binding on those who have signed them, providing they are not contrary to the explicit Provisions of a law.<sup>2</sup>

## **Volume 1 - Concerning Property**

### **Book 1 - General Provisions Concerning Ownership**

#### **Chapter 1**

In Definition of The Various kinds of Property

Article 11 - Property is of two kinds, movable and immovable.

#### **Section 1**

##### **Concerning Immovable Property**

Article 12 - Immovable property is that which cannot be transported from place to place either because it is the nature of the thing to be fixed in one place or because, as the result

of human action, the damage or injury either to the property itself or its emplacement.

Article 13 - Land and buildings and mills and everything which is fixed in a building and is by common use considered apart of it are immovable, and similarly pipes which have been laid under the ground or in a building for carrying water or for other purposes are to be accounted immovable.

Article 14 - Mirrors, Painted curtains, statues and similar objects, in so far as they are attached to the ground or to a building in such a way that their removal would cause injury or damage to their emplacements, are considered immovable.

Article 15 - Fruits and crops shall be deemed immovable that they have not been picked or reaped, and if a portion shall have been picked or reaped , only that portion shall be accounted movable.

Article 16 - In general, trees and branches thereof, young plants and cuttings, as long as they have not been cut or dug, be considered immovable

Article 17 - Animals and the equipment which the owner shall have provided specifically for cultivation such as oxen, buffaloes, machines, implements and appurtenances of husbandry, seeds etc and in general all movable goods which are necessary for the prosecution of farming operations and have been devoted by the owner exclusively to this

purpose shall, for purposes of competency of courts and of attachment of property, be considered as forming part of the landed property and shall be treated as immovable

property, as also shall pumps, oxen and other animals, appropriated for the irrigation of fields, houses and gardens.

Article 18 - Rights benefits from immovable objects such as a life interest, the right of residence and similarly the rights of easements over the land of another. Such as the rights of passages and of transit of water and the claims related to immovable property such as demands for eviction and similar applications, shall follow the rules concerning immovable property.<sup>3</sup>

## **Section 2**

### **Concerning Movable Property**

Article 19 - Articles which it is possible to transport from place, without causing damage either to the articles themselves or to their emplacements, are considered movable.

Article 20 - All debts arising out of loans, or the price of things sold, or the rent of things leased shall, for purposes of competency of courts, be considered movable, even if the thing sold or rented is itself immovable

Article 21 - Ships, large and small, boats, mills, and bathhouses, plying on or situated rivers or seas, and capable of movement and all work places which, in view of the manner of their construction do not form part of a permanent building, shall be accounted

movable, but the attachment of certain of the above - mentioned may, in view of their importance, be carried out in accordance with special arrangements

Article 22- Building materials such as stone, bricks, etc. which have been prepared for use or because of some defect have become separated from the building, so long as they

have not been embodied in the building, shall be considered movable.

## **Section 3**

### **Concerning Property Which Has No Private Owner**

Article 23- The use of a property which has no private owner shall be determined in accordance with the relevant laws.

Article 24- No one shall take possession of common roads and highways, nor of streets which have no thoroughfare.

Article 25- No one may take possession of property which serves the common good and which has no private owner, such as bridges, caravanserais, public reservoirs, ancient

schools and public open places. And the same applies to the qanats and wells of which their use is public.

Article 26-Government property which is subject to public service and welfare such as fortifications, fortresses, moats, military earthworks, arsenals, weapons, stores, warships and similarly the furniture and buildings of the Government buildings and telegraph wires, museums, public libraries, historical monuments and similar objects, in brief whatever property movable or immovable is in use by the Government for the service of the public or the profit of the state, may not privately be owned. And the same provisions

shall apply to property which shall have been appropriated for the public service of a province, city or a region or a town.

Article 27 - The properties which are not privately owned and which private individuals, in accordance with the regulations contained in this law and the especial laws dealing with each particular category, are allowed to take into their possession and exploit, shall be termed "mobahat" and under this heading shall come waste lands, that is to say, lands

which have fallen into disuse and on which are neither habitations nor cultivation.<sup>4</sup>

Article 28 - Property of unknown ownership shall be the needs of the poor, subject to the judge's permission or that of a person authorized by him.

## **CHAPTER 2**

### **CONCERNING THE VARIOUS RIGHTS WHICH ACCRUE TO PERSONS FROM THE POSSESSION OF PROPERTY**

Article 29 - It is possible for people to derive the following rights from property:

- 1- The right of possession (whether of the substance of the thing or its benefits).
- 2- The right of exploitation.
- 3- Rights of easement in the property of another.

#### **Section 1**

##### **Concerning Ownership**

Article 30 - Every owner has unlimited rights of Occupation and exploitation over his property in matters in which the law has made an exception

Article 31 - No property can be alienated from the possession its owner except in accordance with a legal order.

Article 32 - All products and appurtenances of the property whether movable or immovable produced naturally or as the result of exploitation are the property of the owner.

Article 33 - Products and crops which have come out of the ground are the property of the owner of the land, whether their growth is natural or the result of the owner's operations, unless the product or crop has sprung from the roots or seeds of another party.

if this is the case the trees or crops shall be the property of the owner of the roots or seeds, even if they have been sown without the approval of the owner of the land

Article 34- The progeny of animals shall be of the same ownership the mother, and whoever is the owner of the mother shall he considered the owner of the offspring.

Article 35 - Possession by title of ownership shall be taken as proof of ownership unless the contrary proved.

Article 37 - if the present occupier admits that the property formerly belonged to the claimant, he can not urge, in refutation of the other's claim, his own occupation of the property, unless he can prove that the property has been transferred to him according to the correct procedure

Article 38 - The ownership of ground carries with it the ownership of the air immediately above it up to any height, and the same applies to the area under the ground; in brief, the

owner has unlimited rights of possession in the air and the ground, unless the law shall have made provisions to the contrary.

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Article 39 - All buildings and trees above the ground and all buildings and excavations beneath the ground shall be considered the property of the owner of the ground unless the contrary be proved.

## **Section 2**

### **Concerning the Right of Exploitation**

Article 40 - The right of exploitation comprises the right by which a person may derive profit from property which either belongs in proprietary right to someone else or has no

special owner.

### **Subsection 1**

#### **Concerning Life - Rights for a Prescribed Period and Rights of Occupation**

Article 41- A Life - Right is a right of exploitation which has been established by means of a contract entered into by the owner in favour of someone, either for his own lifetime or for the lifetime of the user or for that of a third party.

Article 42- A right for a prescribed period is a right of exploitation which the owner grants for a limited time.

Article 43 - If the right of exploitation includes the right of occupying a habitation, it is termed residential or the right of habitation and it is permissible for this right to be assigned as life - right or as a right for a limited period

Article 44 - In cases where the owner has not prescribed a time - limit for the right of exploitation, the surrender is absolute, and the said right shall run until the death of the owner unless he revokes the surrender before his death.

Article 45 - in the above mentioned cases it is only permissible for the right of exploitation to be granted to a person or persons who were alive at the time of creation of

the said right , but it is also possible for the right of exploitation to follow on in succession for persons who were not alive at the time of the conclusion of the contract, and as long as the owners of the right of exploitation are alive it shall be valid; and after their decease it shall lapse.

Article 46 - It is only possible for a right of exploitation to be granted in respect of property which is such that it can be used without affecting its own existence, whether the

said property is movable, immovable held in undivided shares or divided up.

Article 47 - In the case of surrendered property, whether held as a life - right or not, taking delivery is the legal requirement for making the transaction valid.

Article 48 - The user must not misuse the property to which the right of exploitation applies and, being in custody of it, must not allow excessive use or negligence

Article 49- The expenses necessary for the upkeep of the property which is subject to the

right of exploitation is not an obligation on the user, unless a provision to the contrary has been agreed upon.

Article 50 - If the property which is subject to the right of exploitation becomes dissipated for any reason other than excessive use or negligence on part of the user, the latter shall not be held responsible

Article 51 - In the following cases the right of exploitation lapses:

- In the event of the time - limit expiring.

2 - In the event of the property which is the object of the right of ex being destroyed.

Article 52 - In the following cases the user is a guarantor for the losses of the owner

- In the event of the owner misusing the property which is the object of the right of exploitation.

2 - In the event of his not observing the conditions laid down by the owner and of such non - observance being the cause of damage to the object of the right.

Article 53 - The transfer of the substance of the property by the owner to another party shall not nullify the right of exploitation, but if the person to whom the property is transferred does not know that the right of exploitation has been granted to another party he shall have the option of dissolving the contract.

Article 54 - The rest of the circumstances concerning the exploitation of the property of another shall be as laid down by the owner or demanded by custom and usage.

## **Subsection 2**

### **Concerning Endowment**

Article 55- An Endowment consists in the surrender of a property, and the devotion of its profits to some purpose.

Article 56- An endowment takes place when the donor makes an offer by any form of words which definitely carry this meaning and when the first generation of beneficiaries, or their legal representative if they are limited in number, as in the case of children, accept it or if the beneficiaries are unlimited in number or the endowment be made for the

benefit of the public, then the acceptance of the judge is required.

Article 57- The donor must be the owner of the property to be endowed and, in addition, must be possessed of capacity to contract and to make valid transactions.

Article 58- It is permissible to endow only such property as can be exploited without detriment to its existence, whether it be movable, held in undivided shares or divided up.

Article 59 - If the donor does not hand the substance of the endowment over to the possession of the foundation to which it has been bequeathed, the endowment is not yet complete, but once it has been delivered the endowment is authentic.

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Article 60- In respect delivery, urgency is not essential; so long as the donor has not revoked endowment whenever is given the endowment becomes final

Article 61- When the endowment takes place in the proper form and is delivered, it is binding, and the donor is not permitted revoke it nor to make any alterations in it, nor may he expel any one of the beneficiaries, nor make any new beneficiaries; nor, if in the text of agreement the administrator is not specified, may he appoint an administrator, nor may

he interfere in the capacity of administrator.

Article 62- In the event of the beneficiaries being limited in number they themselves shall take delivery, and delivery to the first generation shall be sufficient; and if the beneficiaries are unlimited or the bequest is to be devoted to the public use, either the administrator or the judge shall take delivery.

Article 63- The guardian and executor of persons who are under disability will take delivery of the endowed property on their behalf and if the donor has reserved the office of administrator to himself, then the fact of his taking delivery shall suffice.

Article 64- Property of which the profits are temporarily granted to another party can be the object of an endowment, and similarly it is permissible to endow landed property to which a right of easement is attached, without prejudicing the said right.

Article 65- The validity of an endowment which may result the detriment of the donor's creditors, is dependent on the permission of the creditors

Article 66- An endowment for an unlawful purpose is null and void. Article

67- The endowment of property of which it is not possible to give and take delivery is null and void, but if the donor alone is not capable of taking and giving delivery, then such an endowment is valid.

Article 68- Anything which, either by nature or in accordance with usage and custom is reckoned as forming part of the dependencies and appurtenances of the endowed property, is in the endowment, unless the donor has made special provision to the contrary, in the sense mentioned in the Chapter Concerning Sales.



Article 69- An endowment for the benefit of non - existent persons is invalid, unless it follows in succession from living beneficiaries.

Article 70- If an endowment is made jointly to persons who do not exist and to persons living, it is valid in so far as it concerns the living and null and void in so far as it concerns those who do not exist

Article 71- Endowments to persons unknown have no validity.

Article 72- An endowment for the benefit of the donor himself in such a way that the donor makes himself the sole beneficiary or one of the beneficiaries or provides for the payment of his debts or other obligations out of the profits of the endowed is null and void, whether it' is concerned with his life time or with the period after his decease

Article 73- Endowments to children, relatives, servants or guests and so on, are valid.

Article 74- In the case of an endowment for the public use, if the donor also becomes entitled to benefit under the endowment he is permitted to benefit.

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Article 75- The donor may reserve to himself the administration, that is to say, the management of the affairs of the property, either for his lifetime or for some specified period, and also may appoint as administrator some other person who either independently or in conjunction with the donor, shall administer the property. The administration of the endowed property may be handed over to one or more persons other

than the donor who will carry out the administration either individually or jointly, and similarly the donor may lay down the condition that he himself or the administrator appointed, may arrange for an administrator , or may make provision for any arrangements to that effect which he deems fit.

Article 76-Any one whom the donor has designated as administrator has the option, in the first instance, of accepting or refusing the trusteeship; once he has accepted he cannot withdraw; and, once he has refused, it is as if he had never been designated as administrator

Article 77-In any case in which the donor has vested the administration in two or more persons independently, when one of them deceases, the other or others take possession

individually and if it be laid down that such taking possession shall be collective, then an act of taking possession on the part of anyone of the administrators shall not be valid

unless it has the approval of the other or others, and after the death of one of them the judge shall appoint a person to be added to the survivors in order that they may jointly enter into possession.

Article 78- The donor may appoint a supervising trustee without whose knowledge and approval no administrative act may take place

Article 79 - Neither the donor nor the judge can remove an administrator who has been specifically appointed in the deed of endowment, unless such a right shall have been provide for, and if the administrator be shown to he dishonest, the judge shall co-opt a trustee.

Article 80- If the donor has made a special provision concerning the qualifications of the administrator, and the administrator loses those qualifications, he ceases to act as an administrator.

Article 81- In the case of endowment to the public, if the donor has not appointed an administrator, the management of the affairs of the endowed property shall be carried in accordance with the views of "Wali-ye-Faqih".

Article 82- In all cases in which the donor has made special arrangements of the estate, the administrator shall carry out these arrangements, and if no arrangement are laid down,

he shall act with regard to repairs, leases and the collection of profits and their division among the beneficiaries and the maintenance of the property and so on, like a trustworthy agent.

Article 83- The administrator may not entrust the administration to another unless the donor has given permission in the text of the deed of endowment, but if in the deed of endowment it is not stipulated that he shall personally administer the property, he may appoint an agent.

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Article 84- It is permissible for the donor to make provision for a portion of the profits of the estates to be devoted to the remuneration of the administrator, and info remuneration

for the administrator has been specified the administrator is entitled to a fair remuneration

Article 85- After the profits of the estate have been realized and apportioned, each of the beneficiaries specified may take possession of the portion, even if the administrator

withholds permission, unless the donor has made such permission a condition of possession.

Article 86- Should the donor not have made special provision, the expenses for upkeep and repairs and for the operations necessary for the exploitation of the estate shall be prior charge before the rights of the beneficiaries.

Article 87-The donor may lay down that the profits of the estate be divided between the beneficiaries equally or unequally, to that the division shall be made at the discretion of the administrator or of some other person to divide the profits as he thinks best.

Article 88- The sale of the estate in the event of its suffering damage, or of fears being entertained that damage will be incurred of such a kind as to render it incapable of exploitation, is permissible, provided that the maintenance of it is impossible, or that no one can be found to undertake it.

Article 89- Whenever part of an estate becomes damaged or liable to damage in such a way that exploitation is rendered impossible, that portion shall be sold, unless the damage

to that portion is detrimental to the exploitation of the remainder, in which case the whole estate shall be sold.

Article 90- An endowment which is allowed to be sold shall be converted into an estate which is as near as possible to the intentions of the donor.

Article 91- In the following cases the profits of the estate endowed for the public shall be expended on public services

1 - In cases where it is not known how the profits of the estate are to be expended, unless

there exist some indications as to the donor's real desires.

2- In cases in which the expenditure of the profits of the estate in the special manner laid down by the testator is impossible.

### **Subsection 3**

#### **Concerning the Enjoyment of Rights Open to Everyone (Mubahat)**

Article 92- Everyone may, in accordance with the laws and regulations applicable to each

one of them, derive benefits from rights open to everyone (Mhahat).

### **SECTION 3**

#### **Concerning the Rights of Easement Concerning the Property of Another and the Rights and Privileges Appertaining to a Landed**

## **Property in Relation to Adjacent Property**

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### **Subsection I**

#### **Concerning Rights of Easement Relating to the Property of Others**

Article 93- The Right of Easement is a right held by one person on the property of another.

Article 94- Owners of property may grant to others such rights as they please on their own property, and in this case the basis of a claim arises out of a deed or contract in virtue of which the right was granted

Article 95- Wherever someone's channel for running water or rain has passed through the

land or house of another person, the owner of that house or land cannot prevent their passage, unless the absence of his right is proved

Article 96- A spring situated in someone's land belongs to the owner of that land, unless another person has rights over its substance or its profits.

Article 97 - Whenever a person has for a long time had a water channel running through the house or property of another to his own property or, has had a right in his favour, the owner of that house or land shall not hinder the taking of water nor its passage through his property, and similarly with regard to rights such as holding rights in doors, openwork windows, aqueducts, irrigation channels and so on.

Article 98- If the owner of a property has given permission to pass through it to some one who cannot do so by right, he may rescind his permission whenever he wishes and prevent the other from passing through; and similarly with other rights of easement.

Article 99- No one has the right to take his water channel into the property of another, nor

to cause rain water from his roof to flow onto the roof of the property of another, nor to throw snow on to it unless he has permission from the owner.

Article 100- if the water channel of one person passes through the house of another, and if it becomes damaged in such way as to cause damage to the house, the owner of the house has no right to oblige the owner of the channel to repair it, but he himself must take

steps to prevent it from causing him loss. Should the damage to the channel obstruct the passage of water, the owner of the house is not obliged to repair the channel, but the owner of the right of passage must himself remove the obstruction, and to make the

repairs may enter the house or land, but except when there is such a necessity, he has no right of entry, without the permission of the owner.

Article 101- Whenever someone derives profit, such as the working of a mill or similar things, from water which is the property of someone else in accordance with some right, the owner of the water cannot change the course of the channel in such way as to prevent this right from being profitably exercised.

Article 102- Whenever an estate is transferred either in its entirety or in part to someone else, rights of easement over another estate or portion of it being included therein, such rights remain unchanged unless there be a stipulation to the contrary.

Article 103-Whenever the partners in a property possess rights and benefits and that estate is divided between them, each partner shall in proportion to his share, become the

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owner of those rights e. g. , if an estate possessing the right of passage through another estate be divided between several persons, they each have the same right of passage as before over the said place.

Article 104- A right of easement necessarily implies the exploitation of that right e.g., if a person has the right of taking water from the springs, tanks or reservoirs of others, he shall have the right of passage to such springs, tanks and reservoirs for the drawing of water.

Article 105-Any expenses which may be necessary for the enjoyment of a right of easement are a charge upon the owner of that right, unless an agreement to the contrary has been arrived at between him and the owner of the property.

Article 106- The owner of a property on which another person has a right of easement cannot use his property in such way as to result in damage, or suspension of the said right ,except with the permission of the owner of the right.

Article 107- The benefits attaching to a right of easement are valid to the extent agreed upon , or to the extent recognized by common usage, and necessitated by the exigencies

of exploitation.

Article 108- in all cases where a person's exploitation of another person's property rests upon a simple permission, the owner can withdraw his permission whenever he pleases, unless there exists a legal impediment to this.

## **Subsection 2**

### **Concerning the Rights and Privileges Appertaining to a Property in Relation to Adjacent Property**

Article 109-A wall situated between two properties is considered as common property of the owners of the two properties, unless there is an indication or reason to the contrary.

Article 110- Building by placing marks, or the placing of a beam, are among the indications which denote occupation and exclusive rights.

Article 111- Wherever there are buildings adjoining the wall in a permanent manner on both sides, or beams are placed on the wall on both sides, the wall is deemed common property unless the contrary is proved.

Article 112- Wherever there are circumstances of exclusive right on one side only, the whole wall is deemed to belong to the owner of that side, unless the contrary is proved

Article 113 - Expenses in connection with a common wall are a charge upon those who have a share in it.

Article 114- Neither of the partners can oblige the other to build or repair a common wall, unless there is no other method of avoid in loss

Article 115- in a case where a common wall is damaged and one of partners refuses to repair it or to allow it to be taken in hand for common building operations, the other partner can repair his own special of the wall.

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Article 116- If one of the partners agrees to the other taking the wall in hand for building operations, but declines to bear the expenses, the other partner can repair the wall, and in

this, case if the new fabric is made with common materials, the wall will be a common wall, otherwise it belongs to the partner who has repaired it.

Article 117- if one of the partners damages a common wall and the damaging of it was unnecessary, he must rebuild what he has destroyed.

Article 118- Neither of the two partners has the right to raise a common wall, or to impose a structure or place a beam on it, or to open a window or a niche in it, or make any kind of change, except with the permission of the other partner.

Article 119- If one of the partners has beams on a common wall, he cannot change their position and place them on another part of the wall without the consent of the other partner.

Article 120- If the owner of a wall gives his neighbor permission to place a beam upon his wall or to build on it, he can withdraw his permission whenever he pleases, unless he has bound himself to forego this right

Article 121- If someone has placed a beam upon a wall with the permission of the owner of the wall, and then removes it, he cannot replace it except with fresh permission from the owner of the wall; and the same applies to other encroachments.

Article 122- If a wall is leaning over towards another property or a highway, or the like, in such a way that it is near to collapsing, the owner of it is obliged to pull it down.

Article 123- If a house or a piece of land is divided between two persons, one of them cannot oblige the other to join with him in erecting a wall between the two parts.

Article 124- If a beam of a building has in the past rested on a neighbour's private wall and the past history of this occupation is unknown, it must remain in its former state, and

if by reason of the building, the beam is removed, the owner of the building can renew it, and the neighbour has no right to prevent him from doing so, unless he proves that the former state of affairs had been brought into being solely by permission.

Article 125- If a lower storey belongs to one person and an upper storey to someone else,

each of the owners can make normal use of his own special part, but as regards the ceiling between the two storeys, each of the owners can use the floor or ceiling of his own

special part only in such normal ways as not to interfere with the rights of the other.

Article 126- The owner of a lower apartment and the owner of an upper apartment are acknowledged as the sole possessors of the lower and upper apartments respectively, and

as the joint possessor of the ceiling between the two apartments.

Article 127- An upper staircase is accounted the property of the owner of the upper storey, unless the contrary is proved.

Article 128- Neither of the owners of an upper and lower storey can oblige the other to repair, or help to repair, their walls and ceiling

Article 129- If a ceiling between an upper and lower apartment is damaged and the two

owners do not agree as to its repairs, and no binding agreement between them has formerly existed, and if one of the owners repairs the ceiling as a pious act, the ceiling is  
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a common one of it has been made with common materials, and belongs to the person who has built it ,if made with private materials

Article 130- No person possesses the right to put up a projecting porch on his house over

looking his neighbour's courtyard without the latter's permission; and if he has put up such a porch without permission, he will be obliged to remove it.

Article 131- If a branch of someone's tree enter the courtyard of his neighbour's house or into his land, the owner must bend it back, and if he does not, his neighbour can bend it back, and if he does not succeed, he can cut it away from the boundary of his property; and these provisions apply also to roots of trees which enter another's property

Article 132- A person cannot make use of this property in such a manner as necessarily to

involve a neighbour in loss, except such use as is customary and is required in order to satisfy his needs or to avoid loss.

Article 133- A person cannot put a door in a wall of his house leading to a neighbour house, even if the wall is his private property; but he can make an aperture or a lattice in his own private wall, and his neighbour has no right to prevent him, but can put up a wall or a curtain in front of the aperture or lattice to prevent his seeing through it.

Article 134- None of the partners in a ferry or a water - course can prevent the other partners from crossing it or taking water away.

Article 135- Trees, pits and the like, which separate properties will be subject to the same

provisions as partition walls.

### **Subsection 3**

#### **Concerning the Borders of Properties**

Article 136- The borders of a quantity of land are the boundaries of the property, the water channels, the streams and the like, which are necessary for the complete exploitation of the land.

Article 137- The borders of a well are 20 gaz for drinking water and 30 gaz for cultivation 1.



Article 138- The borders of a spring or a qanat (water channel) are 500 gaz on all sides in loose earth, and 250 gaz in hard earth; but if the distances on all sides in loose earth, and 250 gaz in hard earth; but if the distances mentioned in this and the proceeding Article are not enough to avoid loss, distances to the extent required to prevent loss shall be added to them.

Article 139- Borders are governed by the provisions applicable to the property of the owner of the borders and any occupation or use of them which is contrary to the purpose of the borders is invalid without permission from the owner; and therefore nobody can dig a well or water channel (qanat) within the borders of another spring or channel. But activities which do not cause loss are permissible.

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## **BOOK 2**

### **Causes of Ownership**

Article 140- Ownership is acquired

- 1- By the rehabilitation of waste land and the annexation of the allowable properties.
- 2- By means of contracts and obligations.
- 3- By acquisition in virtue of a right of pre-emption.
- 4- By inheritance.

### **Part 1**

#### **Concerning the Rehabilitation of Waste Land And Annexation of Allowable Properties**

#### **Chapter 1**

#### **Rehabilitation of Waste Lands**

Article 141- Actions directed towards the reclamation of land are those which make waste and unclaimed land profitable by means of operations which are included by custom under the heading of cultivation, such as husbandry, tree planting, building etc.

Article 142- To begin to cultivate land e.g . by arranging stones round a plot or by digging a well etc: is called leveling (Tahjir) and does not bring about ownership ; but it creates for him who has performed the leveling, a prior right to carry out the cultivation.

Article 143- A person who cultivates with the intention of taking possession thereof, a part of a stretch of waste and unclaimed land, becomes the owner of that part.

Article 144- The reclamation of the boundaries of a piece of land involves the ownership

of the middle of it also.

Article 145- The cultivator must observe in every respect the other laws relating to this subject.

## **Chapter 2**

### **Annexation of Allowable Properties**

Article 146- Annexation means occupation and laying hands upon a thing, or the preparation of the means of annexation or occupation.

Article 147- A person who annexes allowable properties and observes the relevant laws becomes the owner of them.

Article 148- A person who digs a canal in a piece of unclaimed land and joins it to a river has made that canal and becomes the owner of it; but while it is still separate from the river it is accounted as leveling

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Article 149-If a person digs a stream or a channel for the purpose of annexing unclaimed water, the unclaimed water which flows into this stream or channel belongs to the owner of the channel, and another stream cannot be opened from it, or land watered from it without the owner's permission.

Article 150- If several persons are partners in the digging of a channel or a well ,they become the owners of the water in proportion the labour and expense which has been effective in bringing about improvements, and the water will be divided between them in the same proportion.

Article 151 - None of the partners can open up another channel from a common channel, or broaden or narrow the mouth of a stream or build a bridge or a mill over, or plant trees beside it, or make any use of it, except with the permission of the other partners.

Article 152-If the appointed share of water of one o the partners in a common stream flows into a private channel belonging to him, that water becomes his private property, and he can use it in any way.

Article 153-If a stream is common to a number of people, and there is a dispute about the size of each man's share, they shall be judged to have equal shares, unless there exists a reason for the share of some of them to exceed others.

Article 154- A person cannot carry water to his property across the property of another person without the latter's permission, even if there is no other route.

Article 155- Everyone has the right to irrigate his land from an unclaimed stream or to pen up another stream if for his land or his mill or his other needs.

Article 156- If the water of a stream is not enough to irrigate all the land round it and the owners of the land are in dispute about priority and non - priority, and none of them can prove a right of priority, every piece of land which is nearer to the source of the water shall, in due order, have the right of priority over land which is lower down, to the extent of its needs.

Article 157- If two pieces of land on both sides of stream are also situated opposite each other and the right of property of one over the other is not established, and both owners wish to draw water at the same time, and the water is not enough for both, they must draw lots in drawing water in proportion to their shares, and if the water is enough for both, they will divide it in proportion to their shares.

Article 158- If the dates of the beginning of cultivation of lands bordering on a river are different, the land first cultivated has a prior claim to the water over land cultivated later, even though it is situated lower than the latter.

Article 159- If a person wishes to cultivate for the first time a piece of land bordering on a river , and there is a surplus of water and the owners of the existing plots will not be hampered, he can irrigate the new land with the water from this river ; otherwise he has no right to draw water, even if his land is higher than the other lands.

Article 160- if a person digs a qanat (water channel) or a well in his own land or in unclaimed land for the purpose of annexing it, in order that he shall reach water or cause water to flow, he becomes the owner of the resulting water, but so long as he has not struck in unclaimed land, his activities are accounted as leveling.

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### **Chapter 3**

#### **Concerning Mines**

Article 161- A mine situated in somebody's land belongs to the owner of the land, and the working of it will be subject to special laws.

### **Chapter 4**

#### **Concerning Found Objects and Lost Animals**

##### **Section 1**

##### **Found Objects**

Article 162- A person who finds an object worth less than one Dirham<sup>1</sup> weighing 12.6 noknods silver can take possession of it.

Article 163 - if the object found is worth one Dirham, weighing 12.6 noknods silver, must announce the finding for one year; if the owner of the object does not appear within this time, the finder is entitled to keep it in trust or to make use of it. In the event of his keeping it in trust and being destroyed through no fault of his, he will not be responsible for it.

Note: If the finder acquires knowledge at the beginning or before the end of one year that

announcement is of no avail, or if he loses the hope of discovering the owner of the object, he will be released of the obligation to make the announcement.

Article 164- An announcement of the finding of an object consists in publishing and advertising according to religious requirements in such a way that the finding of the object is brought to the notice of the inhabitants of a place in a customary way.

Article 165- Anyone who finds an object in a deserted or ruined place, which is uninhabited and which is not privately owned, can take possession of such an article need

not announce it, unless it is evident that it belongs to present time, in which case it will be

considered in the same way as other objects found in inhabited places.

Article 166- If anyone finds an object on another's property or on property that has been bought from another and presumes that the article belongs to the proprietor or the former

proprietors, he must inform them. If these proprietors claim the object and if there is some proof of their ownership, the object must be returned to them. Otherwise the finder must deal with the object in the manner already prescribed

Article 167- If the object found is not durable but is perishable, it must be sold at a reasonable price and this price will be considered as the property itself.

Article 168- If the object found no longer exists when its discovery is reported, through no fault of the finder, he shall not be held responsible

Article 169- When an object has been found, any profit accruing to it belongs to the former owner till such time as the finder has established his right to keep it ; after that, the profits belong to the finder

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## **Section 2**

### **On Lost Animals**

Article 170- A lost animal is an animal possessed by someone which is found without being in anyone's possession. Animals, however, on their grazing grounds or near a watering place or those capable of defending themselves from ferocious animals cannot be considered as lost.

Article 171- Anyone who finds a lost animal must return it to its owner, or if the owner is unknown, he must deliver it to the judge or his substitute. If he does not do this, the finder will be held responsible for the animal, even if he released it after taking possession of it.

Article 172- If a lost animal is found in inhabited area and the finder, though he has access to a judge or his substitute, fails to hand over the animal, he will not be entitled to claim eventually from, the owner expenses incurred. When an animal has been found in an uninhabited area, the finder can claim any expenses from the owner so long as he has gained no benefit himself from the animal. Otherwise the expenses incurred will be brought into account against any benefit gained and only the balance will be claimable by the finder or the owner as the case may be.

## **Chapter 5**

### **On Buried Treasure**

Article 173- Buried treasure is that found by chance below ground or buildings.

Article 174- Buried treasure of which the owner is not known is the property of the finder.

Article 175- if treasure is found by someone buried on the property of another person, he must inform that owner ; in case the latter claims the treasure and can prove his claim, the treasure will belong to the person who claims ownership

Article 176- When treasure is found buried in unclaimed land it shall belong to the finder.

Article 177- Jewels found in the sea belong to their finder. Flotsam and jetsam also belong to the finder.

Article 178- Articles which have sunk in the sea and have been abandoned by their owner belong to the one who retrieves them.

## **Chapter 6**

### **On Games**

Article 179- Captured wild animals belong to the pursuer.

Article 180- Capture of tame animals and of other animals that bear marks of ownership does not confer ownership.

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Article 181 - If anyone prepares a hive or a place for bees, the bees and the honey shall be

his property. Similarly pigeons gathered in a pigeon tower belong to the owner of the tower.

Article 182-Other game laws will be laid down in special regulations.

## **PART 2**

### **Regarding Contracts, Transactions And Obligations**

#### **Chapter 1**

##### **Contracts and Obligations in General**

Article 183 - A contract is made when one or more persons make a mutual agreement with another one or more persons, on a certain thing, and that agreement is accepted by the latter person.

##### **Section 1**

##### **Different Types of Contracts and Transactions**

Article 184 - Contracts and transactions are divided into the following categories a binding contract - a revocable contract - an optional contract - an unconditional contract - conditional contract .

Article 185- A binding contract is one which cannot be broken by either party except under specified circumstances.

Article 186 - A revocable contract can be cancelled by either party whenever he likes

Article 187 - A contract may be binding one party but revocable by the other

Article 188 - An optional contract can be cancelled by either party, by both parties or by third party.

Article 189 - An unconditional contract is one which is not, in the intention of the makers, contingent upon any outside matter Otherwise it is a conditional contract.

##### **Section 2**

##### **On the Essential Conditions for the Validity of a Transaction**

Article 190 - For the validity of a contract the following conditions are essential:

1 - The intention and mutual consent of both parties to the contract

2 - The competence of both parties.

3 - There must be a definite thing which forms the subject-matter

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of the contract

4- The cause of the transaction must be lawful.

### **Subsection 1**

#### **Regarding the Intention and Mutual Consent of Both Parties to the Contract**

Article 191 - A contract only becomes complete through the real intention of the contractor, and this real intention must be accompanied by some factor which proves that

there was such an intention

Article 192 - If either party or both are unable to speak, a sign which indicates intention and acceptance will be sufficient.

Article 193 - A transaction may be created by an act which indicates intention and consent, such as taking delivery or handing over unless in circumstances excepted by law.

Article 194- The words, signs or other acts by which both parties perform the transaction must be coordinated so that each party accepts the transaction which the other intended to

perform Otherwise the transaction will be null and void.

Article 195 - If anyone makes a contract when drunk, unconscious or asleep, the contract

is null owing to absence of intention.

Article 196 - Anyone who makes a contract it is deemed that he is acting for himself unless in making the contract the contrary is laid down or unless subsequent evidence to the contrary is established. When making a contract, however, anyone can make provision for the benefit of a third person.

Article 197 - If the price or the subject of a sale in a contract is a thing which belongs to a third party, the contract will be on behalf of the owner of that thing.

Article 198 - Either or both parties may represent another .It is also possible that one person would act as the representative of both parties to a contract.

Article 199 - Consent obtained as a result of mistake or duress will not make a contract enforceable

Article 200 - Only mistakes connected with the subject of a transaction will invalidate it.

Article 201 - A mistake made as to the identity of one party will not affect the interests of the other party in the transaction, except when the identity of this second party forms the principal reason of the transaction.

Article 202- Duress is caused by acts which affect reasonable person through threats against his person, property or honour in a way that he cannot be expected to withstand. In connection with such threats .the age, personality, nature and sex of the person must be taken into consideration.

Article 203 - Duress will make a contract unenforceable even when it is caused by an outside party other than the two parties concerned.

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Article 204-Threats made by one party against the body or property or honour of close relatives (of the other party) such as husband, wife, father or children are regarded as causing duress. In connection with this Article the closeness of the relationship must be considered according to custom, in estimating the duress.

Article 205 - When a threatened person knows that the threat cannot be carried out or when he is able to defend himself without difficulty from the threat or from performing the contract, the man who made the threat cannot be regarded as having used undue force

Article 206-If anyone is constrained to make a transaction through distress, this is not regarded as duress and such a transaction is considered valid.

Article 207 - The imposition of a transaction on a person by an order of competent judicial authorities is not considered as made under duress.

Article 208 - If one party fears the other, though not threatened by him, this is not regarded as being duress.

Article 209 - A transaction ratified after the removal of any undue force is binding.

## **Subsection 2**

### **Regarding the Competence of the Parties**

Article 210- Both parties should be competent to transact the business

Article 211 - In order that a contract may be valid both parties to it must be of age, must be in their proper senses and must have reached puberty.

Article 212 - A transaction between people who are not of age, nor in their proper senses nor mature is invalid because of their incompetence.

Article 213 - A transaction made by incapacitated persons cannot be valid.



### **Subsection 3**

#### **Regarding the Object of a Transaction**

Article 214 - The object of a contract must be some property or act which both the parties agree to deliver or execute.

Article 215 - The object of a contract must be capable of being owned and must embody some reasonable and legitimate advantage.

Article 216 - The object of a transaction should not be ambiguous except in special cases

where a general knowledge of the matter would be sufficient

### **Subsection 4**

#### **Regarding the Reason for a Transaction**

Article 217- In a contract it is not necessary to explain the reason for making it, but if this is done the reason must be a legitimate; otherwise the contract will be null and void.

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Article 218 - If it is known that the contract has been made with the intention evading formally some liability, the contract will be null and void.

Article 218 - If the creditor files a petition with the court submitting evidence to the effect that the debtor, to evade his liability, intends to dispose of his properties, the court may enter an attachment writ in the amount of his debt, in which event he cannot sell his properties without the authorization of the court.

### **Section 3**

#### **Regarding the Effect of Contracts**

##### **Subsection 1**

##### **Regarding General Rules**

Article 219 - Contracts made according to law are binding on the parties or their substitutes, unless they have been cancelled by mutual agreement or for some legal reason.

Article 220 - A contract not only binds the parties to execute what it explicitly mentions, but both parties are also bound by all consequences which follow from the contract in accordance with customary law and practice, or by virtue of a law.

Article 221 - If any party undertakes to perform or to abstain from any act, he is responsible to pay compensation to the other party in the event of his not carrying out his undertaking provided the compensation for such losses is specified in the contract or is

understood in the contract according to customary law or provided such compensation is by law regarded as guaranteed.

Article 222 - In case of failure to comply with the above-mentioned stipulations, a judge can, while observing the above Article authorize the party in whose favour the undertaking was made to perform the act in question himself and condemn the defaulting party to compensate the expenses incurred.

Article 223- Any contract entered into is understood to be genuine unless its false nature is proved.

Article 224 - The wording of a contract shall be read according to the meaning understood by customary law.

Article 225 - If certain points that are customarily understood in a contract by customary law or practice are not specified there in they are nevertheless to be considered as mentioned in the contract.

## **Subsection 2**

### **Losses Incurred Through Non-fulfillment of Contracts**

Article 226 - In the event of non-fulfillment of an undertaking by one party, the other party cannot claim damages for loss sustained, unless a special period was fixed for 22

fulfillment of the undertaking and that period was expired . If no period was fixed for the fulfillment of the undertaking a party can only claim damages if the power for fixing the period for such fulfillment was vested in him and if he proves that he asked for the fulfillment of the obligation.

Article 227 - The party who fails to carry out the undertaking will only be sentenced to pay damages when he is unable to prove that his failure was due to some outside cause for which he could not be held responsible.

Article 228- If the object of an agreement consists of the payment of a sum in cash, the judge can, subject to the terms Article 221, convict the debtor to pay compensation for losses incurred through delay in the payment of his debt.

Article 229 - If a man who has into an undertaking is prevented from fulfilling it by some elements not within his control, he shall not be convicted to compensate for losses.

Article 230 - If in a contract the amount of compensation to be in the event of its non - fulfillment is laid down, the judge can condemn the offender to pay more or less than the sum fixed.

### **Subsection 3**

#### **Regarding Effect of Contracts on Third Parties**

Article 231 - Undertakings or contracts are only binding on the two parties concerned or their legal substitutes except in cases coming under Article 196.

### **Section 4**

#### **Regarding Conditions Fixed at the Time of Making Contracts**

##### **Subsection 1**

##### **Regarding Different Types of Conditions**

Article 232 - The following conditions are of no effect though they do not nullify the contract itself:

- 1 - Conditions which are impossible to fulfill.
- 2 - Conditions which are useless and unprofitable.
- 3 - Conditions which are not legal.

Article 233 - The following conditions are of no effect and will nullify the contract itself:

- 1 - Conditions which are contrary to the requirements of a contract.
- 2- Conditions which are unknown and of which lack of knowledge entails ignorance of the consideration.

Article 234 - Conditions are of three different kinds

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- 1 - Conditions of description.
- 2 - Conditions of collateral events
- 3 - Conditions about the performance of a contract.

Of these the first category refers to the quantity or quality of the object. The second provides for the fulfillment or the happening of some extraneous event; and the third arises when a condition is made as to the performance or non performance by one of the two parties or by a third party.

##### **Subsection 2**

##### **Regarding Provisions Governing These Conditions**

Article 235 - If there is a condition of description which is not fulfilled, the party who stands to benefit by the contract shall have the right to cancel it.

Article 236 - As regards the result of a contract, if the realization of the result does not depend upon a special circumstance, it follows from the fulfillment of the condition itself.

Article 237 - If the condition, made as part of the contract, be a condition involving the

performance or the non-performance of an act, a person who has undertaken to carry out

such an act must do so; in the event of his failure to do so, the other party may apply to the judge asking that he may be compelled to execute the condition

Article 238 - If the performance of some act has been undertaken under the terms of a contract, and if it proves impossible to force the party who should perform the act to fulfill his obligation, though the could be performed by some other person, the judge can at the expense of the person at fault arrange for the performance of the act.

Article 239- If it is not possible to force the fulfillment of an act by the person who should perform it and if the act is of such a kind that no one else cancel the contract.

Article 240 - If when a contract has been made it is found that the carrying out of its condition is impossible or if it becomes known that the carrying out was impossible when the contract was made, the person in whose favour the contract was drawn up will have the option of canceling the contract, unless the condition becomes impossible of fulfillment owing to some act of the person in whose favour the contract was drawn up.

Article 241 - In a contract it may be specified that one of the parties should give security or pledge for the fulfillment of his obligation.

Article 242 - If it is stipulated that one of the parties should pledge certain property and if that property is destroyed or damaged, the other party will have the right to cancel the contract but not the right to demand the delivery of the equivalent of the pledged property

or any compensation for damages. If such pledged property is destroyed or damaged after delivery there will be no right of cancellation of the contract.

Article 243 - If a contract provides for a guarantor and if this condition is not fulfilled, the person in whose favour the condition was made will have the right to cancel the contract.

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Article 244 - A party in whose favour a condition is made may surrender his claim to the fulfilment of that condition, and in that case the condition cases to be part of the contract; conditions about the result of a contract cannot, however, be cancelled in this way.

Article 245 - The waiver of the right engendered from a condition may be made either orally or by some act, which indicates such waiver.

Article 246 - When a contract is terminated by mutual consent, its condition becomes null

and void and if one party has fulfilled his obligation under the contract he can claim

compensation from the other party in whose favour he did this.

## **Section 5**

### **Regarding Contracts Which Deal With the Property of a Third Party or Which Are Unauthorized**

Article 247 - Contracts regarding the property of others, except those entered into by natural guardians, executors or legal representatives, are not binding even though the owner of the property agrees there to; if, however, after the contract has been made the owner of the property signifies his consent, the contract becomes binding

Article 248 - The consent of the owner of a property in an unauthorized contract can be signified orally or by an act which signifies his consent to the contract.

Article 249 - The silence of the owner of a property, even if he is present when the transaction is made, cannot be taken as indicating his consent.

Article 250 - Such consent is only effective and valid if it has not been previously refused; otherwise it is not effective.

Article 251 - The refusal of an unauthorized transaction is effective whether expressed orally or by some act which indicates absence of consent.

Article 252 - Consent or refusal need not be immediate; in case of delay causing loss to a

party who has acted in an authorized manner he shall have the right to break the contract

Article 253 - In the case of an unauthorized contract, if the owner of the property dies before signifying his consent or refusal, this consent or refusal can be given by the heirs.

Article 254 - If the property referred to in an unauthorized contract subsequently passes into the possession of the unauthorized person in some way, this mere ownership will not

make the original contract binding

Article 255 - If anyone makes a contract which is acknowledged to be an unauthorized contract and the property in question belongs to the man who made the contract or to a person on whose behalf he was authorized to act as a guardian, or legal representative the

validity of the contract depends on the renewed consent of the person who made the contract; if he does not give such consent the contract is invalid.

Article 256 - In the event of anyone transferring property of himself or anyone else in one contract, or accepting the transfer of property for himself or another, the contract is

binding on himself but is considered unauthorized for anyone else.

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Article 257 - If the object of an authorized transaction is made the object of other transactions also, before the owner of the property signifies his consent or refusal to the first unauthorized transaction, this owner can approve any of the transactions which he likes and the transactions dependent there on shall be valid, while the previous ones shall

be null and void.

Article 258 - In respect of any profit on a property which formed the object of an unauthorized contract or in respect of any return on that property, consent or rejection will be effective as from the date of the contract.

Article 259 - When any property has been handed over to a third party by a seller who is not authorized by the owner and when the owner of the property does not give his consent, the party who hold the property is responsible for the object and its usufruct.

Article 260 - If an unauthorized seller receives a consideration for the object of sale and keeps the said consideration in his possession, and the owner while approving the transaction permits taking delivery of the consideration then the said owner shall have no

recourse against the other party.

Article 261- In the case where property has been disposed of without authority and the original owner withholds his consent, the purchaser will be responsible for the actual property and any profits on it during the time he held it, even if he has not derived any benefit from it, and also he will be held responsible for any damage to the property while it was in his possession.

Article 262 - Under the circumstances described in the above Article the purchaser of the property shall have the right to claim from the man who sold it to him without authority for the return of the actual consideration, or a property identical there to, or its equivalent in value.

Article 263 - If the original owner of any property refuses to sanction a transaction about it and the purchaser is ignorant of the fact that the sale was unauthorized, he can claim back from the unauthorized seller both the consideration and the losses incurred, but he can only claim back the consideration if he knew that the transaction was made without authority.

## **Section 6**

## **Regarding the Termination of Obligations**

Article 264 - Obligations can be extinguished in the following ways:

- 1 - By fulfillment of the obligations.
- 2 - By cancellation of the bargain.
- 3 - By release from the obligation.
- 4- By substitution of a different obligation.
- 5 - By set off and recoupment.
- 6 - By acquisition of the debt.

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### **Subsection 1**

#### **Concerning Fulfillment of the Obligation**

Article 265 - If anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another, while he is under no obligation to do so, he can ask for the return of such property.

Article 266 - If an undertaking is made in such manner that the obligee has no legal right to demand its fulfillment, in the event of fulfilling it on the part of the obligor of his own will then his claim for restitution will not be admissible.

Article 267 - If someone who is not the actual debtor pays the debt in question although he does so without the debtor's permission, the debt shall be discharged; if, however, payment is made by permission of the debtor, the payer can refer to the debtor, but otherwise not.

Article 268 - The performance of an act, when it has been stipulated that it should be done by a party to the contract, cannot be effected by another person except by consent of the obligee.

Article 269 - For fulfillment of an obligation a payment by a party there to is only effective if he delivers what he himself owns or what he is authorized by its owner to deliver, and if he is personally competent to do so.

Article 270 - If the obligor makes some payment in fulfillment of his obligation, he cannot claim for the return of the same from the obligee on the grounds that when he made the payment he did not owe the amount in question, unless he proves that the amount belonged to another but was legally in his possession though without the right to pay it to anyone.

Article 271 - A debt shall only be paid to the creditor or his attorney or to someone

legally entitled to receive such payment.

Article 272 - The payment of a debt to anyone other than those specified in the foregoing Article can only be made by consent of the creditor.

Article 273 - If a person entitled to receive payment of a debt refuses such payment, the obligor can obtain discharge by making payment to a judge or his substitute and from the date of payment his liability for damages in respect of the object of the undertaking shall cease.

Article 274 - If the obligee is not competent to receive any payment there under, such payment will not be valid.

Article 275 - The obligee cannot be obliged to accept any goods which do not constitute the object of obligation even if they are of a like or greater value.

Article 276 - A debtor in fulfillment of an undertaking cannot deliver any goods, of which the disposal has been forbidden by a judge.

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Article 277 - The obligor cannot deliver only a proportion of the amount due to the obligee, but a magistrate may grant a period of grace or arrange for payment by installments if the debtor's financial situation calls for such action.

Article 278 - If a particular property constitutes the object of the obligation then the delivery thereof to its owner in its actual state at the time of delivery shall discharge the obligor from his responsibility, even if the property is deficient or defective, so long as the deficiency or defect is not due to the excessive use or negligence of the obligor, except in the cases stipulated in the law. If, however, a party bound by a contract delays in delivering such property at due date and when its delivery has been claimed, he will be

responsible for any deficiency or defect even if this deficiency or defect even if this deficiency or defect was caused by no fault of his.

Article 279 - When the goods to be handed over under a contract are not particular goods

but are of a general nature, a party bound by the contract need not deliver goods of the best quality, but he must not hand over goods which according to custom and usage are considered defective.

Article 280 - Any act under a contract must be performed at the place where the contract is made, unless the parties to the contract have made a special arrangement or unless



usage or custom require some other procedure.

Article 281 - Any expenses incurred in connection with the payment of a debt must be borne by the debtor, unless a provision to the contrary is made.

Article 282 - If under a contract one party owes several sums to one other party, the debtor shall decide on what count any particular payment is made.

## **Subsection 2**

### **Concerning Cancellation of a Bargain**

Article 283 - After a contract has been made, the parties may cancel and terminate it by mutual agreement.

Article 284 - Cancellation can be made by any oral declaration or by any act which indicates such cancellation.

Article 285 - The object of a cancellation may be the whole or a part of the object a contract.

Article 286 - The loss of either the object of sale or the consideration will not prevent the cancellation of the bargain. In such an event, the counterpart of one of the objects which has been destroyed if such object happens to have counterparts or the price thereof, if such object happens to be appraisable, may be given in its place.

Article 287 - Separable accretion and usufruct with accrues under a contract between the time of its being made and its cancellation shall belong to the party who under the contract has become the owner. But usufruct which is an integral part of the property dealt with under a contract belong to the party who owns the property after the cancellation of the contract.

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Article 288 - If the owner of some property by a contract improves the property after the making of the contract so that it appreciates in value, this difference in value shall belong to him when the contract is cancelled.

## **Subsection 3**

### **Concerning Release From an Obligation**

Article 289 - Release from an obligation takes place when a creditor voluntarily waives his claim.

Article 290 - Release from a contract is only effective when the party to the contract has the power to terminate it.

Article 291 - The release of a dead man from a debt is valid.

#### **Subsection 4**

##### **Concerning Alteration of the Obligation**

Article 292 - Alteration of an obligation can be effected in the following cases

1 - When both parties to a contract agree owing to whatever cause to the change of the original obligation in some way and its replacement by a new obligation as substitute, the

obligor shall be released as far as the original is concerned.

2 - When a third party agrees with the consent of the creditor under the contract to pay the debt by the contract debtor.

3 - When the creditor under a contract transfers his right to another party.

Article 293 - When an obligation is altered, any securities laid down in the original agreement will not be binding under the subsequent agreement, unless the two parties have made express stipulation to that effect.

#### **Subsection 5**

##### **Concerning Set-off and Recoupment**

Article 294 - When two parties are indebted to one another, a set-off may be effected regarding their mutual debts in the ways explained in the following Articles.

Article 295 - Set-off is an obligatory process which is effected without the necessity of the two parties giving their consent. Thus when two parties are indebted to one another at

the same time, their debts are annulled by set-off to the extent of the amount owed by both parties and the parties to that extent released their mutual debts.

Article 296 - Set-off can only take place when the object of the debts are of the same nature and when their place and date of payment coincide, no matter what may be the reason for the debt.

Article 297 - When after a guarantee has been, the beneficiary becomes indebted to the guarantor. This fact will not release the guarantor from his undertaking.

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Article 298 - When only the place of payment differs in two debts, set-off will be effective either on payment of the cost of transport entailed in transferring the thing from one place to another or an agreement between the parties not to require delivery in the specific place.

Article 299 - Set-off will not be binding in respect of the indisputable rights of third parties. Thus if an object owed to a certain creditor is seized legally in favour of a third

party, and the debtor becomes a creditor of his original creditor, the former cannot, under a plea of set-off, refuse to deliver the seized goods.

### **Subsection 6**

#### **Concerning Passing of Ownership**

Article 300 - If a debtor becomes owner of what he owes, his liability ends. Thus, if anyone is the debtor of his ancestor, the debt is settled after the death of the said ancestor

to the extent of the portion of inheritance to which the said debtor is entitled to.

## **CHAPTER 2**

### **OBLIGATIONS INCURRED WITHOUT A CONTRACT**

#### **Section 1**

##### **General Definitions**

Article 301 - Any person who intentionally or inadvertently acquire goods to which he has no claim, is bound to deliver such goods to the actual owner.

Article 302 - If anyone owing to a mistaken belief that he is in debt pays that debt, he has the right to reclaim the amount in question from the person who took it without right.

Article 303 - Anyone who receives any property without any right is responsible for the actual property and for any profits that may accrue thereto, whether or not he is aware of his having no right to the property.

Article 304 - If anyone, under the wrongful impression that he is entitled to possess some goods, disposes of the same, this transaction is regarded as an unauthorized one and is subject to the provisions laid down regarding such transactions.

Article 305 - In the cases described above the owner of the property must pay any expenses entailed through its maintenance, unless the man who took possession of the property knew that he had no right to do so.

Article 306 - If anyone manages the property of a party who is continuously absent an incapacitated person or the like, without the permission of the owner or the person who has the right to give permission, he must give an account of his period of management. If it would have been possible to have obtained permission at the time or if delay in interfering in the matter would have caused no loss, then no claim for expenses of management can be entertained. If how ever, a lack of intervention or a delay in such

action would have entailed losses to the owner of the property, expenses of management

can be claimed by the person who performed the duties of manager.

## **Section 2**

### **On Automatic Liability**

Article 307 - The following matters entail automatic

1 - Usurpation or the acts which are deemed as usurpation.

2 - Deliberate destruction.

3 - Indirect destruction.

4 - Taking advantage.

### **Subsection 1**

#### **On Usurpation**

Article 308- Seizure of another right by violence is called usurpation. Laying hands on another's property without justification is also considered as usurpation.

Article 309 - If anyone prevents the owner of a property from using it but yet does not himself exert control over the property, he is not considered as usurper, but if he destroys

the property or causes such an act, he will be responsible.

Article 310 - If anyone denies that property he has been deposited with him or lent to him or similarly delivered to him, although such delivery has taken place, he is considered to be guilty of usurpation as from the date on which he denies the fact.

Article 311 - A person who has usurped anything should return the thing itself to the owner, if it has been destroyed he must give a similar property or its value. If for any other reason the return of the actual property is not possible, he must provide a substitute

or equivalent.

Article 312 - If an equivalent substitute for the misappropriated property cannot be found, then its value at the time of delivery must be paid. If, however, an exact substitute can be

found but its possessory value has disappeared the last price must be paid.

Article 313 - When anyone on his own land builds with another's materials or plants trees, without the owner's permission, this second party can demand the demolition of the

building or the uprooting of the trees unless he agrees to receive the value thereof.

Article 314 - If as a result of the acts of the person who usurped property its value appreciates, the one who has been guilty of usurpation will have no right to claim the difference in its value; in case, however, this difference forms a separable part, such separable part shall belong to the usurper.

Article 315 - A party guilty of usurpation is responsible for any deficiency or defect that may have been caused during the period of his holding if, even if such deficiency or defect has not been the result of his action.

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Article 316 - If anyone usurps any property from the man who has previously usurped it, his responsibility shall be similar to that of the previous offender, even if he is not aware of the original offence.

Article 317 - The owner of any property can claim the actual property or, if it has been lost, similar property or the value of the whole or part of it from either the man originally guilty of usurpation or from anyone who has subsequently usurped it.

Article 318 - Whenever the owner of some property claims on a party guilty of usurpation in whose hands the usurped property has been destroyed, the latter has not right to claim on another party who may have usurped the property, but if the owner claims on someone guilty of usurpation who, however, was not the person who destroyed

the property, the latter may claim on another party guilty of usurpation in whose charge the property was when destroyed or (he may claim) on any persons who subsequently usurped the property, until the claim eventually falls on the guilty party who held property when it was destroyed; generally speaking responsibility rests with the party who had the property usurped by him when it was destroyed.

Article 319 - If the owner of some property regains the whole or part of some usurped property, he has no right to claim in respect of the amount regained, from any other person who has been guilty of usurpation.

Article 320 - In respect of profits derived from usurped property, each party guilty of usurpation is responsible to the amount of profit accruing the time that he has held usurped property or the time that it has been held by persons subsequently guilty of usurpation even if he derived no benefit there from when, however, a party guilty of usurpation has had to pay profit that accrued while the property was held by others who usurped it later, then he may claim on each of these other persons in proportion to the period that they held the property.

Article 321 - If the owner of a property releases a party who has been guilty of usurpation

from returning the equivalent or the value of the property, he shall have no right to claim on others who have been similarly guilty. If, however, the owner assigns his right to one of those (guilty) persons, this latter person will become the representative of the owner and will enjoy the same right that the owner had.

Article 322 - Releasing one of those guilty of usurpation from paying profits accrued to the property while it was in his charge will not entail the release of others from their share of such profits, but if he (the owner) releases one of the persons guilty of usurpation

respect of actual profits, he will have no right to claim on persons who were later so guilty.

Article 323 - If anyone buys some property from a party who has usurped it, the former is also responsible and the owner can, in accordance with the provisions laid down above, refer to both the seller and the buyer and claim the original property or if it has been lost, its equivalent or its value and also any profits accrued thereto.

Article 324 - If a buyer knows that the property in question has been usurped, then in respect of property taken back by the owner the rights of claim between the seller and buyer are similar to those between two parties guilty of usurpation and will be subject to the above provisions.

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Article 325 - If anyone buys in good faith some usurped property and if the owner claims it from him, he (the buyer) can in his turn make a claim on the man who sold it to him for its value and any damages, even if the property was destroyed while in his (the buyer's) charge, but if the owner claims on the seller for the equivalent or the price of the property, the latter will have no right to claim on the buyer.

Article 326 - When anyone has bought property knowing that it had been usurped and then loses it and has to deliver equivalent property to the original owner, this buyer cannot claim from the seller for the amount by which this equivalent may exceed the original property in value, but only for the amount of the (actual) value.

Article 327 - If usurped property has passed from hand to hand otherwise than by sale, the regulations already given regarding the sale of usurped property will be applicable.

## **Subsection 2**

### **Regarding Deliberate Destruction**

Article 328 - If anyone destroys the property of another person, he will be held responsible and must either produce its equivalent or its value, whether or not the property was destroyed intentionally and whether it was the actual property or profits there on that were destroyed; if he causes defect or damage to such property, he is responsible for the depreciation in price.

Article 329 - If anyone pulls down the building or house of some other party he must rebuild it as before and if this cannot be done, he must pay the price of the building.

Article 330 - In case a man kills an animal belonging to someone else, without the owner's consent, he must pay the difference in price between a live and a dead animal; if

the dead animal is worthless, he must pay the full value of the (living) animal . If, however, he kills the animal or damages it in self defense, he will not be held responsible.

### **Subsection 3**

#### **Regarding Indirect Destruction**

Article 331 Anyone who causes some property to be destroyed must give back its equivalent or its value, and if he causes a defect or damage to it he will be held responsible for any depreciation in value.

Article 332 - If anyone arranges for the destruction of some property and someone else does the deed, the actual perpetrator will be held responsible and not the party who caused the deed, unless the latter is the stronger party in such a way that according to custom and usage the destruction could be attributed to him

Article 333 - The owner of a wall, house or factory is responsible for losses entailed by its collapse provided that he was aware of the defect which caused it or if it was due to his negligence.

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Article 334 - The owner or custodian of an animal is not responsible for losses caused by it unless he has failed to exercise control; but if an animal is made to cause damage the person who made it to do so will be held responsible for losses incurred.

Article 335 - If a collision occurs between two ships, trains, motor other vehicles responsibility will lie with the person whose intentional act or carelessness caused the collision, and if two parties were so responsible for the collision the responsibility will attach to both of them.

### **Subsection 4**

#### **Regarding Taking Advantage**

Article 336 - If a man does an act at the order of another and if according to custom and usage a wage is payable for such an act, or if the man who has acted is accustomed and disposed to undertake such work, then he can claim pay for his work, unless it is shown that he acted gratuitously.

Article 337 - If anyone benefits from another's property when permission has been clearly expressed or understood, the owner of the property will be entitled to the reasonable equivalent of any such profit, unless it be clear that permission was given without (any question of) payment.

### **CHAPTER 3**

### **SPECIAL TYPES OF CONTRACTS**

#### **Section 1**

#### **Regarding Sales**

#### **Subsection 1**

#### **Regulations Governing Sales**

Article 338 - A sale consists of the giving possession of specified goods in return for known consideration.

Article 339 - After mutual agreement between the seller and the buyer in respect of the object of the bargain and its price, the sale is concluded by offer and acceptance. A sale can also be effected by exchange.

Article 340 - When offering and accepting a sale the wording and terms used must clearly indicate an act of sale.

Article 341 - A sale may be made with or without any conditions and also a term may be set for the delivery of the whole or part of the object of a bargain or of the total or partial payment of its price.

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Article 342 - The quantity, type and nature of the object of the sale must be known and the fixing of the quantity by weight, measure, number, length, area or by inspection is made in accordance with the local custom and usage.

Article 343 - If the object is sold by quantity the sale is effected even before it has been counted or measured in volume in or length

Article 344 - If in the terms of a sale contract no conditions are laid down or no time limit has been fixed for delivery of its object or for payment of the price, the bargain is



considered definite and the price should be paid at once , unless in accordance with established rules and local usage or commercial rules and practice certain conditions or time limit exist for commercial transactions even though they have not been stipulated in the contract of sale.

## **Subsection 2**

### **Regarding the Two Parties to a Contract**

Article 345 - Besides being legally competent the seller and the buyer must be entitled to take possession of the property or its value.

Article 346 - A contract of sale should be entered into by mutual consent; a forced contract is not binding.

Article 347 - A blind person can sell or buy so long as he becomes aware of the nature of the object by some means other than seeing it or through the help of another person, even if that person is the other contracting party.

## **Subsection 3**

### **Regarding the Object Sold**

Article 348 - The sale of something of which the sale or purchase is by law forbidden, or which is not (describable as) property or which can bring no reasonable profit or which is not within the seller's power to deliver is null and void unless the purchaser himself is able to take possession of it.

Article 349 - The sale of property that is religious endowment is not valid unless there is a dispute among the beneficiaries in such a way that there is a fear of bloodshed or of the destruction of the endowed property, and except in the cases provided for in the Chapter relating to Endowed Property.

Article 350 - Property can be sold in divided or undivided shares; or if the property consists of goods that can be divided they can be sold in parts, or they can be sold according to sample for delivery after a period.

Article 351 -When goods are of a general nature, i.e. when they can be specified from numerous units, their sale is only valid when their quantity, quality and description is given.

Article 352 - An unauthorized sale is not binding unless permission has been given by the

owner, as has already been stipulated in connection with unauthorized contracts.

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Article 353 - If a specified chattel belonging to a special category is sold and it is found that the chattel delivered does not belong to such category the sale is void , and if a part of the chattel sold is not up to quality then that part of the sale is void and the purchaser also has the right to cancel the remainder of the deal.

Article 354 - when a sale is arranged by means of samples, all the goods sold must be similar to the sample; otherwise the purchaser has the right to cancel the contract.

Article 355 - If an immovable property is sold as being of a certain area and its found that it is less than the stipulated size, the purchase may cancel the deal. Also if it is found that

the area exceeds that laid down, the seller may call off the deal. In both cases, however, the two parties may come to a mutual agreement in regard to the shortage or the excess.

Article 356 - Anything which according to common usage and practice should form part of the object sold or is considered as an attachment to it or which is indicated to be a part

of this object forms part of the sale and belongs to the purchaser, even if this has not been

clearly stated in the contract of sale and even if the two parties of the contract were not aware of the common usage.

Article 357 -Anything that according to common age does not form part of the object sold will not be affected by the sale unless the contrary has been clearly stipulated in the contract.

Article 358 - Under the above two Articles if a garden or house is sold the trees of the garden and the passage and water channel and whatever is attached to the building in such manner that it cannot be detached without damage belong to the buyer. On the contrary, crops on land, fruit on trees and young or pregnant animals do not belong to the

buyer unless this has been stipulated in the contract of sale or is considered as part of the

object sold according to common usage. In any case, however, the parties can come to some other agreement

Article 359 - If there is some doubt whether something is included in the sale according

to common usage, then the contract of sale will not cover that thing unless some stipulation is made to that effect.

Article 360 - Anything that can be sold independently can also be excluded from the sale.

Article 361 - If after a contract has been made for the sale of some specified object and it is found that this object does not exist, then the sale is null and void.

#### **Subsection 4**

##### **Regarding Consequences of a Sale**

Article 362 - The consequences of a regularly conducted sale are as follows:

1- The buyer becomes the owner of the object sold and the seller of its price as soon as a

sale is effected.

2 - A contract of sale makes the seller responsible for claims in connection with the ownership of the consideration.

3 - A contract of sale makes the seller responsible for delivery of the object sold.

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4 - A contract of sale makes the buyer responsible for payment of the consideration.

#### **Part 1**

##### **Regarding Ownership of the Object Sold and Its Value**

Article 363 - If in a contract of sale there is an option of cancellation or if a period of grace is fixed for the delivery of the object sold or for the payment of its price, this will not prevent transfer (of ownership). Thus if the object of the sale or the consideration happen to be a specified article and before they are handed over one of the two parties becomes bankrupt, then the other party will have a right to claim delivery of such specified article.

If the seller undertakes to introduce a guarantor in connection with any conceivable claim

in respect of the title of the object of sale and fails to fulfill his undertaking, then the buyer shall have the right to terminate the contract.

Article 364 - In the case of a conditional sale the ownership becomes binding from the date of the contract and not from the date on which any option expires. In the case of a sale in which delivery is a condition, such as a sale of coins against other coins, the ownership passes from the date of delivery and not from that of the contract.

Article 365 - An invalid sale does not in any way cause ownership to pass

Article 366 - Anyone who, following an invalid sale, takes delivery of any object, must return to it the owner; otherwise, he will remain responsible for the object itself and any profits thereon in case they are lost or damaged.

## **Part 2**

### **Regarding Delivery**

Article 367 - Delivery consists in the object sold being placed at the disposal of the buyer so that he has absolute control of it and can benefit from it in any way he likes. Taking delivery is effected when the buyer assumes control of the object of sale.

Article 368 - The delivery takes place when the object sold is placed at the disposal of the buyer even if the latter has not actually taken physical possession of it.

Article 369 - Delivery is operative in various ways according to the varying nature of the object sold. It must be done in a way that is accepted as valid according to common usage.

Article 370 - If parties of a contract fix a time for delivery the ability of the seller to deliver the object need not exist till this object has to be delivered. The ability to deliver need not exist at the time of concluding the contract.

Article 371 - In sales where the delivery of the object of sale is dependent on the permission of the owner, the ability of the delivery is counted on the date that such permission is granted.

Article 372 - If the seller can only deliver a part of the goods sold, then the sale is valid for that part but not for the remainder.

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Article 373-When the goods are already in the buyer's possession a fresh delivery is not necessary; the same applies to the consideration of the sale

Article 374 - For taking possession of the goods, no authorization is necessary. The buyer

can take possession of goods he has bought without any authorization

Article 375 - Delivery should be made at the place where the contract was concluded, unless another place is required by common usage or unless by a provision in the contract

of sale a special place has been fixed for the delivery.

Article 376 - In case of delay in delivery of the goods sold or of their price, the party in default will be forced to make delivery.

Article 377 - Either the seller or the buyer can retain the goods sold or their consideration until the other party is prepared to deliver his part, unless either the object of sale or the consideration thereof is agreed to be delivered at a subsequent date in which case either the object of sale or consideration which has become mature should be surrendered.

Article 378 - The seller who has voluntarily delivered the object of sale before receiving the price thereof, cannot reclaim the object of sale, except in the case of the cancellation of the transaction assuming that he has the option to do so.

Article 379 - if the buyer undertakes to give security or a pledge for the consideration and

fails to carry out this obligation, the seller will have the right to cancel the contract .If the seller undertakes to introduce a guarantor in connection with any conceivable claim in respect of the title of the object of sale and fails to fulfill it, then the buyer shall have the right to terminate contract.

Article 380 - In the case of the bankruptcy of the buyer, if he has retained in his possession the actual object of the sale, the seller can reclaim it and he can keep the object sold if it has not yet been handed over.

Article 381 - Costs of delivery, such as transport to the place of delivery and also the expenses of checking, weighing and so on are at the charge of the seller, but those connected with the payment of the price are to be paid by the buyer.

Article 382 - If in regard to the expenses of the transaction or the place of delivery, common usage lays down some rules contrary to those detailed above or if in the contract

some stipulations to the contrary are made, the common usage or these stipulations shall

be followed. The seller and the buyer can also modify the above rules by mutual consent.

Article 383 - The delivery should also contain all the elements which are the parts and appurtenances of the object of sale.

Article 384 - If under a contract the object sold is fixed in quantity and if on delivery less than this quantity is handed over, the buyer will have the choice of canceling the contract or of taking the quantity available on payment of the right proportion of the price. If the object sold exceeds in quantity the amount fixed in the contract, the excess belongs to the seller.

Article 385 - If an object sold is one that cannot be divided without damage, such as a house or a carpet, and if it is sold as being of a fixed size but on delivery it is smaller or  
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larger in size, then the buyer in the former case and the seller in the latter can cancel the contract

Article 386 - If in the cases described in the above two Article the deal is cancelled, the seller must refund, over and above the price any costs of the contract and reasonable expenses incurred by the buyer.

Article 387 - If the object sold perishes before delivery, even without fault or neglect of the seller, the sale will be cancelled and the consideration restored unless the seller has already applied to a magistrate or his substitute for the enforcement of the delivery, in which case the loss will be borne by the buyer only.

Article 388 - If before delivery the object of sale deteriorates the buyer can cancel the sale.

Article 389 - If under the circumstances described in the above two Articles the loss of the object or its deterioration in value is due to an act of the buyer, he will have no claim on the seller and must pay the consideration of the sale.

### **Part 3**

#### **On Assurance of the Titles**

Article 390 - If, after acceptance of the consideration it is established that the object of sale wholly or partially belongs to another person, the seller shall be held responsible even though such condition has not been stipulated in the contract.

Article 391 - If it is established that the object of sale wholly or partially belongs to another person, the seller must return the consideration of the object of sale; and if the purchaser be ignorant of the existence of the defect, in title, the seller must also take responsibility for the losses suffered by the purchaser.

Article 392 - In the case mentioned in the preceding Article, the seller must be responsible for the whole of the consideration he has received in relation to the whole or part of the object sold, even though after the conclusion of the sale for any reason whatever there should be a reduction in price.

Article 393 - In respect of the excess which may have accrued to the object of sale owing

to the acts of the purchaser, the provisions of Article 313 shall apply.

### **Part 4**

## **On Payment of Consideration**

Article 394 - The purchaser must pay the consideration at the agreed time, and at the place and in accordance with the conditions which are laid down in the deed of sale.

Article 395 - If the purchaser does not the consideration at the agreed time, the seller will have the right to cancel the transaction in accordance with the arrangements concerning the option of delaying the payment of the consideration; or, he will have the right to demand that the judge shall compel the purchaser to pay the consideration.

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## **Subsection 5**

### **On Options and Orders Concerning Them**

#### **Part 1**

#### **On Options**

Article 396 - Options are of the following kinds:

- 1 - The Option of Meeting place.
- 2- The Option of Animals.
- 3 - The Option of Conditions.
- 4- The Option of Delayed Payment of the Consideration.
- 5- The Option of Inspection and Incorrect Description.
- 6 - The Option of Loss.
- 7-The Option of Defect.
- 8 - The Option of Trickery.
- 9 - The Option of Sales Unfulfilled in Part.
- 10- The Option of Unfulfilled Conditions.

#### **First Option**

##### **On the option of Meeting place**

Article 397 - Each party to the transaction, subsequently to the conclusion of the sale, while in the place of meeting and before the parties have separated, has the option of rescinding the sale.

#### **Second Option**

##### **On the Option of Animals**

Article 398 - If the object of sale is an animal, the purchaser has Article 398 - If the object of sale is an animal, the purchaser has the option of rescinding the sale until three days after the conclusion of the sale.

#### **Third Option**

### **On the Option of Conditions**

Article 399 - It is possible that the sale may be concluded subject to the condition that either the seller, or the purchaser, or both of them, or some other person, should have the

right of canceling the transaction within a specified period.

Article 400 - If the date commencement of the specified period be not mentioned, the commencement will be reckoned as from the date of the transaction; otherwise the period

will be as laid down in the agreement of sale.

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Article 401 - If no period be specified for the Option of Condition both the condition of option and the sale are null and void. Fourth Option

On the Option of Delayed Payment of the Consideration

Article 402 - If the object of sale is a concrete object, or is of that nature, and if no period is specified by the two parties for the price or the surrender of the thing sold, the seller has the option of rescinding the sale when three days have elapsed since the date of the transaction and neither the seller has delivered the object of sale to the purchaser has paid

the whole consideration to the seller.

Article 403 - If the seller should, in any way whatever, demand the payment of the purchase money, and if it appears from the evidence that his intention was to oblige the purchaser to complete the sale, his option will be extinguished.

Article 404 - Should the seller, within three days from the date of the sale, deliver the whole of the object of sale to the purchaser, or should the purchaser pay the whole of the

consideration, the seller will no longer have any right to rescind the contract, even though

it should happen, in any way whatever, that the object of sale return to the seller or the consideration to the purchaser.

Article 405 - If the purchaser offers the price and the seller refuses to accept it, he loses his right to cancel the contract.

Article 406 - The Option of Delay is purely for the seller; the purchaser does not enjoy this right of option owing to a delay in the delivery of the object of sale

Article 407 - The payment of part of the consideration, or the delivery of same to a



person who is not authorized to receive it, does not avoid the option of the seller.

Article 408 - If the purchaser gives surety for the consideration, or if the seller draws a bill for the consideration and the bill is honoured, the Option of Delay is void.

Article 409 - If the object of sale is one of those things which spoils deteriorates before the expiration of three days, the commencement of the option is from the time that the object of sale is about to spoil or to deteriorate

### **Fifth Option**

#### **On the Option of Inspection and Incorrect Description**

Article 410 - If a person should buy a thing from its description only without having seen it, and should then find on inspection that it does not possess the description which had been made, he has the option of either canceling the sale or of accepting the object as it is. Article 411 - If the seller has not seen the thing, whereas the purchaser has seen it, and

the thing sold possesses qualities which are other than those described, the seller only shall have the right of cancellation.

Article 412 - If the purchaser has seen a portion of the object of sale, but has only bought

the rest from description or by way of samples, and finds that that portion is not in accordance with the description or with the samples, he can either reject all the thing sold, or accept it all.

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Article 413 - If one of the parties to the sale has previously seen the goods and makes the

transaction on the basis of his previous inspection and if it appears, after inspection, that the said goods do not possess the qualities which they previously had, he shall have the option of rescinding the transaction.

Article 414-In a sale of merchandise of a general description there is no Option of Inspection, and the seller must deliver goods which are in accordance with the description

laid down by the two parties.

Article 415 - The Option of Inspection and Incorrect Description is effected immediately after inspection.

### **Sixth Option**

#### **On the Option of Lesion**

Article 416 - Either of the parties to a transaction if he has suffered (gross loss) may, after being appraised of the lesion, cancel the transaction.

Article 417 - A lesion is gross if in accordance with common usage it is not susceptible of being overlooked.

Article 418 - If the party who has sustained loss knows, at the time of the transaction, the proper price of the object of sale, he will have no right of cancellation.

Article 419 - In the determination of the extent of the loss, the conditions of sale must also be taken into consideration.

Article 420 - The Option of Loss is effective immediately after the detection of the loss

Article 421 - If a person who has deceived the other party to the transaction delivers the difference in price, the Option of Loss does not extinguish unless the deceived party agrees to receive the difference in price

### **Seventh Option**

#### **On the Option of Defect**

Article 422 - If it appears, after the transaction, that the thing sold was defective, the purchaser has the option either to accept the defective thing together with compensation for its defect, or to cancel the transaction.

Article 423 - The Option of Defect attaches to the purchaser when the defect was inherent, but existed at the time of the transaction.

Article 424 - An inherent defect is one which the purchaser, whether this ignorance arose

from the fact that the defect was really concealed, or whether the defect was evident but the purchaser did not realize that fact.

Article 425 - A defect which occurs in the thing sold after the sale but before delivery is to be regarded in the same way as a previous defect

Article 426 - The determination of a defect shall take place in accordance with common usage and custom, and therefore may vary with time and place.

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Article 427 - If, in connection with the defect, the purchaser should exercise his option of receiving compensation therefore, the difference in price which must be given to him will be decided in the following way:

The true of the thing sold, in undamaged state, will be determined by experts.

If the price of the thing, undamaged, be equal to the price of the thing as fixed by the

parties to the transaction at the time of the sale, the difference between this price and the

price of the thing in its damaged state will be the amount of compensation.

And if the price of the thing sold in the undamaged state is less or greater than the price of the transaction, the proportion which the price of the thing in the damaged state bears to the price undamaged will be calculated, and the seller will retain that proportion of the price fixed on in the transaction, and will give back the rest to the purchaser by way of compensation.

Article 428 - Should the experts disagree, the average of their price will be the authoritative price

Article 429 - In the following circumstances the purchaser cannot cancel the sale; he may

only take compensation:

1 - If the thing sold is destroyed when the purchaser; or if the thing be transferred to someone else.

2 - If the thing sold is subjected to change, whether the change is due to the action of the purchaser or not.

3 - If after delivery of the thing sold, another defect should take place in it, unless it should have taken place during the time that the purchaser has his special option ; in that

case no impediment exists to cancellation, and to the return of the object.

Article 430 - If the defect which takes place after delivery arises as the result of a former defect, the purchaser will also have the right to return the object of sale.

Article 431 - Should there be several things sold as part of the same transaction, in such way that the price of each several thing is not separately fixed, if certain of them are found to be damaged, the purchaser must either return all of them and receive back the price, or keep all of them and take compensation; no discrimination may take place except with the consent of the seller.

Article 432 - Should the seller in a transaction be a single person, while there are many purchasers, if a defect appears in the thing sold, one of the purchasers may not singly return his portion while someone else retains his, except with the consent of the seller; and if they do not all agree in returning the object of sale, the only right which remains to each of them is the right of reclaiming compensation.

Article 433 - If in one transaction the sellers are more than one in number, the purchaser

may return the portion of one of them while he retains the portion of another and claims compensation.

Article 434 - If it appears that the defective thing has in actual fact no proprietary worth and no price, the sale is void; and if a part of the thing sold has no value, the sale in 43

respect of that part is void and the purchaser has, in respect of the remainder, a right of cancellation in consideration of the Option of Sales Unfulfilled in part.

Article 435-The option of defect, after it becomes known, should be exercised immediately by the beneficiary.

Article 436 - If the seller accepts no responsibility for the defect in such way that he can establish the fact that he was not responsible therefore, or if he sells the object with all its

defects, the purchaser will have no right to recourse against the seller when a defect appears; and if the seller makes reservations against one particular defect, he will be relieved of liability only in respect of that particular defect

Article 437 - In respect of rules relating to defects, the consideration for a thing if that consideration be something not money, follows the rules as those applying to definite goods sold.

### **Eighth Option**

#### **On the Option of Trickery**

Article 438 - Trickery denotes conduct which causes the other party to the transaction to be misled.

Article 439 - If the seller practices trickery, the purchaser will have the right to cancel the sale, and similarly with the price paid by the purchaser, if the latter practices trickery.

Article 440 - The Option of Trickery, after it becomes known, should be exercised immediately.

### **Ninth Option**

#### **On the Option of Sales Unfulfilled in Part**

Article 441 - The Option of Sales Unfulfilled in part arises when the transaction, in respect of a part of the thing sold, is void for any reason; in that case the purchaser will have the right to cancel the transaction, or else to accept that part of the thing in respect of which the transaction was valid, while returning the consideration of that part in respect of which the transaction was void.

Article 442 - When the Option of Sales Unfulfilled in Part comes into force, the portion

of the consideration which must be returned to the purchaser is calculated as follows  
That part of the object of sale which becomes the property of the purchaser will be valued  
alone; the seller will keep that portion of the consideration which bears to the whole  
consideration of the purchase the same ratio as the value of the portion mentioned  
above  
bears to the value of the whole thing sold in its entirety; and the seller must return the  
rest  
to the purchaser.

Article 443 - The Option Sales Unfulfilled in Part arises when the purchaser, at the time of the transaction, did not know that the sale was fulfilled in part; but in any case the consideration will be divided.

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### **Tenth Option**

#### **On the Option of Unfulfilled Conditions**

Article 444- The Option of Sales Unfulfilled Conditions arises in the circumstances described in Articles 234 to 245.

2- On the Rules Concerning Options in General.

Article 445 - All Options descend after death to the heir of the deceased

Article 446 - It is possible that, an Option of Conditions may arise expressly as being concerned solely with the person mentioned in the condition; in that case it will not descend to the heir.

Article 447 - If the condition of option arises for a person who is not one of the parties to the contract, it will not be transferable by inheritance.

Article 448 - It is possible for forfeit all the options as a condition inserted in the deed of sale.

Article 449 - Cancellation arises whenever any word is said or any deed done which indicates cancellation.

Article 450 - Any possessory acts which are by their nature an indication of satisfaction with the transaction amount in practice to acceptance; for instance, if the purchaser who has an option, and who knows that he has an option, sells the object or pawns it. Article

451 - Any possessory acts which are by their nature an indication that the contract is cancelled, amount in practice to a cancellation.

Article 452 - If both of the parties to a contract have an option, and one of them accepts

while the other cancels, the transaction is cancelled.

Article 453 - In regard to Options of Meeting-place, of Animals and of Conditions, if the object of sale, after delivery but during the existence of the option of the seller or of the two parties, is destroyed or becomes defective, the purchaser is responsible; and if the option is confined to the purchaser, the destruction of the defect incurs the responsibility of the seller.

Article 454 - If the purchaser lets out the thing sold on hire, and the sale is then cancelled,

the hire is not valid unless it has been expressly or impliedly agreed that the purchaser is to have no right of transference of the thing sold either in respect of itself or its profits; in which case the hire is void.

Article 455 - If after the conclusion of the contract, the purchaser converts to another's use either the whole or a part of the object of sale, as for instance if he mortgages it to some person, the cancellation of the transaction will not affect the rights of the said person unless a condition has been violated.

Article 456 - Every species of Option can exist in all binding transactions, except the Option of Meeting, of Animals, and of Delayed Payment, which are confined to sales.

Article 457 - Every sale is irrevocable unless one of the options are established in regard to it.

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## **Section 2**

### **On Conditional Sales**

Article 458 - In the contract of sale the transacting parties may make a condition that if ever the seller, within a specified period, gives back to the purchaser the whole of the equivalent of the consideration, he may exercise an option of cancellation of the transaction in regard to the whole of the object of sale; similarly they may make a condition that if ever he gives back a portion of the equivalent of the consideration, he may have the object of canceling the transaction in regard to all of or part of the object of sale; in any case, the right of option depends on the contract made by the two parties. And if there is no special mention of whether the whole or whether a part of the consideration has to be returned, the option will not be established unless the whole of the price is returned.

Article 459 - In a conditional sale, immediately on completion of the transaction the

object of sale becomes the property of the purchaser, subject to the option held by the seller. Therefore if the seller does not abide by the conditions fixed between him and the purchaser regarding the return of the object of sale, the sale will become unconditional, and the purchaser will become the unconditional proprietor of the object of sale; and if, on the contrary, the seller acts in accordance with the abovementioned conditions, and asks for the return of the object of sale, it will become the property of the seller from the moment of cancellation; but the accretions and profits accruing from the object of sale from the time of the transaction until the time of the cancellation belong to the purchaser.

Article 460 - In a conditional sale, the purchaser may not perform any proprietary act regard to the object of sale which conflicts with the option, such as conveyance and the like.

Article 461 - If the purchaser, at the time of the option, refuse to accept the consideration, the seller may hand over the consideration to the judge or his deputy and may cancel the transaction.

Article 462 - If the thing sold by way of conditional sale becomes transferred to the heirs of the purchaser by reason of the latter's death, the right of cancellation by the seller remains unchanged, in regard to the heirs.

Article 463 - If, in a conditional sale, it becomes apparent that the object of the seller was in reality not a sale, the rules as to sales will not be applied to it.

### **Section 3**

#### **On Barter**

Article 464 - Barter is a transaction whereby one of the parties to the transaction gives a thing in exchange for another thing received from the other party to the transaction, without any stipulation that one of the things exchanged should be a thing sold and the other a consideration therefor.

Article 465 - In barter the special rules relating to sales do not apply.

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### **Section 4**

#### **On Hire**

Article 466 - Hire is a contract whereby the hirer becomes the owner of the profits resulting from the thing hired. The person who lets out on hire is called the Mujir (lessor); the person who hires is called the Mustajir (lessee) and the thing which forms

the subject of the hire is called Aain-e-musta'jareh (the thing hired).

Article 467 - Inanimate things, animals, or persons may all be the subject of hire.

### **Subsection 1**

#### **On the Hire of Inanimate Things**

Article 468 - In the hire of inanimate things the period of hire must be specified, or else the hire is void.

Article 469 - The period of hire begins from the day arranged between the two parties; and if in the deed of hire there is no mention of any time for commencement, the period will begin from the moment of the transaction.

Article 470 - It is an essential condition of a contract of hire that the lessor is able to deliver the thing hired.

Article 471 - In order that the contract of hire may be valid, it must be possible that the thing hired may be capable of engendering profits while remaining in its original state.

Article 472 - The thing hired must be a specified thing, and the hire of a thing which is imperfectly known or which is uncertain is void.

Article 473 - It is not necessary that the lessor should be the proprietor of the thing hired, but the proprietor, if he wishes to let the property, must be the proprietor of the profits arising from the thing hired.

Article 474 - The lessee may let the thing hired to another person, unless in the lease there is a stipulation that he should not do so.

Article 475 - The hire of thing held in undivided shares is allowed, but the delivery of the thing hired depends on the permission of the partner.

Article 476 - The lessor must deliver the thing hired to the hirer; if he refuses to do so the lessor will be compelled; and if it proves impossible to compel him, the lessee will have the option of cancellation.

Article 477 - The lessor must deliver the thing hired in such condition that the lessee is able to make use of the thing hired in the way desired.

Article 478 - If it is established that the thing hired was, at the time of hiring, defective the lessee may cancel the lease, or he may accept to hire it for the whole rent in the same

state that it was in; but if the lessor removes the defect in such way that no loss results to

the lessee, the latter will have no right of cancellation.



Article 479 - In order that a defect shall entail the hirer to cancel the lease, it is necessary

that it should be a defect which causes a prejudice to the profits or makes them more difficult.

Article 480 - A defect which occurs after the contract of lease of lease and before any profit has been realized from the thing hired give rise to an option; and if a defect occurs during the course of the lease, the option is established for the remainder of the period of hire.

Article 481 - If the thing hired, in consequence of a defect, is no longer capable of realizing profits, and the defect cannot be removed, the lease is void.

Article 482 - If the thing which forms the subject of hire is one of a species of a general nature, and one unit of the same which was delivered by the lessor is defective, the lessee

has no right of cancellation, but he can compel the lessor to change the defective unit; and if it is impossible to change it, he will have the right of cancellation.

Article 483 - If, during the course of the lease, the thing hired is destroyed, in part or as a whole, the lease, from the time of the destruction, is cancelled in relation to the proportion of the thing which has been destroyed; and if part of it has been destroyed, the

lessee has the right of cancellation of the lease in regard to the remainder of the thing hired, or else to claim only a proportionate reduction in the rent.

Article 484 - The lessor may not, during the period of the lease, introduce changes in the thing hired, in such a way that changes prejudice the lessee's purposes in hiring.

Article 485 - If, during the course of the lease, repairs become necessary in the thing hired, so that if they are delayed, loss will result to the lessor, the lessee may not prevent the repairs, even though during the whole or part of the time occupied by the repairs he is

unable to make use of the whole or part of the thing hired; in that case he will have the right to cancel the lease.

Article 486 - The repairs, and the whole of the expenditure which is necessary in order to maintain the thing hired in a state in which it is able to earn profits, are the responsibility of the proprietor, unless other conditions have been agreed upon, or unless the customary

law of the place provides the contrary; similar rules hold for the instruments and appliances which are necessary for the use of the thing hired in a state in which it can earn profits.

Article 487 - if the lessee exceeds his powers or abuses the thing hired and the lessor is unable to prevent that conduct, the lessor has the right of cancellation.

Article 488 - if a third person, without claiming any right, should interfere with the lessee in respect of the thing hired or the profits thereof, and if this takes place before the lessee

enters into possession, he has the right of canceling the lease; and if he does not cancel the lease, he has recourse against the interferer in respect of the cessation of the interference and of the payment of a reasonable equivalent for the part in which he interfered; while if the interference takes place after the hirer has entered into possession,

he has no right of cancellation, and can only have recourse against the interferer.

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Article 489 - If the person who interferes claims any right relating to the thing hired or to the profits thereof, the interferer may not seize the thing hired from the possession of the hirer, unless he first proves his right in a suit to which both lessor and lessee are parties.

Article 490 - The hirer must:

1 - Treat the thing hired in a normal way and not use it excessively or abuse it.

2 - Use the thing hired for the purpose which was agreed upon in the lease, or if no purpose was specified, for the purpose of profit in the way indicated by the circumstances

and conditions of the lease.

3 - Pay the rent on the terms agreed upon, or if no terms were agreed upon, in cash.

Article 491 - If the kind of exploitation which is mentioned in the lease does not envisage exclusively the kind of exploitation intended the hirer can use the thing in such way that it suffers a loss equal to or less than the loss which it would have suffered if it had been used in the way indicated in the lease.

Article 492 - If the hirer uses the thing hired in a manner other than that mentioned in the lease, or than that which can be assumed from circumstances and conditions of the lease,

and it is not possible to prevent that, the lessor will have the right to cancel the lease

Article 493 - The hirer is not a guarantor in respect of the thing hired, in this sense, that if the thing hired, in the absence of excessive use or negligence on the part of the hirer, should be destroyed, he will not be responsible, but if the hirer over-uses or abuses the thing, he is a guarantor even if the prejudice suffered is not the result of his excessive use or negligence.

Article 494 - The contract of lease finishes immediately its period expires; and if the hirer retains the thing hired after the expiry of the lease in his possession without the permission of the proprietor, the latter will be entitled to a reasonable compensation for the period of retention, even if the hirer has drawn no profit therefrom; and if he retains possession with the permission of the proprietor, he must continue the payment of the rent only if he draws profits therefrom, unless the proprietor has allowed him to retain the thing gratis.

Article 495- If a guarantee has been given in relation to the payment of the rent, the guarantor will not be liable for the reasonable compensation mentioned in the foregoing Article.

Article 496- The contract of lease will, on the destruction of the thing hired, be void as from the date on which the thing is destroyed; and in regard to any departure from the conditions agreed upon between the lessor and the hirer, the option of cancellation will become established from the date of such departure.

Article 497- The contract of lease will not become void owing to the death of the lessor or hirer; but if the lessor is the owner of the profits of the thing hired only for the duration of his own life, the lease is void on the death of the lessor, and if one of the conditions of the lease has been that the hirer shall himself take charge of the thing hired, the lease is void on the death of hirer.

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Article 498- If the thing hired be transferred to another, the lease remains in force, unless the lessor has made a condition that he shall have the right of cancellation if the thing is transferred.

Article 499- If a trustee of an endowed property, in pursuance of the objects of the endowment, should let the thing endowed, the lease will not be void on the death of the trustee.

Article 500- In a conditional sale, the purchaser may let the thing sold for the period during which the seller has no right of option. And if the lease is incompatible with the

option of the seller, he must safeguard the rights of the seller by means of making an option or the equivalent thereof; otherwise the lease, in so far as it is incompatible with the rights of the seller, will be void.

Article 501 - If the lease the period is not specified clearly, and if the rent is specified as a

certain sum per day, per month or per year, a lease for one day, one month or one year will be valid; and if the hirer retains the thing hired in his possession for periods longer than those mentioned, and the lessor does not request him to evacuate, the lessor will be

entitled to the rent at the rate agreed upon according to the time which has elapsed, in virtue of their mutual agreement.

Article 502 - If the hirer carries out repairs in the thing hired without the permission of the proprietor, he will not have the right to claim the price of those repairs.

Article 503 - If the hirer, without the permission of the proprietor, erects buildings or plants trees in the house or the land which he has hired, both the lessor and the hirer will have the right, whenever he likes, to pull down the building or pull up the trees; in that case, if the thing hired suffers any damage, the hirer is responsible.

Article 504 - If, in accordance with the lease, the hirer is permitted to erect buildings or plant trees, the proprietor cannot compel the hirer to pull down those buildings or pull up those trees; and if after the expiry of the period a building or trees remain in the possession of the hirer, the proprietor will have the right to claim reasonable rent for the land; and if they are in the possession of the proprietor, the hirer will have the right to claim reasonable rent from the proprietor.

Article 505 - Installments of rent which, by reason of the fact that the time for their payment has not arrived, have not become a liability of the hirer, shall not become immediately payable by reason of his death.

Article 506 - In leases of arable land, any kind of pests which attack cultivated plants are the responsibility of the hirer, unless other arrangements have been agreed upon in the lease.

## **Subsection 2**

### **On the Hire of Animals**

Article 507 - In the hiring of animals, the specifications of profit depends on either the specification of the period of hire, or the description of the distance and the place to which the rider or the goods have to be transported.

Article 508 - in cases where the profit becomes known through the description of the period of hire, the specification of the rider or the load is not necessary; but the hirer cannot transport more than the customary quantity; and if the profits should be specified in the description of the distance and the place, the specification of the rider or the load is necessary.

Article 509 - In the hire of animals it is possible to make a condition that if the proprietor does not transport the load to its destination in a specified time, a specified sum shall be deducted from the hire. Article 510 - In the hire of animals it is not necessary that the thing hired should be a particular animal; the specification of the species of animal will be sufficient.

Article 511 - An animal which is the subject of hire must be used for the definite purpose which the two parties intended; therefore an animal which was hired for riding cannot be used for the transport of loads.

### **Subsection 3**

#### **On the Hire of Persons**

Article 512 - In the hire of persons, the person who hires is called *musta'jir* (hirer) and the person who becomes the subject of the hire is called *ajir* (hireling); and the price of hire is called *ujrat* (wages)

Article 513 - The principal divisions of contracts of hire of persons are the following:

- 1 -The hiring of servants and workers of all kinds.
- 2 - Contracts for the employment of persons who contract for the carriage of goods, whether by land or sea or air.

#### **Part 1**

##### **On the Hiring of Servants and Workers**

Article 514- A servant or a worker may not become a wage - earner (*ajir*) except for a specified period or for the execution of a certain matter.

Article 515 - If a person becomes a wage - earner without the specification of the termination of the period, the period of hire will be limited to the period in accordance with which the hire is specified; therefore, if the hire of the wage-earner is laid down as a certain sum per day, per week, per month, or per year, the period of hire will be limited to one day or one week, or one month or one year, and after the expiry of the said period the

hire will cease to have effect; but if the wage-earner after the expiry of the period of his hire, continues to work and the proprietor keeps him, the wage-earner, in view of the mutual engagement, is entitled to the same rate as that which was laid down during the time of the hire between him and the proprietor.

## **Part 2**

### **On Contracts of Carriage**

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Article 516 - Contracts for carriage whether by land or sea or air, involve the same engagements in regard to the protection and the care of the things entrusted to the carrier

as those laid down for contracts of bailment; therefore if excessive usage or abuse takes place, (that person) shall be responsible for the destruction or the damage to the thing who received the thing for transporting; and this responsibility shall attach to him from the date of delivery of the things

Article 517 - The dispositions of Article 509 shall also be applicable to carriage of goods.

## **Section 5**

### **On Contracts of Agricultural and Harvesting Partnership**

#### **Subsection 1**

#### **On Agricultural Partnership (Muzara'eh)**

Article 518 -A muzara'eh is a contract in virtue of which one of the two parties gives to the other a piece of land for a specified time so that he shall cultivate it and divide the proceeds.

Article 519 - un a contract of muzara'eh the share of each one of the cultivators and agents must be specified by way of undivided shares, as for instance a quarter, or a third,

etc; and if the share is specified in any other way the rules to a muzara'eh shall not apply.

Article 520 - In a muzara'eh it is lawful to make a condition that one of the two parties should give to the other party some other thing in addition to the share from the produce.

Article 521 - In a contract of muzara'eh it is possible that each one of the agents of production and the seeds should belong to the cultivator or to the agent; in that case the undivided shares of each of the two parties shall be determined in accordance with an agreement or with local custom.

Article 522 - In a contract of muzara'eh it is not necessary that the possessor of the land

should be the proprietor; but it is necessary that he should be the proprietor of the profits of the land, or that in some other manner, such as by way of guardianship etc; he has the

right of possession of the land.

Article 523 - The land which is the subject of muzara'eh must be capable of being cultivated in the way desired, although it may need working or water; and if the cultivation of the lands demands operations which at the time of the contract the agent was ignorant of, such as the construction of a water - channel, or of a well, etc; he will have the right of cancellation of the transaction.

Article 524 - The kind of cultivation must be specified in the contract of muzara'eh, unless it is known from local custom, or unless the contract was for cultivation in a general sense; in the latter case ,the agent will be entitled to choose the kind of cultivation

which he prefers

Article 525 - The contract of muzara'eh is an irrevocable contract. Article 526 - Either the agents or the possessor may, in case of the Option of Loss, cancel the contract.

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Article 527 - if, owing to the loss or water or other causes of this nature , the land becomes unworthy of cultivation and it is impossible to remove the cause of this defect, the contract of muzara'eh is cancelled.

Article 528 - if a third person, before the land which is the subject of a muzara'eh is delivered to the agent, seizes the land, the agent has an option of cancellation; but if he seizes the land after delivery he has no right of cancellation.

Article 529 - A contract of muzara'eb will not be void owing to the death of the parties or of one of them, unless a condition has been made that the agent should supervise the work himself; in that case the contract is cancelled when he dies.

Article 530 - If a person has a life interest in the profits of a property and has given that property development under a muzara, eh the contract of muzara'eh will be cancelled by his death.

Article 531 - After the appearance of the harvest resulting from the cultivation, the agent becomes the owner of his share from that harvest

Article 532 - If, in the contract of muzara'eh, it is laid down that the whole of the harvest shall belong to the cultivator alone or to the agent alone, the contract, is void.

Article 533 - if a contract of muzara'eh for some reason becomes void, the whole the

harvest becomes the property of the owner of the seed, and the other party, who was the

owner of the land or of the water or of the labour, is entitled to a reasonable compensation in proportion to that which he owned.

If the seed was shared between the cultivator and the agent, the harvest and the compensation will also be divided among them in the same proportions as the seed was owned.

Article 534-f the agent, during the course of the work, or at the beginning, abandons it, and if there is no one to carry out the work in his place, the judge, at the demand of the possessor, compels the agent to fulfill the work, or else continues the work at the expense

of the agent; and if this is impossible the possessor has the right of cancellation.

Article 535 - If the agent does not cultivate, and the period comes to an end, the possessor

is entitled to a reasonable compensation.

Article 536 - If the agent does not use proper care in cultivation, and the harvest becomes less owing to this fact, or any other loss results for the possessor, the agent will

become the guarantor for the difference

Article 537 - If, in the contract of muzara'eh it is laid down that a particular thing has to be cultivated, and the agent cultivates something also, the muzara'eh is void and the provisions of Article 533 shall be applied.

Article 538 -If the muzara'eh is cancelled during the period previous to the appearance of

the harvest, the harvest, belongs to the owner of the seed, and the other party will be entitled to a reasonable compensation.

Article 539 - If the muzara'eh is cancelled after the harvest, both the possessor and the agent share the harvest in proportion to the arrangement between them; but, from the date

of the cancellation, up to the gathering of the harvest, each of them will be entitled to a

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reasonable compensation for the land, the work, and the implement belonging to him, payable from the proportional share of the other party.

Article 540 - If the period of the muzara'eh comes to an end and it happens that the



harvest is not ripe, the possessor has the right to destroy the harvest, or to let it be, after receiving a reasonable compensation

Article 541 - The agent may take a wage - earner for the cultivation, or take a partner; but

the consent of the possessor is necessary for transferring the responsibility of the transaction or the surrender of the land to another person.

Article 542 - The land tax is the responsibility of the proprietor, unless the contrary is stipulated in the agreement; the rest of the expenses of the land depend upon the agreement of the two parties, or on custom.

## **Subsection 2**

### **On Contracts for Irrigation**

Article 543 - By a contract for irrigational purposes (musaqat) is meant a transaction which takes place between an owner of trees and similar things and an agent, in return for

a specified undivided share of the produce; the work produce includes fruits, leaves, flowers, etc.

Article 544 - In a case where the contract of musaqat is void or is cancelled, the whole of the produce is the property of the owner, and the agent will have the right to a reasonable compensation.

Article 545 - The provisions relating to muzara'eh mentioned in the preceding Subsection

will also apply to contracts of musaqat, except that the agent cannot, without the permission of the owner, hand over the transaction to someone else or enter into partnership with someone else.

## **Section 6**

### **On Profit - Sharing Partnership**

Article 546 - A profit - sharing contract (mudarabeh) is a contract in virtue of which one of the contracting parties gives over some capital with the stipulation that the other party employs it in commerce, and shares the profits arising there from. The owner of the capital is called the proprietor (malik) and his agent is the manager (mudarib).

Article 547 - The capital must be a sum in cash.

Article 548 - The share of each of the parties, proprietor and manager, in the profits must be an aliquot part of the whole, such as a quarter or a third, etc.

Article 549 - The shares mentioned in the preceding Article must be specified in the contract of bailment, unless in accordance with custom they are separately known, and the fact that they are not mentioned in the contract arises from that reason.

Article 550 - The contract of profit - sharing is a revocable contract.

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Article 551 - A contract of mudarabah may be cancelled owing to any of the following reasons:

1 - In case of the death, lunacy, or mental incapacity of one of the parties

2- In case the proprietor becomes destitute.

3 - In case the whole of the capital and its profits disappear.

4 - In case the trade which the parties envisaged becomes impossible.

Article 552 - If in a contract of mudarabah a definite period be laid down for trading, he specifying of the period does not make the contract binding, but after the expiry of the period the manager may not make any transaction except with the renewed consent of the proprietor.

Article 553 - If the contract of bailment is a general one, i.e. no special form of trade is laid down, the manager can perform any transaction which may seem to him appropriate but common practice must be observed in respect of the kind of trade.

Article 554 - The manager may not make a contract of mudarabah with the same capital, or transfer it to another, without the permission of the proprietor.

Article 555 - The manager must perform acts which, in respect of that kind of trade, are in conformity with common practice and the custom of the place and the time; but if he himself performs acts which must, according to common practice, be performed by wage - earners, he will not be entitled to a wage for them.

Article 556 - The manager is in the position of the trustee, he will not be liable for the sum given to him in terms of mudarabah, except in cases of positive or negative negligence.

Article 557 - If a person gives a possession for the purpose of trade, and makes a condition that the whole of the profits belong to the owner, the transaction shall not be accounted as a mudarabah, and the manager shall be entitled to a reasonable compensation, unless it is established that the manager has executed the work gratuitously.

Article 558 - If a condition has been made that the manger is liable for the capital, or that

the losses resulting from the trade are not be borne by the owner, the transaction is void, unless a binding condition has been made that the manager shall hand over gratuitously to

the owner from his own property the amount of loss or destruction suffered.

Article 559 - In current accounts or deposit accounts is it possible that the rules of mudarabah should apply, regard being paid to the condition mentioned in the last part of the preceding Article; and interest on the mudarabah may be entered in these accounts.

Article 560 - Except as provided before above, managers are subject to the conditions and

arrangements laid down by the two parties in their contract.

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## **Section 7**

### **On Reward (Ji'ala)**

Article 561 - A ji'ala or contract of reward is defined as the engagement of a person to pay a known recompense, in return for an act, whether the other party is specified or not.

Article 562 - In a contract of ji'ala the person who engages himself is called the ja'il (rewarder), the other party who does the act is called the amil (agent) and the reward paid

is called the ja'l (reward).

Article 563 - In a contract of ji'ala the specification of the reward in all particulars is not necessary; therefore, if a person engages himself to give to whoever finds an article of his

which he has lost a specified undivided share in it, the contract of ji'ala is in proper form.

Article 564 - In aji'ala, in addition to the fact that it is not necessary to specify the agent, it is also possible that the act shall also be unspecified and the circumstances of the act not known.

Article 565 - A contract of ji'ala is a permissive engagement, and until the act has not been finished, each of the two parties can withdraw; but if the rewarder withdraws during the course of the act, he must pay to the agent a reasonable compensation for his act.

Article 566 - If, in a contract of ji'ala , the act has several parts, each one of which was intended from the outset by the rewarder, and the ji'ala is cancelled, the agent will be entitled to the price agreed upon in proportion to the act which he has done, whether the cancellation shall come from the side of the rewarder or from that of the agent himself.

Article 567 - The agent will become entitled to the reward when he act which is not in

consonance with reason, is void.

Article 568- If a number of agents get involved in the performance of the job, each will be entitled to receive his reward in proportion to his contribution.

Article 569- The subject matter of Ji'ala, shall remain in trust with the agent from the time it falls into possession of the agent until the time when it is passed to the rewarder.

Article 570- Ji'ala shall be null and void for any illegitimate and unlawful act.

## **Section 8**

### **On Partnerships**

#### **Subsection 1**

##### **On the Rules Appertaining to Partnerships**

Article 571 - A partnership is defined as the combination of the rights of several proprietors in one single thing by way of undivided shares.

Article 572 - A partnership is either voluntary or compulsory.

Article 573 - A voluntary partnership arises either from any form of contract or from the acts of the partners, such as when they combine together voluntarily, or when they accept

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a property in undivided shares as the result of the acts of certain persons, and in similar ways.

Article 574 -A compulsory partnership is the combination of the rights of proprietors arising out of their association with one another, or from inheritance.

Article 575 - Each one of the partners, in proportion to his share, shares in the profits and

losses, except where one or more persons, in consideration of their services, are allotted greater shares.

Article 576 - The method of administration of the joint property will depend upon the conditions laid down between the partners.

Article 577 - A partner who in the contract of partnership is permitted to administer the property of the partnership is entitled to perform any act which is necessary for the administration, and will in no case be responsible for losses suffered as the result of his actions, except in case of negligence or excessive use.

Article 578 - The partners may always withdraw their permission unless their permission has been given under an irrevocable contract in that case, as long as the partnership lasts

they have no right of withdrawal

Article 579 - If the administration of partnership is the duty of several partners, in such away that each one of them is independently permitted to act, each one of them may singly perform the acts which are necessary for the administration of the partnership.

Article 580 - If it has been agreed among the partners that one of the directors may not act without another, the director who acts alone and has no written authorization from the

other partners, will be a guarantor in relation to the partners, even if it is at that moment impossible for other partners to intervene in the administration.

Article 581 - The operations of each of the partners who act outside their authority or without authority are considered as unauthorized acts and come under the provisions relating to unauthorized transactions

Article 582 - A partner who without authority or outside the limits of his authority operates in connection with property of the partner ship is a guarantor.

Article 583 - Each one of the partners may, without the consent of the other partners, transfer to a third person the whole or a part of his share

Article 584 - A partner who has possession of property belonging to the partnership is in the position of a trustee and will not be a guarantor in respect of the destruction or damage of that property, except in cases of negligence or excessive use.

Article 585 - A partner who acts without authority is responsible to the person with whom he has traded, and claimants have the right to refer to him only.

Article 586 - If no period is specified for the partnership in the text of a contract of obligation, any one of the partners may withdraw whenever he wishes.

Article 587 - The partnership will be dissolved in one of the following ways:

- 1 - On a share-out.
- 2 - If the whole of the property of the partnership is destroyed.

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Article 588 - In the following cases the partner are not authorized to operate with the jointly - owned property:

- 1 - On the expiry of the period of authority, or on withdrawal, if that is possible.
- 2 - On the death of one of the partners, or when one of the partners becomes incapacitated.

## **Subsection 2**

### **On the Division of the Property of the Partnership**

Article 589 - Each one of the partners can, whenever he wishes, demand the division of the jointly - owned property, unless a division, in accordance with this law, is forbidden, or the partners have bound themselves, in an irrevocable manner, not to divide the property

Article 590 - If the partners are more than two in number, it is possible that a division may be made in respect of the shares of one or more of the partners, and the shares of the rest may be left undivided

Article 591 - If the partners consent to a division of the property, the division will take place according to the agreement of the partners, and if the partners cannot come to an agreement the judge will compel them to divide the property, provided that the division will not result in any loss; if it does result in loss compulsion is not permissible and the division must take place according to mutual agreement.

Article 592 - If the division is to the disadvantage of some of the partners, and not to the disadvantage of others, if the demand for a division comes from a partner who suffers a disadvantage, the other party will be compelled to agree; if the contrary, i.e. if the demand comes from one who has not suffered loss, the other party is not compelled to accept a division.

Article 593 - A loss is considered to be an impediment to division when it represents an evident depreciation, to such a degree that, in accordance with common practice, it is not negligible.

Article 594 - If a jointly owned qanat, or a similar thing, becomes defective and needs to be cleaned or repaired, and one or more of the partners, to the loss of one or more other partners, refuses to take part in the cleaning or repairs, the partner or partners who suffer

loss may refer to the judge; in that case, if the property is not divisible, the judge may, in order to extirpate the source of dispute and to prevent loss, compel the partner who refuses, according to the situation, to participate in the cleaning or the repairs, or to hire or sell his share.

Article 595 - If a division will involve the disappearance, as a property, of the whole a part of' the joint property or of the shares of one or more of the partners, division is forbidden, even if the partners agree thereto.

Article 596 - If the jointly - owned consists of several units, a compulsory division of

some of those units does not necessarily involve the division of the rest of the property.

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Article 597 - The separation of a private property from an endowed property is permissible, but the division of an endowed property among the beneficiaries is not permissible.

Article 598 - The arrangements for a division are as follows:

If the joint property is such that it must be divided itself, it will be divided up in proportion to shares of the partners; and if it be such that it can be valued, it will be apportioned according to its price; and after the division or the valuation, if the parties cannot come to an agreement as to their shares, the matter will be decided by lot.

Article 599 - The division, after it has taken place in proper form, is obligatory, and none of the partners can dissociate himself from it without the consent of the others.

Article 600 - If, in the portion of one or more of the partners, a defect may appear of which he or they did not know at the division the partner or partners concerned have the right to set aside the division.

Article 601 - If, after the division, it becomes apparent that the division has taken place under a mistake, the division is void.

Article 602 - If, after the division, it becomes apparent that a definite quantity of the property divided belonged to someone else, the division is valid if, after the division, the property belonging to another exists in each of the divided shares in the same proportion;

otherwise it is void.

Article 603 - A path or a watercourse belonging to any portion belongs, after the division, to that same portion.

Article 604 - A person who has rights over the property of another cannot prevent a division of that property; but his rights will remain the same after the division as they were before.

Article 605 - If the portion of one of the partners is a water channel or a path over the portion of another partner, the right of passage of water or the use of the path shall not disappear after the division, unless such a disappearance shall have been upon; and other

rights over the property of another follow the same rule.

Article 606 - If the estate of a deceased person be divided up before the payment of his debts, or if after the division it becomes apparent that the deceased was liable for a debt,

the creditor must refer to each of the heirs in proportion of his portion; and if one or more of the heirs are unable to pay, the creditor may refer to the other heirs for the settlement of the portions of the destitute heir or heirs.

## **Section 9**

### **On Deposit**

#### **Subsection 1**

##### **On General Principles**

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Article 607 - By Deposit is meant a contract whereby one person entrusts a thing belonging to him to another in order that the latter should retain it for him free of charge, The person who deposits is called the mudi (depositor) and the person who receives the deposit is called the mustaudi or the amin (trustee).

Article 608 - In a Deposit the acceptance of the trustee is necessary, though it maybe shown by an act.

Article 609 - A person may deposit a thing who is the owner or the representative of the owner; or who is, on behalf of the owner, explicitly or implicitly authorized by the owner.

Article 610 - In a Deposit the two parties must have capacity for a transaction, and if a person accepts a thing on deposit from another person who has no capacity for a transaction, he must return the thing to the legal guardian of that person, and if the thing depreciates or disappears in his possession he is a guarantor.

Article 611- A Deposit is a revocable contract.

#### **Subsection 2**

##### **On the Engagements of the Trustee**

Article 612 - The trustee must preserve the deposited thing in the way that the depositor laid down; and if there was no specific stipulation for the manner in which the thing is to be preserved, he must keep it in the way which is usual for that thing; otherwise he is a guarantor.

Article 613 - If the owner has laid down a way for the preservation of the thing deposited, and the trustee considers it necessary that way should be changed in order to preserve the thing, he may change it, unless the owner has specifically forbidden any change; in that case he is a guarantor.

Article 614- A trustee is not a guarantor in respect of the destruction or the depreciation of the thing deposited with him, unless in case of negligence or excessive use.



Article 615- A trustee in his position as a protector is not responsible in respect of events the prevention of which is beyond his power.

Article 616 - If the return of the thing deposited be requested, and the trustee refuses to return it, the rules as to trustees will cease to apply to him from the date of his refusal, and he will become a guarantor in respect of any defect or depreciation which supervenes in the thing deposited, even though that defect or depreciation does not arise from an act of his.

Article 617 - The trustee cannot exercise any possessory rights over the thing deposited except such as arise in protecting it; nor can he in any way make a profit from, except with the express or implied leave of the depositor; otherwise he is a guarantor.

Article 618 - If the thing deposited is entrusted to the trustee in a closed box or a sealed letter, he has no right to open it; otherwise he is a guarantor.

Article 619 - The trustee must hand back exactly the same thing as he received.

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Article 620 - The trustee must give back the thing deposited in the same state as the thing was at the time of giving it back; and he is not a guarantor in respect of the defects which may have accrued therein.

Article 621 - If the thing deposited is taken by force from the trustee and if he has received a payment or something else in its place, he must give to the depositor that which he received in exchange, but the depositor is not obliged to accept it and he has the right to refer direct to the person who took the thing away by force.

Article 622 - If the heir of the trustee destroys the thing deposited he is responsible for supplying the equivalent or the price or the same, even if he did not know that the thing was a deposit.

Article 623 - The profits resulting from a thing deposited belong to the owner.

Article 624 - The trustee must return the thing deposited only to the person from whom he received it, or to his legal representative, or to a person who has authority to receive it;

and if he wishes, from force of circumstances, to give it back but has no means of approach to a person entitled to receive it, he must give it back to a judge.

Article 625 - If it is established that the thing deposited belongs to another person other than the depositor, the trustee must return it to the true owner, and if the owner is unknown, the rules relating to things of unknown ownership will apply.

Article 626 - If a person deposits a thing, the deposit will become void at the death of the depositor, and the trustee cannot return it to anyone except to the heirs.

Article 627 - If there be more than one heir, and if they do not agree among themselves about the thing, the thing deposited must be returned to the judge.

Article 628 - If a change takes place in the situation of the depositor such as for instance if he becomes a ward, the contract of deposit is cancelled, and the thing deposited cannot

be returned except to the person who has the right to administer the effects of the ward.

Article 629 - If a thing belonging to a person who has become incapacitated is deposited, that thing must be given back to him when he is no longer an incapacitated person.

Article 630 - If a person makes a deposit of a thing in his capacity as guardian or tutor, that thing after he ceases to possess that capacity, must be returned to its owner, unless the owner continues to be incapacitated; in that case the thing is returned to the subsequent guardian or tutor.

Article 631 - If a person is in possession of a thing in a capacity position, in respect of that thing, equivalent to that of a trustee, he is the same as a trustee; therefore, a tenant, in

relation to the thing hired, or a guardian or tutor in relation to the minor's property or to their ward, and the like, are not guarantors, unless in cases of negligence or excessive use; and if the owner is entitled to have the thing returned to him, the possessor, from the

moment of the owner's application and the possessor's refusal to return although he could have done so, will be responsible in case of destruction of the thing or of any kind of damage or defect, even though it be not the consequence of his own act.

Article 632 - Caravansarai properties, hotel keepers, bath keepers and similar persons are

responsible in respect of the effects and goods and clothes of persons who enter those

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places only if those effects and goods and clothes are deposited with them, or if in accordance with local custom those effects are in the position of being on deposit.

### **Subsection 3**

## **On the Engagement of the Depositor**

Article 633 - The depositor must give to the trustee the expenses which he has incurred in

the preservation of the thing deposited.

Article 634 - If the return of the thing deposited necessitates any expenditure, the depositor must pay.

## **Section 10**

### **On Lending**

Article 635 - Lending is a contract whereby one of the parties gives the other party permission to derive profit, gratis, from a thing belonging to the former.

The person who gives is called the lender (mu'ir) and the person who receives is called the borrower (musta'ir)

Article 636 - The lender, in addition to having capacity, must be the owner of the profits of the thing which he gives on loan, even though he be not the owner of the thing itself.

Article 637 - Any thing which is capable of yielding a profit while continuing its own existence unchanged is capable of being loaned.

The profit which is envisaged in lending is a profit which is lawful and reasonable.

Article 638 - Lending is a revocable contract, and is cancelled by the death of either of the parties.

Article 639 - If the thing lent possesses defects which cause loss to the borrower, the lender will not be responsible for the losses incurred unless he is regarded as the cause of

the defect by local custom.

The same rule also applies in the case of a depositor or a lessor etc.

Article 640 - the borrower is not a guarantor as to the destruction or the depreciation of the thing lent, unless in case for negligence or excessive use.

Article 641 - The borrower is not responsible for a defect arising from using the thing lent, unless he has used the thing in a way not permitted or if lending was unconditional, if he has used it in a way not in accordance with common usage.

Article 642 - If a condition of guarantee has been imposed on the borrower, he will be responsible for any loss or defect, even though that loss or defect be not related to any act

of his.

Article 643 - If the borrower has also had to furnish guarantee for defect resulting from

usage in general, he will be a guarantor for these defects too.

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Article 644 - In lending gold or silver, whether coined or not, the borrower is a guarantor even if he has not been subjected to a guarantee, and even if there has been no negligence of excessive use.

Article 645 - In the return of the thing lent the provisions of Articles 624 and 626 up to 630 must be observed.

Article 646 - The expenditure necessary for deriving a profit from the thing lent is the responsibility of the borrower, and the expenses of upkeep of the thing follow the rules of common usage and custom, except as provided in special agreements.

Article 647- The borrower cannot in any circumstances hand over the thing loaned to the possession of another, except with the permission of the lender.

## **Section 11**

### **On Loans**

Article 648 -A Loan is a contract where by one of the two parties surrenders to the ownership of the other party a definite portion of his property, so that the other party may return to him what is equivalent thereto in respect of quantity, kind and description, and if that party declines to give back the equivalent, he gives the price of the same on the day of payment.

Article 649 - If a property which is the subject of a loan, is destroyed or becomes defective after having been delivered the loss is to be made good from the property of the borrower.

Article 650 - The borrower must return a thing similar to the thing He has received, even though it may have appreciated or depreciated.

Article 651 - If a specified period of time is fixed for the payment of the debt in a binding form, the lender cannot claim the settlement of his loan before the expiry of the term.

Article 652 - At the time of the lender's claim for payment, the judge orders a delay or for payment by installments on behalf of the debtor, according to the circumstances

Article 653- Repealed by the Amendments of November 1991

## **Section 12**

### **On Gambling and Betting**

Article 654 - Gambling and betting are void transactions and no action based on them

will lie. The same rule applies to all engagements which arise out of illegal transactions.  
Article 655 - Betting is permitted in races of riding animals and also in shooting matches and in fencing the provisions of the foregoing Article do not apply to them.

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## **Section 13**

### **On Agency**

#### **SUBSECTION 1**

##### **On General Principles**

Article 656 - An agency is a contract whereby one of the parties appoints the other as his representative for the accomplishment of some matter.

Article 657 - The establishment of agency relationship is subject to the acceptance of the agent.

Article 658 - An agency comes into being however after and acceptance are indicated whether by word or conduct.

Article 659 - An agency may be either gratuitous or in return of remuneration.

Article 660 - An agency can be of a general nature, and for the whole of the affairs of the principal, or limited to a certain matters.

Article 661 - If the agency is a general one, it will be concerned only with the administration of the property of the principal.

Article 662 - An agency must not be given except for a matter which the principal himself is entitled to act, an agent must be a person who has the capacity to execute that matter.

Article 663 - An agent cannot execute a matter which exceeds the limits of his power of attorney.

Article 664 - An attorney for litigation purposes is not an agent empowered to receive what is due, unless there exist certain circumstantial evidence there for, similarly, an agent appointed to collect something to which his principal is entitled will not be an attorney for litigation purposes.

Article 665 - An attorney in a sale is not an agent for the receipt of the purchase price, unless there is indisputable proof thereof.

#### **Subsection 2**

##### **On the Duties of the Agents**

Article 666 - If the principal suffers loss owing to the fault of the agent, and if the agent is

by common custom considered to be the cause of the loss, he will be responsible.

Article 667 - The agent must, in his handlings and performances act in the interests of his

principal, and must not exceed the limits of the authority which the principal has explicitly given him, or the authority which is inferred by custom, usage, and circumstantial evidence.

Article 668 - The agent must give to his principal an account of the time of his agency, and must give up to him that which he has received for his principal.

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Article 669 - If two or more agents are appointed for the execution of one matter, no one of these agents may participate in that matter without the other or others; unless each of them has an independent agency; in that case each one of them can singly do the work.

Article 670 - If two persons are agents in association with one another, and one of them dies, the agency of the other becomes void.

Article 671 - An agency for a certain matter involves an agency for the preliminaries and essential preparations for that matter, unless it be expressly stated that the agency does not apply to them.

Article 672 - An agent in a matter may not give an agency to any one else in that matter, unless he is expressly or impliedly an agent entitled to select a sub - agent.

Article 673 - If an agent who has not the right of subscription hands over to a third person

the execution of the matter for which he has the agency, both the agent and the third person will be responsible to the principal for the losses which they are considered to have caused.

### **Subsection 3**

#### **On the Duties of the Principal**

Article 674 - The principal must execute all the engagements which the agent, within the limits of his powers, has undertaken.

In respect of that which has been done outside the limits of the powers of the agent, the principal will be under no obligation whatever, unless he expressly or impliedly permits the irregular actions of his agent.

Article 675 - The principal must pay the whole of the expenditure incurred by the agent in the execution of his agency, and also the remuneration of the agent, unless other arrangements have been made in the contract of agency.

Article 676 - The fee of the agent will be in accordance with the agreement between the two parties; and if there has been no agreement relating to the fee or its size, it will be in accordance with local practice and custom; if there is no recognized custom; the agent is entitled to a reasonable remuneration.

Article 677 - If it is not expressly stated in the contract of agency whether the agency is gratuitous or for fee, the presumption is that it was for a fee.

#### **Subsection 4**

##### **On the Various Ways of Ending an Agency**

Article 678 - The agency can be dissolved in the following ways:

- 1 - By dismissal by the principal.
- 2- By resignation of the agent.
- 3 By the death or insanity of the principal of the agent.

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Article 679 - The principal can, whenever he desires, dismiss the agent, unless a condition has been made in the course of an irrevocable contract as to the agency of the attorney or the impossibility of his dismissal

Article 680 - Everything which the agent has done before the news of his dismissal reaches him, in the limits of his powers, is valid.

Article 681 - After the agent has resigned, he may continue to take steps in pursuance of the agency as long as it is evident that the principal continues to give him permission.

Article 682 - The fact that the principal becomes incapacitated annuls the agency except in respect of things in which incapacity does not impede there being an agency; similarly,

the incapacity of the agent annuls the agency, except where incapacity does not impede the steps necessary for the agency.

Article 683 - If the substance of the agency disappears, or the principal performs himself that he assigned to the agent to do, or ma general way does that which is contrary to the agency, as for example if he sells himself that for which he gave an agency for agent to sell, the agency is void.

#### **Section 14**

##### **On Contracts of Guarantee**

##### **Subsection 1**

##### **On General Considerations**

Article 684 - A contract of guarantee is defined as such that a person takes upon himself

the responsibility of a property which forms an obligation upon another person.

The person who accepts the obligation is called the zamin

(guarantor); the other person is termed "mazmunun la" (the beneficiary), and the third person is termed "mazrnunun anh" (he for whom the guarantee is given) or the, original debtor.

Article 685 - In a contract of guarantee the consent of the original debtor is not an essential condition.

Article 686 - The guarantor must have capacity to transact.

Article 687 - It is permissible to be a guarantor of an incapacitated or deceased person.

Article 688 - It is possible for the guarantor to furnish a guarantee.

Article 689 - If more than one person become guarantors for a man, the guarantee of the person whom the beneficiary accepts is the valid guarantee.

Article 690 - In a contract of guarantee it is not essential that the guarantor should be solvent; but if the person to whom the guarantee is given is ignorant, at the time of the guarantee, of the lack of means of the guarantor, he can cancel the contract; but if the guarantor, after the contract becomes destitute, the beneficiary shall have no option.

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Article 691 - A guarantee in respect of a debt the cause of which has not yet arisen is void.

Article 692 - In a matured debt it is possible for the guarantor to specify a period for the payment; and similarly for an immature debt he can engage to pay it immediately.

Article 693 - The beneficiary can in a contract of guarantee require a pledge from the guarantor, even though no security was taken in the original debt.

Article 694 - It is not essential for the guarantor to know the amount, the details, and the conditions of the debt which he guarantees; hence, if a person becomes the guarantor of a

debt of a person without knowing what the amount of it was, the contract of guarantee is valid; but a guarantee of one of several debts, in a doubtful manner, is void.

Article 695 - It is not necessary for the guarantor to have complete knowledge about the person to whom the guarantee is given or the original debtor.

Article 696 - It is possible to guarantee any debt, even if there is a termination clause therein.

Article 697 - It is possible to guarantee either the seller or the purchaser against the possible claims by a third party in connection with the ownership of the object of sale or



the consideration as the case may be.

## **SUBSECTION 2**

### **On tile Effect of a Guarantee on the Guarantor and the Beneficiary**

Article 698 - After the guarantee is validly made, the obligations of the original debtor is discharged and the obligation of the guarantor towards the original creditor comes into force.

Article 699 - To make a guarantee dependent upon certain factors, as for instance to indicate that, if the debtor does not pay then I shall stand as guarantor' is void but it is possible to make execution of guarantee dependent upon certain factors.

Article 700 - A guarantee which lays down conditions concerning the pre-requisite of guarantee, as for instance if the guarantor undertakes that if the person guaranteed is in debt the guarantor will guarantee him, is not void.

Article 701 - A guarantee is an irrevocable contract, and the guarantor or the beneficiary cannot cancel it, unless in case the guarantor becomes indigent as laid down in Article 690; or there be a right of cancellation in respect of the debt which is guaranteed; or if the

conditions of the contract are not adhered to.

Article 702 - If the guarantee specifies a period, the person guaranteed cannot claim his due from the guarantor before the expiry of the period, even if the debt has matured.

Article 703 - In a guarantee of immediate payment the beneficiary has the right to claim his due, even though the original debt has not been matured.

Article 704 - A general guarantee is a sight guarantee, unless it becomes evident, from proofs, that it relates to a period.

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Article 705 - A delayed guarantee becomes a sight guarantee on the death of the guarantor.

Article 706 – Repealed.

Article 707 - If the claimant releases the guaranteed person from his obligation the guarantor will not be released, unless the object of the claimant is to abolish the debt altogether.

Article 708 - A person who is a guarantor to defend the claims of a third party concerning the ownership of the object of sale is released on the cancellation of the contract of sale on the ground of mutual consent or by exercise of an option.

## **Subsection 3**

## **On the Effects of a Guarantee as Between the Guarantor and the Guaranteed Debtor**

Article 709 - The guarantor has no right of recourse against the guaranteed debtor except

after the payment of the debt; but he can have recourse if the guaranteed debtor has engaged to obtain a release for him (the guarantor) within specified time, and that time has elapsed.

Article 710 - If the guarantor, with the consent of the beneficiary assigns the payment of the debt to another, and if that person agrees to pay it, it is as though he (the guarantor) has paid the debt, and he has a right of recourse against the guaranteed debtor; the same

rule shall be applicable when the beneficiary makes such assignment.

Article 711 - If the guarantor pays the debt, and the guaranteed debtor pays it again, the guarantor will not have recourse against the beneficiary, but must refer to the guaranteed

debtor, and the latter can take back from the beneficiary what he paid him.

Article 712 - If the beneficiary dies, and the guarantor becomes his heir, he has a right of recourse against the debtor.

Article 713 - If the guarantor gives to the beneficiary less than the debt, he cannot claim from the debtor more than he has given, even if he has compromised for less than the amount of the debt.

Article 714 - If the guarantor gives to the beneficiary more than the debt, he has no right to claim more, unless he has given it with the permission of the debtor.

Article 715 - If the debt is payable at the end of a term, and the guarantor pays it before the due date, he cannot claim from the debtor as long as the period of the debt is still unexpired.

Article 716 - If the debt is payable at sight, whenever the guarantor pays it, he can refer to

the debtor, even though the guarantee was for a period which had not then elapsed, unless

the debtor has given permission for a deferred guarantee.

Article 717- If the debtor pays the guarantor is released, even though the guarantor may not have given the debtor permission to pay.

Article 718 - If the beneficiary releases the guarantor from the debt, the guarantor and the debtor are both released.

Article 719 - If the beneficiary releases the guarantor, or if another pays the debt gratuitously, the guarantor has no right of recourse against the debtor.

Article 720- A guarantor who guarantees with the object of doing a spontaneous benevolent act has no right of recourse against the debtor.

#### **Subsection 4**

##### **On the Effect of a Guarantee on More than One Guarantor**

Article 721 - If several persons give a guarantee to a person in respect of a debt by way of pro rata, the guaranteed creditor has the right of recourse against each one of them to the extent of his share only; and if one of the guarantors pays the whole of the debt he can refer to each one of the other guarantors who agreed to the payment, to the extent of his share.

Article 722 - A guarantor of a guarantor has no right of recourse against the original debtor, but must refer to the person whom he has guaranteed; and in the same manner every guarantor has recourse against the creditor, and so on up to the original debtor.

Article 723 - It is possible that a person renders himself responsible for the payment of the debt of another by virtue of an irrevocable contract; in that case the fact that the obligation is conditional does not render it void, as for instance when a person incurs an obligation to pay the debt of a debtor on condition that the debtor fails to pay.

#### **Section 15**

##### **On Assignment**

Article 724- Assignment is a contract in virtue of which the claim of a person from a debtor is transferred to a third party.

The debtor is called, "muhil" (assignor), the creditor muhtal (assignee) and the third party is called "muhalun 'alaih" (third party assignee).

Article 725 - The assignment does not become definite except with the consent of the assignee and third party assignee.

Article 726 - If, in regard to an assignment (haveleh), the debtor (assignor) is not indebted to the creditor (assignee), the provisions applicable to an assignment will not apply.

Article 727 - It is not necessary, for the validity of the assignment, that the third party assignee should be indebted to the assignor, In that case, the third party assignee after his

accepting, is in the position of a guarantor.

Article 728 - The solvency of the third party assignee is not a necessary condition for the propriety of the assignment.

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Article 729 - If, at the time of the assignment, the third party assignee was insolvent and the assignee was ignorant of his insolvency, the assignee can cancel the assignment and

have recourse against the assignor.

Article 730 - After the assignment is effected, the obligation which was incumbent upon the assignor in respect of the assigned debt is discharged, and the obligation attaches to the third party assignee.

Article 731 - If the third party assignee was not indebted to the assignor, he may, after paying the sum transferred, have recourse against the assignor for the sum paid.

Article 732 - An assignment is a binding contract, and neither the debtor, nor the creditor,

nor the third person can cancel it, except in accordance with Article 729, or when the condition has been made that an option of cancellation should exist.

Article 733 - If, in a sale, the seller makes an assignment providing that the purchaser should pay the price to some person, or if the purchaser makes an assignment empowering the seller to receive the price from someone, and the nullity of the sale is established, the assignment is null; and if the creditor has received the price he must give

it back ;but if the sale becomes cancelled in consequence of an option or mutual consent,

the assignment is not null, but the third person is discharged, and the seller or the purchaser can have recourse against one another.

The provisions of this Article will apply to other contracts also.

## **SECTION 16**

### **On Personal Surety (Kifalat) (Bail-bond)**

Article 734- A "kifalat" is a contract by virtue of which one of two parties engages, with the party, to produce the presence of a third person, when summoned.

The person who engages is called “kafil”; the third person is called a “makful” (the object of personal guarantee), and the other party is called “makfulun lah” (beneficiary).

Article 735 - A “kifalat” takes place with the consent of the “kafil” and of the “makfulun lah” (beneficiary).

Article 736 - It is not necessary, for the validity of the “kifalat”, for the “kafil” to know that there exists a lawful claim incumbent upon the “makful”; the existence of a claim to a right on the side of the “makfulun lah” is sufficient, even if the “makful” denies it.

Article 737 – A “kifalat” may be absolute or temporary; if it is temporary, its period must be specified.

Article 738 - It is possible for another person to become the “kafil” of a “kafil”

Article 739 - In an absolute “kifalat”, the “makfulun lah” may, whenever he desires, request that the “makful” be produced; but in a temporary “kifalat” he has no right of claim before the end of the term.

Article 740 - The, “kafil” must produce the “makful” at the time and the place which he has promised ; or else he must incur the responsibility for the right which is proved to be incumbent on the

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“makful”.

Article 741 - If the “kafil” has engaged to surrender property if the “makful” does not appear, he must act in accordance with his engagement.

Article 742 - if in the “kifalat” no place has been specified for the surrender of the “makful”, the “kafil” must hand over the “makful” in the place where the contract was made, unless the contract envisages another place.

Article 743 - If the “makful” is absent, a delay will be accorded to the “kafil” sufficient to enable him to produce the “makful”.

Article 744 - If the “kafil” hands over the “makful” at a time or in a place other than that which was laid down, or contrary to the conditions which he made, it is not incumbent upon the “makfulun lah” to accept this; but if he agrees, the “kafil” is discharged; similarly, if the “makfulun lah” requests the surrender of the “makful” in a way contrary to that which was laid down by the two parties, the “kafil” is not obliged to accept.

Article 745 - Any person who abducts a person from the control of the one entitled to control him, or his lawful deputy, without his consent, is in the position of a “kafil”, and must produce that person; if not, he must take responsibility for the due which are proved

to attach to him.

Article 746 - The "kafil" will be discharged in the following circumstances:

- 1 - If he produces the "makful" in the manner agreed upon.
- 2 - if the "makful" himself appears at the appointed time.
- 3 - If the obligation of the "makful" is discharged in any way from that which the "makfulun lah" claimed.
- 4- If the "makfulun lah" gives a discharge to the "kafil".
- 5 - If the claim of the "makfulun lah" becomes in any way transferred to another person.
- 6 - If the "makful" dies.

Article 747 - If the "kafil" produces the "makful" in accordance with the conditions agreed upon, and the "makfulun lah" refuses to take delivery of him, the "kafil" will be discharged after reference to witnesses or to the judge.

Article 748 - The death of the "makfulun lah" will not involve the discharge of the "kafil".

Article 749 - If one person becomes a "kafil" for a person in relation to several persons, he will not be discharged as far as the others are concerned by the delivery of the person to one of them.

Article 750 - If a person be the "kafil" of a "kafil", and another person be his "kafil", and so on, each "kafil" must produce the "makful" pertaining to him; whoever of them produces the original "makful" is discharged together with all the others; and whoever of them becomes discharged by reason of any of the reasons mentioned in Article 746, the "kafil" who come after him are discharged too.

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Article 751 - If the "kifalat" is with the permission of the "makful", and the "kafil", not being able to produce the "makful" pays whatever penalty attaches to him, or if he pays a penalty with his permission he can have recourse against the "makful" and receive back what he has paid; but if neither was with the consent of the "makful", he will have no right of recourse.

## SECTION 17

On Settlement (Compromise)

Article 752 - A settlement of account is possible either in the case of the adjustment of an

existing dispute, or for avoidance of a possible dispute, or in the case of a transaction and the like.

Article 753 - In order that the settlement is in proper form, the two parties must have capacity for the transaction and must have an interest in the subject of the settlement.

Article 754 - Every settlement is effective, except that which relates to an unlawful matter

Article 755 - A settlement is also possible even when the claim is denied; therefore, a request for a settlement is not to be regarded as a confession of indebtedness.

Article 756 - Civil claims which have arisen as the result of a crime may also become the subject of a settlement.

Article 757 - A settlement without a recompense (consideration) is also lawful.

Article 758 - A settlement made in respect of a transaction, though it provides the final result of the transaction which it replaces, does not include the special conditions and attributes of the transaction . Therefore, if the subject of settlement is a definite object given in return for a consideration, its results will be the result of a sale, without the execution of the special conditions and rules appertaining to a sale.

Article 759 - A settlement does not involve a right of pre - emption, even though it takes the place of a sale.

Article 760 - A settlement is an irrevocable contract, even though it take the place of revocable contracts; and it does not lose validity except in circumstances of cancellation through the exercise of an option or mutual consent.

Article 761 - A settlement which arises from a dispute or is based on clemency is final as far as .the two parties are concerned, and neither of them can cancel it, even if there be a

claim of gross loss except in a case of non - compliance with a condition, or when an option of cancellation has been included as a condition.

Article 762 - If a mistake has occurred in the circumstances during the negotiation of the terms of settlement, or in connexion with the object of settlement, the settlement is void

Article 763 - A settlement of account under circumstances of reluctance is not enforceable

Article 764 - Trickery in a settlement is a justification for an option of cancellation.

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Article 765 - A settlement based on a void transaction is void; but a settlement in a claim

arising out of the cancellation of a transaction is valid

Article 766 - If the two parties bring to an end, in a general settlement the whole of their mutual claims whether existing or potential, in the form of a settlement, all the claims are accounted as being included in that settlement, even if the cause of claim was unknown when the settlement was made, unless the settlement did not include that claim, in accordance with evidence.

Article 767 - If, after the settlement, it becomes known that the subject of the settlement did not exist, the settlement is void.

Article 768 - In a contract of settlement it is possible that one of the parties, in return for the share which he receives, should engage himself to pay an alimony for a specified period each year or each month. This engagement may involve alimony for the other party to the settlement or to a third party or parties.

Article 769 - In an engagement such as that specified in the previous Article, whoever derives profit from the settlement, there may be a condition that after the death of the beneficiary the profits may go to his heirs.

Article 770 - A settlement which takes place in accordance with the previous Article is not cancelled by the bankruptcy or the indigence of the person who undertook the engagement, unless there was a condition to that effect.

## SECTION 18

### On Pledges (Mortgage)

Article 771 - A pledge is a contract whereby a debtor gives a property to the creditor as a security.

The person who gives the pledge is called, *rahin'* (mortgagor), and the other party the *,murtahin'* (mortgagee).

Article 772 - The property which is pledged must be transferred to the possession of the creditor, or to that of a person agreed upon by the two parties; but it is not a necessary condition for the validity of the transaction that the property should remain in that possession.

Article 773 - No property which is incapable of being alienated or transferred legally may be the subject of the pledge.

Article 774 - A pledged thing must be a definite object, and the pledging of a debt or a profit is void.

Article 775 - A pledge may be given for any property which is owed, even though a contract which gives rise to the debt be subject to cancellation.



Article 776 - It is possible for one person to give a thing in pledge in respect of two or more debts which he owes to two or more persons. In that case the creditors must agree among themselves as to who shall have possession of the thing; similarly it is possible for

two persons to pledge a thing to one person in return for a claim which he has on them.

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Article 777 - In the course of a contract of pledge, or in accordance with a separate contract, it is possible for the debtor to make the creditor his attorney empowering him to ensure that if, at the time appointed, the debtor does not pay his debt, the creditor will recover from the object pledged or from its price the amount of his claim; and it is also possible that he should arrange that the attorneyship mentioned above should continue after the death of the creditor, vesting in his heirs; and finally it is possible that the attorneyship should be given to a third person.

Article 778 --If it is laid down as a condition that the creditor has no right to sell the thing pledged, it (i.e. the condition) is void.

Article 779 - If the creditor has no authority for the sale of the thing pledged, and the debtor also is not ready to sell it or to pay the debt, the creditor refers to the judge who will compel a sale or oblige the debtor to pay the debt in another way.

Article 780 - The creditor who holds the pledge has preference over every other claimant in the settlement of his claim from the price of the pledged thing.

Article 781 - If the thing pledged be sold at a price greater than the claim of the creditor, the excess belongs to the owner thereof; and if, on the contrary, the proceeds of the sale are less, the creditor must have recourse to the debtor for the balance.

Article 782 - In the circumstances of the last part of the foregoing Article, if the debtor has become indigent, the creditor shares with the creditors of the bankruptcy.

Article 783 - If the debtor pays a part of the debt, he has no right to claim the restitution of part of the thing pledged, and the creditor may retain the whole of it until the whole of the debt is paid, unless another arrangement has been agreed upon between the debtor and the creditor.

Article 784 - It is permissible to change the thing pledged for something else, with the agreement of the two parties.

Article 785 - Everything which in a contract of sale is reckoned as appertaining to the thing sold without any special mention thereof, enters also into the thing pledged.

Article 786 - The earning of the thing pledged and the profits which may accrue to it, will

form part of the thing pledged if they are joined to it; if they are not joined , they belong to the debtor, unless another arrangement has been agreed upon the two parties.

Article 787 - A contract of pledged is binding as far as the debtor is concerned, but it is optional on the creditor; therefore, the creditor may, whenever he desires, cancel the contract, but the pledger cannot take back his pledge before he has paid his debt or before

he has, in some legal manner, become discharged of his debt.

Article 788 - A pledge does not become cancelled by the death of the pledger or of the creditor, but if the creditor dies the debtor may request that the pledge may be given to the possession of a third person appointed with the consent of the heirs and of him.

If the parties concerned do not come to an agreement, the aforesaid person will be appointed by the judge.

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Article 789 - The pledge is regarded as an, amanat' (article on trust) when in the hands of

the creditor; therefore, the creditor will not be responsible for its decay or for its deterioration, unless he is at fault.

Article 790 - When the debtor has cleared himself from his debt, the pledge is a trust in the hands of the creditor; but if, on being asked to return it, he refuses to do so, he will become a guarantor for it, even if he is not at fault.

Article 791 - If the thing pledged becomes destroyed in consequence of the act of the pledger himself or of some other person, the person who destroys it must give the equivalent of the pledge, and the said equivalent will then become the pledge.

Article 792 - The attorneyship mentioned in Article 777 will not apply to the equivalent pledge mentioned in the foregoing Article.

Article 793 - The pledger cannot enter into possession of the pledge in such a way as to be contrary to the rights of the creditor, except with the latter's permission

Article 794 - The debtor may make changes in the pledge, or perform other proprietary rights on the pledge which are of advantage to it and which do not impinge on the rights of the creditor, without there being any right for the creditor to prevent such action; if the creditor prevents, the judge may give permission.

## SECTION 19

### On Gifts (Donation)

Article 795 - A Gift is a contract in virtue of which a person gives over to another gratis

the proprietary rights in a thing.

The person who gives is called, wahib' (the donor); the other party is called, muttahab' (the donee), and the thing which is the subject of the gift is called ain-i-mohubeh'.

Article 796 - The donor must have capacity to contract and possess his thing

Article 797 - The donor must be the owner of the thing which he gives.

Article 798 - A gift does not take place except with the acceptance of the donee and with his taking possession of it, whether the donee himself takes over the gift or whether his attorney does so: and taking possession of the thing without the permission of the donor is of no effect.

Article 799 - In a gift to a minor, or to a lunatic, or to a person of unsound mind, the taking possession of the legal guardian is lawful

Article 800 - If the thing given is in the hands of the donee there is no need for him to take it over.

Article 801 - A gift may be reciprocal. Hence, the donor may make a condition that the donee should give him a thing, or perform gratis a lawful service.

Article 802 - If, before possession has been taken, the donor or the donee dies, the gift becomes void.

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Article 803 - After possession has been taken, also, the donor may take back his gift, provided it still exists, except in the following circumstances:

- 1- When the donee is the father, the mother, or the children of the donee.
- 2 - When the gift has been reciprocated and the reciprocated gift has been handed over.
- 3 - When the thing given has passed out of the possession of the donee, or has become the object of the rights of another, whether by way of compulsion, as where the donee has become a ward in consequence, or by way of choice, as when the thing given has been given as a pledge.
- 4- When a change has been made in the thing given.

Article 804 - If the donor terminates the gift, the usufruct of the thing given belongs to the donor if they are attached to the thing, and to the donee if they are separate.

Article 805 - No revocation can be made after the death of the donor or the donee.

Article 806 - If a creditor agrees to surrender his claim upon the debtor, he has no right of revocation.

Article 807 - If a person gives a thing to another by way of a benefaction (or alms), he has no right of revocation.

### PART3

#### On the Exercise of the Right of Pre - emption (Shuf'eh)

Article 808 - When real property, capable of being divided, is held jointly by two individuals, and one of them transfers his share to a third person by way of sale, the other

joint owner has the right to give the purchaser the price which he has paid for it, and to take possession of the portion sold.

This right is known as the right of pre - emption (shuf'eh), and the person who exercises that right is known as a, shafi '.

Article 809 - When a building and trees are sold without the land, there is no right pre - emption.

Article 810 -If the property of two persons enjoy the right of passage or a waterway held in common, and one of them sells his property together with the right of passage on the road or water, the other one has the right of pre-emption, even though he be not a joint holder in undivided shares in the property itself ; but if one of the parties sells the property apart from the right of passage, the other has no right of pre - emption.

Article 811 - If the share of one of the two partners is a, waqf' (religious endowment), neither the custodian nor the beneficiary of the waqf has any right of pre - emption.

Article 812 - If the thing sold consists of several units, and some of them are subject to pre - emption and the rest are not , it is possible to execute a right of pre - emption in respect of the part possible to execute a right of pre - emption in respect of the part which

is capable of pre - emption, in proportion to its share of the price.

Article 813 - There is no right of pre - emption in an illegal sale.

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Article 814 - The fact that the sale is subject to an option is not an obstacle to the exercise of the right of pre - emption.

Article 815 - A right of pre - emption must not be exercised only in respect of one part of the thing sold; the person entitled to the above - mentioned right must either refrain from it altogether or perform it in respect of the whole of the thing sold.

Article 816 - The exercise of the right of pre - emption renders void any transaction which the purchaser may have performed before that and after the contract of sale, in respect of the subject of the right of pre - emption.

Article 817 - In respect of a partner who exercises his right of pre - emption, the purchaser is a guarantor for any claim of ownership, not the seller. But if, at the time of the exercise of the right of pre - emption the subject of the right is not yet handed over to the possession of the purchaser, the pre - emptor will not have any right of recourse against the purchaser.

Article 818 - The purchaser is not a guarantor respecting any defect or fault or decay which has taken place while the thing has been in his hands before the exercise of the right of pre - emption and after the thing has been claimed, provided that he has not used

it excessively or been guilty of negligence.

Article 819 - Profits which may have accrued to the thing sold before the exercise of the right of pre - emption belong to the purchaser if they are separate, and to the pre - emptor

if they are inseparable; but the purchaser may uproot or destroy any building which he made or any tree which he has planted.

Article 820 - If it is apparent that at the time of the sale the thing sold was defective and the purchaser has therefore been granted a reduction of price, the pre - emptor is entitled

to deduct a corresponding amount from the price at the time when he exercises his option.

The rights of the purchaser in relation to the seller with regard to a claim of ownership in the thing sold are the same as those which apply in the course of a contract of sale.

Article 821 - The right of pre - emption is an immediate one.

Article 822 - A right of pre - emption may be waived; and the fact that it is waived may be inferred from anything which points towards the fact that the above - mentioned right is renounced.

Article 823 - The right of pre - emption is transferred to the heir or heirs of the pre - emptor after his death.

Article 824 - If one or more of the heirs waive their right, the remaining heirs cannot exercise their right only in relation to their own portion; they must either waive their right entirely, or enforce it in relation to the whole of the thing sold.

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PART .4

On Wills and Inheritance

## CHAPTER 1

### ON WILLS

#### SECTION 1

##### On General Considerations

Article 825 - Wills are divided into two categories Possessory and Contractual.

Article.826 - A Possessory will occurs when a person bestows on another person, without charge, the property in a thing or a benefit belonging to him to take effect from the date of his death.

A Contractual Will occurs when a person appoints one or more other persons to carry out an affair, or to perform other possessory acts.

The person making the will is called the Testator; the person in whose favour a possessory will is made is termed the Beneficiary; the thing which is subject matter of the will is called the Legacy (,mussabe'); and the person who, in virtue of a contractual will is appointed either as a trustee for one third of the estates or a trustee for a minor, is called the executor (,vasi').

Article 827 - A right of property resulting from a will does not become definite except with the agreement of the beneficiary after the death of the testator.

Article 828 - If the beneficiaries are not limited in number, as for instance if the will is in favour of the poor or for a work of public benevolence, there is no need to accept.

Article 829 - The acceptance of the beneficiary before the death of the testator is of no effect, and the testator may revoke his legacy, even if the beneficiary may have taken possession of the legacy.

Article 830 - In relation to the beneficiary, the rejection or the acceptance of the legacy after the death of the testator is valid. Therefore, if the beneficiary rejects the legacy before the death of the testator, he may accept it after the death ; and if after his death he accepts it and takes possession of the legacy, he may not reject it afterwards; but if he has accepted the legacy before the death, a second acceptance after the death is not necessary.

Article 831 - If the beneficiary is a minor or insane, the guardian will have to accept or

reject the legacy.

Article 832 - The beneficiary may accept the legacy in relation to a portion of the legacy; in that case the will, in relation to the portion which has been accepted, is valid, in relation to the rest it is void.

Article 833 - The heirs of the testator cannot take possession of the legacy, as long as the

beneficiary has not communicated to the heirs whether he rejects or accepts it

If delay in this notification results in a loss the heirs, the judge will compel the beneficiary to declare his decision.

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Article 834 - In a contractual will acceptance is not a necessary condition; but the executor may refuse the duty referred to him during the life time of the testator ;and if he has not refused it before the death of the testator, he will have no subsequent right of refusal, even if he was ignorant of the trust.

## SECTION 2

### On the Testator

Article 835 - The testator must be competent to possess the thing which is the subject of the will.

Article 836 - If a person wounds or imprisons himself with the intention of committing suicide, or performs other acts of the same nature which causes death, and if after that act

he makes a will, that will is void if he dies; but if, by chance, he does not die ,the will is valid.

Article 837 - If a person, by a will, deprives one or more of his heirs of their inheritance , that disposition is not valid.

Article 838 - The testator can revoke his will.

Article 839 - If the testator makes a second will in contradiction of the first the second will is valid.

## SECTION 3

### On the Legacy

Article 840 - A Will providing for the employment of a thing in a way contrary to law is void.

Article 841 - The legacy must be the property of the testator; and a will which disposes of the property of another, even though it is with the permission of the owner, is void.

Article 842 - It is possible to dispose in a will of property which is not in existence.

Article 843 - The testamentary disposition of more than one - third of the estate is not valid, except with the permission of the heirs; and if some of the heirs agree, the disposition applies only to the share of those heirs.

Article 844 - If the legacy is a definite thing, that thing is to be valued, if its price is more than one - third of the estate, the excess belongs to the heirs , unless they allow otherwise.

Article 845 - The measurement of the third of the estate is fixed in relation to the testator's property at his death, not at the time of his making the will.

Article 846 - If the legacy consists of the property, either for a specified time or permanently, the portion of one - third shall be separated as follows:

In the former case, the whole property, with its profits, will be valued . Then, the said property will be valued having regard to the loss of profits during the period of the legacy; and the difference between the two prices will be reckoned towards the third part.

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In the latter case, i.e. if the legacy be the permanent profits of the property, and for this reason the property itself has no value, the price of the property, having regard to the profits, will be reckoned towards the third part.

Article 847 - If the legacy consists of things of a standardized nature, not of particular units, the determination of the units there of is the duty of the heirs, unless other arrangements have been laid down in the will.

Article 848 - If the legacy be undivided share of the estate, such as a quarter or a third thereof, the beneficiary will become a partner in undivided shares with the heirs in that same proportion of the estate

Article 849 - If the testator leaves as a legacy, in a specified manner, more than one - third of his estate, and the heirs do not consent to more than one - third, the portion be separated from the estate in the same manner as laid down in the will, up to the amount of

one- third, and the excess will be void; and if the legacy relates to several objects without

specifying how much goes to each, a deduction will be made from all those objects.

#### SECTION 4

On the Beneficiary Under a will



Article 850 - The beneficiary must be alive, and must be able to be the proprietor of the thing which is left to him in the will.

Article 851 - A legacy in favour of an unborn child is valid, but proprietary rights only pass if the child is born alive

Article 852 - If abortion takes place as the result of a crime, the legacy goes to his heirs, unless the crime prevents their inheriting.

Article 853 - If the beneficiaries are more than one in number, but are limited in number, the legacy is divided equally among them, unless the testator arranged differently in the will.

## SECTION 5

On the 'Vasi' (Executor)

Article 854 - The testator can appoint one or more persons as executor. If they are more than one, the persons appointed must carry out the duty together, unless each one of them

has been declared independent.

Article 855 - The testator may appoint several persons in succession to be executor, in this way, that if the first dies, the second becomes the executor, and if the second dies, the third, etc.

Article 856 - It is possible to appoint a minor as an executor, together with a person of full age. In that case, the person of full age will execute the duty until the minor arrives at full age.

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Article 857 - The testator may appoint one person to supervise the operations of the executor.

The limits of the authority of the supervisor will be as stipulated by the testator, or else will be determined by analogy. Article 858 - The executor is in the position of a trustee for the property which is in his possession in accordance with the will, but he is not a guarantor, except in case there is excessive use or negligence.

Article 859 - The executor must act in accordance with the testator, or else he will be a guarantor and will be dismissed.

Article 860 - No one except the father or the father's father may an executor .for a minor.

## CHAPTER 2

### ON INHERITANCE

## SECTION 1

On the causes or Inheritance and the Various Degrees of Heirship

Article 861 - Two things give rise to inheritance: relationship and connexion by marriage.

Article 862 - Persons who take inheritance by relationship are of three categories:

- 1 - Father, mother and children.
- 2 - Grandparents, brother, sister and their children.
- 3 - Paternal uncles and paternal aunts, maternal uncles and maternal aunts and their children.

Article 863 - Heirs of the lower categories take an inheritance when no person of a higher category exists.

Article 864 - An instance of those who inherit by marriage is one of the spouses who survives the other one.

Article 865 - If several causes of inheritance are united in the same person, he takes inheritance from all the causes, unless some of those causes exclude other, in which case

he takes inheritance only from those causes which exclude others.

Article 866 - If there is no heir, the judge will make dispositions concerning the estate.

## SECTION 2

On the True Commencement of the Inheritance

Article 867 The inheritance becomes definite on the real or the supposed death of testator.

Article 868 - The rights of possession of the heirs, in relation to the estate of the deceased, do not become established except after the payment of the dues and the debts

attaching to the estate of the deceased.

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Article 869 - The dues and debts which attach to the estate of the deceased and must be paid before it is divided up are as follows

- 1 - The price of the winding - sheet of the corpse, and the dues which attach to the property of the estate, such as a thing which is subject to a pledge.
- 2 - The debts and the proprietary charges which were incumbent on the deceased.
- 3 - The legacies of the deceased, if without the permission of the heirs up to one third of the estate ; if with their permission, more than one third.

Article 870 - The dues mentioned in the foregoing Article must be paid in the order laid down in that Article; and the remainder, if any, must be divided up among the heirs.

Article 871 - If the heirs perform transactions relating to the actual chattels constituting the estate, those transactions are of no effect as long as the debts of the deceased are not paid; and the creditors can cancel them.

Article 872 - The goods of a continually absent person will not be distributed except after proof of his death, or after the expiration of the period which such a person might normally be expected to live.

Article 873 - If the date of the death of persons who take inheritance from one another is not known, and the priority of one over the other is not ascertained, those persons will not

take inheritance from one another, except where the death takes place as the result of drowning or an accident, in which case they will take inheritance from one another.

Article 874 - If persons who are entitled to inherit one from another die, and the date of the death of one of them is known, and it is not known whether the death of the other was

before or after that date, only the person whose date of death is unknown will take an inheritance from the other, and not vice versa.

### SECTION 3

#### On the Conditions and the Impediments of Inheritance

Article 875 - It is a condition of inheritance that the heir should be alive at the moment of the death of the person from whom the inheritance issues; and if it is a question of an unborn child, it takes an inheritance only if it was conceived at the moment of death, and if it was born alive, even if it dies immediately after birth.

Article 876 - If there be a doubt whether the infant was alive at the moment of birth, no inheritance passes.

Article 877 - If there be a dispute as to the moment of conception, the provisions of the law relating to the indications furnishing a presumption of paternity will be applied.

Article 878 - When at the time of death, there is an infant conceived which, if born and capable of inheriting, will prevent the succession of all or a part of the other heirs, the inheritance will not be divided up till such time as the state of the infant be determined; and if the infant conceived will not stand in the way of the inheritance of any of the other

heirs, and the latter, desires the estate to be divided up, a portion must be set aside for the

conceived infant equal to the portion of two sons of that degree of relationship; and the  
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portion of each of the heirs is conditional until the state of the infant conceived is determined.

Article 879 - If there be a lost or untraceable person among the heirs, his portion will be set aside until his state is determined, if it be established that he died before the source of

the inheritance, his portion returns to the other heirs; otherwise, it goes to him or to his heirs.

Article 880 - Murder is an obstacle to succession; hence, a person Who intentionally kills the deceased is prevented from taking any inheritance from him, whether he were the perpetrator, or whether he were the instigator, or whether he were acting singly or as the accomplice of others.

Article 881 - If the intentional killing of the deceased was by process of law, or justified defense, the provisions of the pervious Article do not apply.

Article 881 bis - An unbeliever (Kafir) does not take inheritance from a Muslims and if there are unbelievers among the heirs of a deceased unbeliever, the unbelieving heirs do

not take inheritance even if they are prior to the Muslim as concerns class and degree.

Article 882 - After a solemn malediction (li'an) husband and wife will take inheritance from one another; similarly a child who, owing to a denial of paternity, has been the cause of a solemn malediction, does not take inheritance from the father nor the father from him; but the said child takes inheritance from the mother and his maternal relations, and vice versa.

Article 883 - If a father, after pronouncing a solemn malediction, withdraws it , the son takes inheritance from him; but he takes no inheritance from the paternal relations, nor does the father nor the inheritance from the paternal relations, nor does the father nor the

paternal relations take inheritance from the son.

Article 884 - An illegitimate child does not take inheritance from the father, the mother, or their relations; but if the illegitimacy of the relationship of which the child is the result is established in relation to one of the parties, while it is not established for the other

party by reason of violence or error, the child takes inheritance only from the latter side, and vice versa.

Article 885 - The children and the relations of the persons who are deprived of inheritance in accordance with Article 880 are not deprived of inheritance; hence, the offspring of a person who has killed his own father takes inheritance from his murdered grand father, if nearer relatives do not come between.

#### SECTION 4

##### On Exclusion From Inheritance (Hujb)

Article 886 - Exclusion from Inheritance (hujb) is the name given to the state of an heir who is completely or partially excluded from taking an inheritance owing to the existence of another heir.

Article 887 - Exclusion from inheritance is divided into two classes:

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First, when the heir is deprived of the inheritance totally, e.g. a brother's son is deprived of the inheritance owing to the existence of a brother of the full blood

Second, when the portion of an heir is lessened from the highest grade to the lowest grade; as for instance when the share of a husband is lessened from a half to a quarter whenever there are children from the wife; and similarly when the share of the woman is reduced from a quarter to an eighth whenever there are children from her husband.

Article 888 - The determining factor in total exclusion from inheritance is the nearness of relationship to the deceased; hence, each degree of heirs deprives the next degree of taking

any inheritance except in the case mentioned in Article 936 and in the cases where the more remote heir is able to take inheritance by way of representation of another, in which

case both take an inheritance.

Article 889 - As between the heirs of the first degree, if there be no children of the deceased, the children's children, to whatever extent they go down, are the representatives of their father or their mother, and take an inheritance with the remaining parent; but, as between the children, the nearest to the deceased deprives the further ones

from inheritance.

Article 890 -As between the heirs of the second degree, if there are no brothers or sisters of the deceased, the children of his brothers or sisters, however far down they go, are the representatives of their father or mother , and take an inheritance with whichever of the ancestors of the deceased has survived; but , as between the ancestors or the brother's or sister's children, the nearer to the deceased deprives the remoter from an inheritance. The provisions of this Article will also be applied in the case of the heirs of the third degree.

Article 891 - The following heirs are not subject to exclusion from an inheritance:

Father, mother, son, daughter, husband and wife.

Article 892 - Partial exclusion from inheritance of a share occurs in the following cases

1 - Whenever the deceased has children or grandchildren, in that case the parents of the deceased may not take more than one - third of the estate, except in accordance with Articles 908 and 909, in which case it is possible for either of the parents to take, by way of relationship or remainder, more than one sixth; and similarly the husband is restrained from taking more than one quarter, and the wife from taking more than one - eighth.

2 - Whenever the deceased has brothers or sisters. In that case the mother of the deceased

is restrained from taking more than one - sixth, provided that:

a - There be at least two brothers, or one brother with two sisters, or four sisters

b - Their father be still alive.

c - She under no incapacity for inheriting, except for reasons of murder ; and

d - The brothers and sisters of the deceased be of the full - blood or on the father's side.

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## SECTION 5

On 'Shares' of Inheritance Those Entitled to the Same

Article 893 - The heirs take their inheritance sometimes by shares; and sometimes by relationship; and sometimes by both shares and by relationship.

Article 894 - Persons who take, share are those whose portions of the estate are fixed; and

persons who take by relationship are those whose portions are not fixed.

Article 895 - The fixed portions which are termed, shares are defined as a half, a quarter,

an eighth, two - thirds, and one - sixth of the estate.

Article 896 - The persons who take inheritance by share consist of the mother, the husband, and the wife.

Article 897 - The persons who take partly by share and partly by relationship consist of the father, the daughter or the daughters, and the sisters on the father's side or of the full blood, and cousins (kalaleh) on the mother's side.

Article 898 - All other heirs, other than those mentioned in the two preceding Articles, take their inheritance only by ,relationship'.

Article 899 - Three categories of heirs are entitled to a share of one - half of the estate

1 - The husband, on condition that there be no children from the deceased wife whether from that husband or from another husband.

2- A daughter, if she be sole offspring.

3-A sister of full blood or half blood on the father's side, provided that she be the only one.

Article 900 - Two categories of heirs are entitled to take one - quarter of the estate as their share.

1 - The husband, if the woman dies having children.

2- The wife or wives, prided that the husband has died without offspring.

Article 901 - A ,share' of one - eight belongs to the wife or wives, provided the husband has died having children.

Article 902 - A two-thirds share of the estate belongs to two categories of heirs:

1 - Two daughters or more, provided there are no male offspring.

2 - Two or more sisters of the full or the half blood on the father's side, if there are no brothers.

Article 903 - Two categories of heirs take a one-third share:

The father, the mother, and the mother's relation (kalaeh) if only one.

Article 904 - Three categories of heirs take a one-sixth share:

The father, the mother, and the mother's relation (kalaleh) if only one.

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Article 905 - Each of the persons entitled to a share takes his portion from the estate of the deceased; and then the rest remains for those entitled by relationship: and if the person entitled to take by relationship be not equal in that category to the rank of the person who takes by a share, the rest is returned to the person entitled by share, except in

the case of a husband or a wife, to whom it will not be returned; nevertheless, if there be no heir to the deceased except the husband, the balance of the estate remaining after abstraction of the share is returned to him.

## SECTION 6

On the Portions of Inheritance of the Various Degrees of Heirs

### SUBSECTION 1

On the Portions of Inheritance of the First Degree

Article 906 - If the deceased has left no living children, and no living children's children of whatever degree, either of the parents, if alone, takes the whole estate; and if the father

and mother of the deceased are both alive, the mother takes one - third and the father two

- thirds. But if the mother comes after someone else, one-sixth of the estate belongs to the

mother and the rest to the father.

Article 907 - If the deceased leaves no parents, but has one or more children, the estate will be divided as follows:

If the offspring consists of only one, whether son or daughter, the whole of the estate belongs to that child.

If there are several children, but all are sons or all daughters, the estate will be divided equally among them.

If there are several children, some being sons and some daughters each son takes twice as

much as each daughter.

Article 908 - If the father or the mother of the deceased, or both parents, are alive, together with one daughter, the share of each one of the father and the mother will be one-sixth of the estate.; and the share of the daughter will be one - half there of. The remainder must be divided among all the rest of the heirs in proportion to the share of each; unless the mother comes after someone else, in which case the mother takes no portion of the remainder.

Article 909 - If the father or the mother, or both the parents of the deceased are alive, together with several daughters, the share of the whole of the daughters will be two-thirds

of the estate ,which is to be divided equally among them; and the ,share' of each one of



the father and the mother will be one - sixth . And if there be a remainder it will be divided among all the heirs in proportion to their shares unless the mother comes after someone else, in which case the mother will not take any portion of the remainder.

Article 910 - If the deceased has sons or daughters, even if only one person, his grandchildren do not inherit.

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Article 911 - If the deceased leaves no sons or daughters, his grand children are the legal

representatives of his sons or daughters, and in this way are reckoned as belong in to the

first degree of descendants, and take inheritance with each one of the parents who are alive.

The division of the inheritance among the grandchildren will take place in accordance with their sex, that is to say, each individual will take the portion the person through whom he claims descent from the deceased; hence, the children of a son take twice as much as the children of a daughter.

In the division among individuals of each sex, a boy takes twice as much as a girl.

Article 912 - Children's children, to whatever generation they extend, take inheritance in the way recorded in the previous Article subject to this, and those nearer to the deceased

exclude those more remote from him.

Article 913 - In all the conditions mentioned in this subsection, whichever of the married pair is the survivor takes his or her, share and this share means one half of the estate for the surviving husband and one-quarter for the surviving wife, provided that the deceased left no children or grandchildren; and it means one - quarter of the estate for the husband

and one - eighth for the wife if the deceased left children or children's children. And the remainder of the estate is to be divided among the other heirs in accordance with the preceding Articles.

Article 914- If, owing to the existence of several persons entitled to shares, the estate of the deceased be not sufficient to satisfy of them, the deficiency falls on the daughter or the two daughters; and if, after deduction of the portion of those entitled to shares there still remains something, and there be no heirs entitled to take the remainder by way of relationship, this remainder will be divided among the persons entitled to shares in

accordance with the provisions of the preceding Articles; but the husband and the wife in all case, and the mother if she comes after someone else, take no part of the remainder.

Article 915 - The ring which the deceased used to wear, and also the Qoran and the personal clothes and the sword of the deceased go to the eldest son, without being reckoned as part of his portion, unless the estate of the deceased consists of nothing else.

## SUBSECTION 2

On the Portions of Inheritance of the Second Degree

Article 916 -If the estate goes to the heirs of the second degree.

Article 917 - Each one of the heirs of the second degree, if the only one, takes the whole of the estate; and if there are more than one, the estate will be divided among them in accordance with the following Articles.

Article 918 - If the deceased leaves full brothers or sisters, half- brothers or sisters do not inherit.

If there are no full brothers or sisters, half - brothers and half - sisters on the father's side take their portion of the inheritance.

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Article 919 - If the heirs of the deceased consist of several full brothers, or of several half - brothers on the father's side, or several full sisters, or of several half - sisters on the father's side, the estate will be divided among them equally.

Article 920 - If the heirs of the deceased consist of several full brothers and sisters, or of several half - brothers and half - sisters on the father's side, the share of a male will be twice that of a female.

Article 921 - If the heirs consist of several brothers on the mother's side, or of several sisters on the mother's side, the estate will be divided among them equally.

Article 922 - If there are full brothers and also brothers and sisters from the mother's side, the division will be performed in the following manner:

If the brother or the sister on the mother's side be one person only, he or she takes one - sixth of the estate, and the rest belongs to the brothers and sisters of the full or half blood

on the father's side, who will divide up the rest in the manner laid down above.

If there are several brothers and sisters on the mother's side (kalaleh), one - third of the estate belongs to them and is divided among them equally, and the rest belongs to the

brothers and sisters of the full or the half blood on the father's side and is divided among them in accordance with the disposition laid down above.

Article 923 - If the heirs consist of grandfathers or grandmothers, the estate will be divided among them in the following manner:

If there be a sole grandfather or grandmother, whether paternal or maternal he or she takes the whole of the estate.

If there be more than one grandfather and grandmother, and if both be paternal, males take twice as much as females and if they be both on the maternal side, the estate is divided among them equally.

If there be both grandfather or grandmother on the father's side and grand father or grandmother on the mother's side, one - third of the estate goes to the grandfather or grandmother on the mother's side; and if there be more than one ancestor on the mother's side; that third part will be divided equally among them all; and the remaining two -thirds will go to the grandfather or grandmother on the mother's side; and if there be more than one such ancestor, the portion of a male in that two - thirds part will be twice the portion of a female.

Article 924 - If the deceased leaves ancestors and brothers and sisters (kalaleh), two - thirds of the estate goes to the heirs which have relationship on the side of the father; and

in dividing up this portion the males take twice the portion of the females; and one - third goes to the heirs which have relationship on the mother's side, and is divided among them equally; nevertheless, if the relations on the mother's side consist of only one brother or one sister on the mother's side, he or she will only be entitled to one - sixth of the estate.

Article 925 -In all the cases dealt with in the foregoing Articles, if the deceased leave neither brothers nor sisters, the nephews and nieces are their legal representatives, and take inheritance with the ancestors; in that case, the division of the inheritance in regard to the nephews and nieces will take place by way of their generation, that is to say, each

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generation takes the portion of that person through whom he or she claims relationship with the deceased Hence the children of full or half brothers and sisters will take portion of the full or half brothers and sisters on the father's side only , and the children of

brothers and sisters on the mother's side take the inheritance of the brothers and sisters on mother's side.

In dividing the inheritance among the individuals of one generation, if the children of the full or the half blood on the father's side be alone, the male take twice the portion of the female's; and if they descend from brothers and sisters on the mother's side, the portion will be shared equally.

Article 926 - If there be in existence both brothers and sisters of the full blood, and those of the half blood on the father's side, and those of the half blood on the mother's side, the

brothers and sisters of the half blood on the father's side will be excluded from the inheritance

Article 927 - In all the cases mentioned in this subsection whichever one of the married pair remains takes his or her, share' from the original estate for the husband, and a quarter thereof for the wife.

The shares of the relations of the mother, whether ancestors or descendants (kalaleh), are taken from the original estate.

If, owing to the inclusion of the husband or the wife, there be a deficiency in the available inheritance, this deficiency will be borne by the brothers and sisters of the full blood or of the half blood on the father's side or by the paternal ancestors.

### SUBSECTION 3

On the Portions of Inheritance of the Heirs of the Third Degree

Article 928 - If there be no heir o the second degree left by the deceased, his estate goes to the heirs of the third degree.

Article 929 - Each one of the heirs of the third degree, if he is the sole person of that description, takes the whole of the inheritance; and if there be more than one such person,

the estate will be divided among them in accordance with the following Articles.

Article 930 - If the deceased leaves uncles or aunts related through both father and mother, the uncles and aunts related through only one parent do not inherit.

If there be no uncles or aunts related through both father and mother, the uncles and aunts related through the father take their portion.

Article 931 - If the heirs of the deceased consist of several paternal uncles or of several paternal aunts, the estate will be divided among them equally, provided that they are all related through father and mother, or all through the father, or all through the mother.

If there be paternal uncles and paternal aunts, all of them being from one mother, they will divide the estate equally; but if all of them are from the same father and mother, or from the same father only, the portion of the males will be twice that of the females.

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Article 932 - If there be paternal uncles of the same mother, and also paternal uncles of the same mother and father and of the same father only, the paternal uncle or aunt of the

same mother, if alone, takes one - sixth of the inheritance; if they be several, they take one- third of the estate and divide this third equally among themselves; and the rest of the

estate goes to the uncles of the same father and mother, or of the same father, and in the

sharing males take twice the portion of the females.

Article 933 - If the heirs of the deceased consist of several maternal uncles or of several maternal aunts, or of several maternal uncles and maternal aunts together, the estate is divided among them equally, whether all are of the same father and mother, or all of the same father, or all of the same mother.

Article 934- If the heirs of the deceased consist of a maternal uncle and aunt from the same father, or from the same father and mother, together with a maternal uncle and aunt

from the same mother, if the relation of the same be one only he or she takes one - sixth of the estate ;if there be more than one, they take on - third of it and divide it equally among themselves, and the remainder belongs to the maternal uncles and aunts of the same father and mother, or of the same father, who also divide it among themselves in equal shares.

Article 935 - If the deceased leaves one or more paternal uncles or aunts together with one or more maternal uncles or aunts, one - third of the estate goes to the maternal uncles

and aunts, and two - thirds to the paternal uncles and aunts.

The division of the third among the maternal uncles and aunts will be in equal portions , but if, among the maternal uncles and aunts there be one related only through the mother,

one - sixth of the portion of the maternal uncles and aunts goes to that person; and if there

be several related only through the mother, one - third of that portion will be given to them, and in that case there will be an equal division among them.

In the division of the two - thirds part among the paternal uncles and aunts, the portions of the males will be twice that of the females; but if there be one person of the paternal uncles and aunts who is related through the mother only, one - sixth of the portion of the paternal uncles and aunts goes to him ; and if there be more than one such person related

through the mother only, one - third of that portion will go to them, in that case they will divide that third portion equally.

In the division of the five - sixth or the two - thirds which remains after deducting the portion of the paternal uncles and aunts, it will be divided among the paternal uncles and aunts related by father and mother or those related by the father only, in such a way that the portion of each male is twice that of each female.

Article 936 - If there be living paternal uncles or aunts or maternal uncles or aunts, their children do not inherit, except when the heirs are confined to one nephew from a paternal

uncle related by father and mother, together with one paternal uncle related only on the side of the father; in that case only, the nephew deprives the uncle of an inheritance; but, if, in addition to the nephew from a paternal uncle related by father and mother, there be a maternal uncle or aunt, or several paternal uncles or aunts even if related through the father alone, the nephew will take no inheritance

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Article 937 - If the deceased has left neither paternal uncles or aunts nor maternal uncles

or aunts, their children take inheritance in their stead, and the portion of each stock will be the portion of that person through whom the stock claims descent from the deceased

Article 938 - In all the case mentioned in this subsection, the surviving spouse take his or

her share from the original estate, and this share means one - half of the original estate for

the deceased's husband and one - quarter for the deceased's wife.

A person related through the mother takes his portion from the original estate, and the remainder belongs to the persons related through the father; and if there be a deficiency, it will be borne by the persons related through the father.

Article 939 - In all the cases mentioned in this subsection and two previous subsections, if the heir is a hermaphrodite and be one of a group of heirs which are such that the males

take twice the portion of the females, his portion will be determined as follows.

If the indications of masculinity are the greater, he takes the portion of boy of his degree; and if the indications of femininity are the greater, the hermaphrodite takes the portion of one girl of that degree; and if neither the masculine nor the feminine indication be preponderant, the hermaphrodite will take one - half of the sum of the portions of one boy

and one girl of his degree.

#### SUBSECTION 4

On the Inheritance of Husband and Wife

Article 940 - A married pair, married permanently, and not restrained from inheriting, take inheritance one from the other.

Article 941 - The portions of inheritance of a husband and a wife follow the provisions of Articles 913, 927 and 938.

Article 942 - If there be more than one wife, the fourth or eighth part, which belongs to the wife, will be divided equally among them.

Article 943 - If the husband has divorced his wife in such a way that the divorce is revocable, either one of them who dies before the expiry of the "uddah" period will inherit from the other; but if the death of one of them takes place after the expiry of the "uddah" period, or if the divorce was irrevocable, they will not inherit from one another.

Article 944 - If the husband divorces his wife when he is ill, and dies of that same disease

within a year from the divorce, the wife takes inheritance from him, even if the divorce were irrevocable; provided that the wife has not taken another husband.

Article 945 - If a man marries a woman when he is ill, and dies of that disease before

consummation of the marriage, the wife does not take inheritance from him; but if he dies after consummation, or after recovery from that disease, the wife takes inheritance from him.

Article 946 - The husband takes inheritance from the whole of the effects of the wife; but the wife takes only from the following effects

a - From the movable property, of whatever kind.

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b - From building and trees.

Article 947 - The wife takes inheritance from the price of the buildings and trees, and not from those things themselves; and the method of valuation is this, that the buildings and trees are valued on the supposition of their being worthy to remain in the ground, but without taking into consideration the labour.

Article 948 - If, in the circumstances of the previous Article, the heirs refuse to pay the price of the building and the trees, the woman may realise her right on those thing from the thing themselves. Article 949 - If there be no other heir apart from the husband or wife , the husband takes the whole of the estate of his late wife; but the wife takes only her portion , and the rest of the estate of the husband is considered as the estate of a man

without any heir, and will be dealt with in accordance with Article 866.

### BOOK 3

#### On Various Provisions

Article 950 – “Replaceable things” (misli) mentioned in this Act mean things which are such that similar things are well known and exist in great quantities, such as seeds; and priceable things (qaimi) are the counterpart of “misli” things.

Nevertheless, the determination of this theory depends upon custom.

Article 951 - Encroachment (ta’addi) consists of conduct surpassing the limits of permission or ordinary usage, in relation to a thing or a right belonging to another.

Article 952 - Negligence (tafrif) consists of omission of an act which, in virtue of an agreement of by ordinary usage, is necessary for the protection of another’s property.

Article 953 - Fault includes excessive use and negligence. Article 954 - All optional contracts (jaiz) are cancelled by the death of one of the parties; similarly they are cancelled by imbecility, in matters where adolescence is a necessary condition.

Article 955 - The provisions of this Act are validly applicable to all circumstances which



took place before this Act.

## BOOK 1

### General Terms

Article 956 - The capacity to possess rights begins with the birth of a human being and ends with his death.

Article 957 - A child in the womb will enjoy civil rights provided that it comes into the world alive.

Article 958 - Every human being is entitled to civil rights but nobody can utilise and employ these rights unless he possesses legal capacity for so doing.

Article 959 - Nobody can alienate himself entirely from the enjoyment or use of the whole or part of his civil rights.

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Article 960 - Nobody can dispossess himself of his liberty or forgo the enjoyment of his liberty so long as it is within the limits of decency and his action is not contrary to the law.

Article 961 - Foreign nationals are also entitled to the enjoyment of civil rights with the following exceptions:

1 - In respect of rights which are recognized by law as being explicitly and exclusively for Iranian subjects or explicitly denied to foreign nationals.

2 - In respect of rights concerning personal status which are not accepted by the law of the Government of the foreign national.

3 - In respect of special rights created solely from the point of view of the Iranian people.

Article 962 - Determination of the capacity of any person to contract is to be in accordance with the law of his own country; nevertheless, in the case of a foreign national who carried out a civil contract in Iran for which, according to the law of his own country, he did not possess capacity or possessed only a partial capacity, and if, apart from his foreign nationality, he can be recognized according to Iranian law as possessing the capacity to make that contract, he will in fact be recognized as having capacity in respect of that contract.

The foregoing recognition will not include civil contracts concerning family rights, rights of inheritance or the transfer of real estate situated outside Iran.

Article 963 - If husband and wife are not nationals of the same country, their personal and financial relations with one another will be subject to the laws of the country of the husband.

Article 964 - Relations between parents and their children are subject to the law of the country of the father unless the only certain parentage of the child is that of its mother, in which case the relations between the two follow the laws of the country of the mother.

Article 965 - Legal guardianship and the appointment of a guardian for minor children will be in accordance with the laws of the country of the ward.

Article 966 - Possession, ownership and other rights exercised over moveable or immovable property follow the laws of the country where the things exist or are situated; nevertheless, the transfer of moveable property from one country to another cannot affect

or limit the rights which persons may have acquired over those things in accordance with the laws of the country in which the things were first situated.

Article 967 - The moveable or immovable property of deceased foreign nationals in Iran will be dealt with under the laws of the country of the deceased person only in case of substantive laws such as the laws concerning the nomination of the heirs, the determination of the extent of their respective shares in the inheritance and of the proportion of the assets which the deceased person could have disposed of by virtue of a will.

Article 968 -Obligation arising out of contracts subject to the laws of the place of the performance of the transaction except in cases where the parties to the contract are both  
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foreign nationals and have explicitly or impliedly declared the transaction to be subject to the laws of another country.

Article 969 - The method of drawing up a document follows the laws of the place where that document is drawn up.

Article 970 - Foreign diplomatic or consular officers in Iran can carry out marriage formalities only in cases where the parties to the marriage are both nationals of their country and also where the laws of that country allow them to nationals of their country and also where the laws of that country allow them to do so. The marriage must in any case be registered at the Civil Status Office.

Article 971 - Claims and lawsuits follow, in matters of competency of the court and of laws of procedure, the laws of the place where they are instituted. The fact that the same case or claim is already being decided by a foreign court cannot nullify the competency of the Iranian court.

Article 972 - Effect cannot be given in Iran to judgments issued by foreign courts and official documents recognized as being enforceable by law in a foreign country unless an order to do so is issued in accordance with Iranian laws.

Article 973 - If, in accordance with Article 7 of Volume I of this Act or the foregoing Article, the law of the foreign country which is to be enforced has made reference to another law, the court is not bound to observe such reference unless the reference was originally made in favour of Iranian laws.

Article 974 - The stipulations of Article 7 and Articles 962 to 974 of this Act will only be enforced insofar as the enforcement is not incompatible with the international treaties signed by the Government or with the provisions of special laws.

Article 975 --The court cannot enforced foreign laws or private agreements which are contrary to public morals or which may be considered by virtue of injuring the feelings of society or for other reasons, as contrary to public order, notwithstanding the fact that the enforcement of such laws is permissible in principle.

## BOOK 2

### Concerning Nationality

Article 976 - The following persons are considered to be Iranian subjects

1 - All persons residing in Iran except those whose foreign nationality is established; the foreign nationality of such persons is considered to be established if their documents of nationality have not been objected to by the Iranian Government.

2- Those born Iran or outside whose fathers are Iranian.

3 - Those born in Iran of unknown parentage.

4 - Persons born in Iran of foreign parents, one of whom was also born in Iran.

5 - Persons born in Iran of a father of foreign nationality who have resided at least one more year in Iran immediately after reaching the full age of 18; in other cases their

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naturalization as Iranian subjects will be subject to the stipulations for Iranian naturalization laid down by the law.

6 - Every woman of foreign nationality who marries an Iranian husband.

7- Every foreign n who has obtained Iranian nationality

Note - Children born of foreign diplomatic and consular representatives are not affected by Clause 4 and 5 of this Article.

Article 977 –

(a) If persons mentioned in Clause 4 of Article 976 wish to accept the nationality of their

fathers they must submit a written declaration to be Ministry of Foreign Affairs to which they should annex a certificate issued by the national Government of their fathers to the effect that the said Government would recognize them as their own nationals.

(b) If persons mentioned in Clause 4 of Article 976 after reaching the full age of 18 years wish to remain of the nationality of their fathers, they must, within a period of one year, submit a declaration to the Ministry of Foreign Affairs to which they should annex a certificate from their father's national Government indicating that the said Government would recognize them as its own nationals.

Article 978 - Reciprocal treatment will be observed in the case of children born in Iran of nationals of countries where children born of Iranian subjects are considered as nationals

of that country and the return of such children to Iranian nationality is made dependent on permission.

Article 979 - Persons can obtain Iranian nationality if they:

- 1 - Have reached the full age of 18.
- 2- Have resided five years, whether continuously or intermittently, in Iran.
- 3 - Are not deserters from military service.
- 4 - Have not been convicted in any country of non - political major misdemeanours or felonies.

In the case of Clause 2 of this Article, the period of residence in foreign countries in the service of the Iranian Government will be considered as residence in Iran.

Article 980 - Those opting for Iranian nationality who have rendered services or notable assistance to public interests in Iran, or who have Iranian wives by whom they have children, or who have attained high intellectual distinctions or who have specialised in affairs of public interest can be accepted as nationals of the Islamic Republic of Iran without the observance of the requirement of residence, subject to the sanction of the Council of Ministers and provided that the Government considers their naturalization to Iranian nationality to be advisable.

Article 981 - This Article was repealed on 29 December 1982.

Article 982 - Those who have obtained or obtain Iranian nationality will enjoy all rights recognized for Iranians but cannot attain to the following positions:

- 1 - Presidency or vice - presidency:

- 2 - Membership in the Council of Guardians and chief of the Judiciary
- 3- Ministry, deputy ministry, position of governor - general and governorship.
- 4- Membership of the Islamic consultative Assembly.
- 5 - Membership of provincial, or district councils, or municipal councils.
- 6 - Entry into the service of the Ministry of Foreign Affairs, or attaining any diplomatic position or being appointed on diplomatic delegations.
- 7 - Judgeship.
- 8 - The highest - rank in the Army, the Revolutionary Guard and the police.
- 9- Holding important information and security positions.

Article 983 - An application for naturalization must be submitted to the Ministry of Foreign Affairs direct or through the Governors or Governors General, and be accompanied by the following documents

- 1 - Certified copy of the identity papers of the applicant, his wife and children.
- 2 - Certificate from the police stating the period of residence in Iran of the applicant, his clean record, possession of sufficient property or of employment which ensures a livelihood.

The Ministry of Foreign Affairs will complete, if necessary, the particulars concerning the applicant and will send the papers to the Council of Ministers for an appropriate decision rejecting or accepting the application. If the application is accepted a document of nationality will be delivered to the applicant.

Article 984 - The wife and minor children of those who obtain Iranian nationality in accordance with this Act will be recognized as Iranian nationals but the wife can submit, within one year of the date of issue of nationality papers to her husband, and the minor children can submit, within one year after reaching the full age of 18, a written declaration to the Ministry of Foreign Affairs accepting the former nationality of her husband or the father as the case may be , provided, how ever, that the certificate mentioned in Article 977 is attached to the declaration of the children whether male or female.

Article 985 - Adoption of Iranian nationality by the father in no affects the nationality of his children who may have attained the full age of 18 at the date of his application for naturalization.

Article 986 - A non - Iranian wife who may have acquired Iranian nationality by marriage, can revert to her former nationality after divorce or the death of her husband, provided that she informs the Ministry of Foreign Affairs in writing of the facts but a

widow who has children from her former husband cannot take advantage of this right so long as her children have not attained the full age of 18. In any case , a woman who may acquire foreign nationality according to this Article cannot possess properties except within the limits fixed for foreign nationals . If she possesses landed properties more than

those allowed in the case of foreign nationals, or if subsequently she comes into possession by inheritance of landed properties exceeding that limit, she must transfer by 96

some way or other to Iranian nationals the surplus amount of landed properties within one

year from the date of her renunciation of Iranian nationality or within one year from the date of her acquiring the inherited property. Failing this, the properties in question will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to her after the deduction of the expenses of sale

Article 987 - An Iranian woman marrying a foreign national will retain her Iranian nationality unless according to the law of the country of the husband the latter's nationality is imposed by marriage upon the wife . But in any case, after the death of the husband or after divorce or separation, she will re - acquire her original nationality together with all rights and privileges appertaining to it by the mere submission of an application to the Ministry of Foreign Affairs , to which should be annexed a certificate of the death of her husband or the document establishing the separation.

Note 1- If the law of nationality of the country of the husband leaves the wife free to preserve her former nationality or to acquire the nationality of her husband, the Iranian wife who opts to acquire the nationality of the husband and who has proper reasons for doing so can apply in writing to the Ministry of Foreign Affairs and the Ministry can accord her request.

Note 2 - Iranian women who acquire foreign nationality by marriage have not the right to possess landed properties if this would result in the economic dominance of a foreigner. The provisions of Article 988 so far as they concern going out of Iran do not apply to the women above - mentioned.

Article 988 - Iranian nationals cannot abandon their nationality except on the following conditions

1 - That they have reached the full age of 25.

2 - That the Council of Ministers has allowed their renunciation of their Iranian

nationality.

3 - That they have previously undertaken to transfer, by some means or other, to Iranian nationals, within one year from the date of the renunciation of their Iranian nationality, all the rights that they possess on landed properties in Iran or which they may acquire by inheritance although Iranian laws may have allowed the possession of the same properties

in the case of foreign nationals.

The wife and children of the person who renounces his nationality according to this Article do not lose their Iranian nationality, whether the children are minors of age, unless the permission of the Council of Ministers allows them to renounce their nationality, and

4 - That they have completed their national military service.

Note A - Those who may venture to apply for the renunciation of their Iranian nationality according to this Article in favour of a foreign nationality must, besides carrying out the stipulations of Clause 3 of this Article, leave Iran within three months. If they fail to do so, the proper authorities will issue Deportation Orders for their expulsion and the sale of their properties. The above - mentioned prescribed period of grace may be extended

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subject to the approval of the Ministry of Foreign Affairs up to a maximum period of one year.

Note B - The Council of Minister may in the course of approving the denunciation of nationality by an unmarried Iranian woman, approve of the denunciation of the nationality of her children provided that they are without father or paternal grandfather and are less than 18 years of age, or otherwise lack legal capacity. Also her children of less than 25 years of age can denounce their nationality in conformity with their mother's for denunciation of nationality

Article 989 - In case any Iranian subject acquired foreign nationality after the solar year 1280 (1901 - 1902) without the observance of the provisions of law, his foreign nationality will be considered null and he will be regarded as an Iranian subject.

Nevertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale. In addition, he will be disqualified to attain the position of Cabinet Minister or Assistant Minister or of membership of the Legislative Assemblies, Provincial and District Councils and Municipal Councils, or any other governmental

positions.

Note - The Council of Ministers may on the basis of certain considerations, upon the request of the Ministry of Foreign Affairs, recognise the foreign nationality of those persons who subject to this Article. Such persons may be given, with the approval of the Ministry of Foreign Affairs, leave to visit or reside in Iran.

Article 990 - Iranian subjects who may have personally, or whose fathers may have, renounced Iranian nationality in accordance with the provisions of law and who may wish to re - acquire their original nationality can be reinstated in their Iranian nationality by mere application unless the Government may deem the grant of their application to be inadvisable.

Article 991-Particulars and instructions concerning the enforcement of the law of nationality and the exaction of the administrative fees in, the case of those who may apply for naturalization as nationals of the Islamic Republic of Iran, or renunciation of Iranian or retention of original nationality, will be specified in regulations which will have to be sanctioned by the Council of Ministers.

#### BOOK 4

##### Documents of Identity (sijill)

Article 992 - The document of identity of every person will be established by record in books designated for this purpose.

Article 993 - The following events must be notified to the Census Office during the proper period and in the way stipulated by special laws and regulations

1 - All births and all abortions which may occur after the 6th month from the date of conception.

2- Marriages, whether permanent or temporary.

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3 - Divorces, whether permanent or revocable or divorce by way of waiving the remainder of the period of a temporary marriage.

4- The death of any individual.

Article 994 - A verdict of presumptive death of a continuously absent person which is issued according to the provisions of Book 5, Vol. 2 of this Act, must be registered in the Census Books.

Article 995 - Alterations in the entries in the identity books cannot be made unless by verdict of a court.



Article 996 - if the inaccuracy of the facts declared to the Identification Bureau is established in a court or the identity of a person entered in identity records is established or the verdict of presumptive death of a continuously absent person is reversed, the fact must be entered in the proper identity records.

Article 997 - Every person must possess a family name. The selection of certain special names which are laid down in the regulations of the Identification Bureau is forbidden.

Article 998 - Any person whose family name has been adopted without right by someone else can sue that person under the relevant laws and demand that he should change that family name.

If a person changes, according to relevant regulations his family name duly registered in the identification Bureau, every interested person can protest against this act during the period, and in the manner stipulated in the relevant laws and regulations.

Article 999- The document of birth of the persons whose birth has been declared within the legal period to the Identification Bureau is considered to be an official document.

Article 1000 - Other matters concerning identity cards will be dealt with in the special Laws and regulations.

Article 1001 - Iranian Consular Officers abroad must fulfil in respect of Iranians residing within their jurisdiction the duties which are under the charge of the Identification Bureau according to the relevant laws and regulations.

## BOOK 5

### On Domicile

Article 1002 - The domicile of every person is the place wherein he lives and where also is the principal centre of his affairs. If the place or residence of a person is different from the principal centre of his affairs, the latter will be considered as his domicile.

Article 1003 - No one can have more than one domicile.

Article 1004 - Change of domicile will take place on genuine residence in another place provided that the principal centre of affairs of the person concerned is also transferred to that place.

Article 1005 - The domicile of a married woman is the same as that of her husband . Nevertheless where the husband has no known domicile and also when the wife has a

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separate domicile with the consent of her husband or by sanction of a court, she can have

a separate domicile.

Article 1006 - The domicile of a minor child or an incapacitated person is the same as that of the natural guardian or legal representative

Article 1007 - The domicile of Government officials is the place where they have their permanent post.

Article 1008 - The domicile of military persons who are in a garrison is the place of their garrison.

Article 1009 - In case of grown up persons who ordinarily work with or for others and who live in the house of their employers or masters, their domicile is the same as that of their employers or masters

Article 1010 --If in the course of a transaction or agreement both parties or one of the parties to it have chosen a domicile other than theirs for the fulfilment of the obligations involved in that transaction or agreement, the domicile in respect to all claims concerning that transaction will be the domicile appointed. The same will apply if a place other than their real dwelling place is appointed for the service of papers concerning lawsuits, summonses warnings.

## BOOK 6

### Concerning Continuously Absent Persons

Article 1011 - A continuously absent person whose whereabouts are unknown is a person

who has been absent for a comparatively long duration of time and no news whatever have been received from him.

Article 1012- If the continuously absent person whose whereabouts are unknown has left no advice for the administration of his estate or affairs and there may be no person legally

in a position to take charge of his affairs, the court will nominate a trustee for the administration of his estate. Application for the appointment of the trustees will only be accepted from the Public Prosecutor and the persons interested in the matter.

Article 1013 - The court can demand from the trustee whom it appoints to produce a guarantor or to produce other security.

Article 1014 - If one the heirs of the continuously absent person gives a sufficient guarantee, the court cannot appoint another trustee and the heir in question will be appointed in that capacity.

Article 1015 - The duties and responsibilities of the trustee who is to be appointed

according to the foregoing Articles are those fixed for a guardian.

Article 1016 - If both the death and the date of death of the missing person whose whereabouts are unknown are definitely established, his estate will be distributed among the heirs existing at the time of death although one or several of them may have died subsequently to the date of death of the continuously absent person.

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Article 1017 - If the death of a continuously absent person is established without possibility of ascertaining the date, the court must determine the date on which the death become unquestionably known and in that case the estate will be distributed among the heirs who existed at that date.

Article 1018 - The stipulations of the above Article will also be observed in the case where a judgment of presumed death of the missing person issued.

Article 1019 - The judgment of presumed death of a continuously absent person will be issued in a case where such a duration of time has elapsed from the date of the last news

received as to his being alive that such a person would not ordinarily remain alive after that time.

Article 1020 - The following cases are of those in which a continuously absent person cannot ordinarily be supposed to be alive:

1 - When 10 full years have passed from the date of the last news received as to the life of the continuously absent person and at the expiry of the period his age has surpassed 75.

2 - When a person was included in an armed force under any denomination and disappeared during the war and till three years after the conclusion of peace no news are received from him. If the war is not terminated by the conclusion of a peace agreement, the period in question must be reckoned as five years from the date of conclusion of the war.

3 - When a man engaged in a sea voyage was on board of a ship which was wrecked in that voyage and three full years have passed from the date of wreckage of the ship in question and no news is received from him.

Article 1021 - In the case of the last Clause of the above Article if after the expiry of the following periods of time from the date of departure of the ship the latter does not arrive

at its destination, or if it has not returned to the port of departure in the case where it has set out without determined destination and there is no news of its existence, the ship in question will be considered as destroyed

a - For voyages in the Caspian Sea and inside the Persian Gulf, one year.

b - For voyages in the Sea of Oman, the Indian Ocean, the Red Sea, the Mediterranean Sea, the Black Sea and the Sea of Azof, two years.

c - For voyages in other cases, three years.

Article 1022 - If a person meets the danger of death or disappears in consequence of accidents other than those mentioned in Clause 2 and 3 of Article 1020 or if he has been in an airplane and the latter has disappeared a judgment of his presumed death will only be issued when five years have passed from the date when he met with the danger of death and during that period no news have been received showing that the man was still alive.

Article 1023 - In cases coming under Articles 1020, 1021 and 1022, the court can only issue the judgment of presumed death of a continuously absent person when a notice has

been published for three consecutive times each with an interval of one month from the other in one of the local newspapers and one of highly circulated papers of Tehran

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inviting the persons who may have news of the man to convey their information to the court and when after the expiry of one year from the date of the first publication of this notice , the fact that the man is alive is not proved.

Article 1024 - If several persons lose their life in an accident, it will be presumed that they have all died in one instant.

The stipulation of this Article does not obstruct the enforcement of Article 873 and 874 of Book 1 of this Act.

Article 1025 - The heirs of a continuously absent person whose whereabouts are unknown can apply to the court, before the issue of the judgment of his presumed death, asking that his estate may be delivered into their possession, provided, firstly, that the missing person has not already appointed a person for the administration of his estate and, secondly, that two full years may have passed from the date that the last news from the continuously absent person were received and that during the period it has not been known whether the man is still alive or dead . In respect of this Article, the stipulations of Article 1023 concerning the publication of a notice and the notice of one year must

categorically be observed.

Article 1026 - In the case of the foregoing Article, the heirs should give guarantee or sufficient security so that in the event that the continuously absent person returns or that third parties may have right on the estate they should be responsible for the estate or for the rights of others in it. The guarantees will remain valid until the verdict of presumed death is issued

Article 1027 - After the issue of the judgment of presumed death if the continuously absent person is found, the persons who have taken possession of his estate by inheritance must return what exists of the estate at the time the continuously absent person is found, either in original property or the equivalent or the income thereof

Article 1028 - The trustee who is to be appointed for the administration of the estate of a continuously absent person whose whereabouts are unknown must pay off the property of

the continuously absent person the cost of living (nafaqeh) of the permanent wife or the temporary wife of the continuously absent person duration of marriage has not yet expired and to whom the continuously absent person has undertaken to pay the cost of living. He should also pay out of the property of the continuously absent person the cost living of his children. If any difference arises as to the fixing of the amount of cost of living, the court must determine the amount.

Article 1029 - If a man has been for four years continuously absent with unknown whereabouts , his wife can apply for a divorce The judge will then grant the divorce subject to the stipulations of Article 1023.

Article 1030 - If the continuously absent person on returns after the occurrence of the divorce and before the expiry of the period of 'uddeh' time, he has the right to cancel the divorce (ruju) but if the uddeh period has already expired, his right will be extinguished.

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## BOOK 6

### On Relationship

Article 1031 - Relationship is of two kinds Relationship by blood and relationship by marriage.

Article 1032 - Relationship by blood involves the following order of precedence first class: father, mother, children and children of children; Second class grandfathers and grandmothers, brothers and sisters and their children; Third class : paternal uncles, paternal aunts, maternal uncles and maternal aunts and their children.

The degree of relationship by blood in each class is determined by the number of generations in that class.

For example, in the first class, the relation of the father and the mother to their children comes first and the relationship of children between themselves comes second in the same way in the second class, the relationship of brother and sister with grandfather and grandmother comes first and that of the children of brother and sister with grandfather comes second. And in the third class, the relation of the uncle and the maternal uncle, and

that of the paternal aunt and the maternal aunt comes first, and that of their children comes second.

Article 1033 - Every person who is in relation by blood to any degree and in any lineage with another person will have the same relation by blood in the same degree and lineage with the husband or wife of that person as the case may be . The father - in - law and the mother - in - law of a man therefore, constitute his relations of the first degree and the brother and the sister of the husband of a woman constitute her relations by marriage of the second degree.

## BOOK 7

### On Marriage and Divorce

#### CHAPTER 1

##### ON MARRIAGE

###### SECTION 1

###### On Asking for the Hand in Marriage

Article 1034 - It is lawful to ask for the hand of a woman to whose marriage there is no obstacle.

Article 1035 -A promise of marriage does not create the matrimonial relation even though the whole or some of the dowry fixed for payment at the time of marriage between the two parties may have been paid. Either the man or the woman, therefore, can, so long as the ceremonial act of marriage has not been pronounced, refuse the marriage and the other party cannot oblige her or him to contract the marriage or claim compensation for losses merely owing to the refusal.

Article 1036 - Repealed on 29 December 1982.

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Article 1037 - Every one of the betrothed parties can , if the proposed marriage is cancelled, claim the restitution of the presents given to the other party or to the parents

for the marriage in question.

If the presents do not exist in original, the claimant is entitled to ask for their value of the presents which are ordinarily preserved unless the same presents have been destroyed without any fault of the party who was in their possession.

Article 1038 - The stipulation of the foregoing Article does not apply as far as it concerns the payment of equivalent value in a case where the proposed marriage does not take place in consequence of the death of one of the betrothed persons.

Article 1039 - Repealed on 29 December 1982.

Article 1040- Each one of the parties concerned can, with a view to contracting marriage, ask the other party to produce a certificate of a doctor showing the freedom of the person

concerned from serious contagious diseases such as syphilis, gonorrhoea and consumption.

## CHAPTER 2

### MEDICAL FITNESS FOR MARRIAGE

Article 1041 - Marriage before the age, of majority is prohibited.

Note -Marriage before puberty by the permission of the Guardian and on condition of taking into consideration the ward's interest is proper.

Article 1042 - Repealed on 29 December 1982 . (1) Article 1043 - The marriage of a girl who has not married previously is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of majority . If, however, the father or the paternal grandfather withhold the permission without justifiable reason, the girl can refer to the Special Civil Court giving full particulars of the man whom she wants to marry and also the terms of the marriage and the dowry money agreed upon and notify

her father or her paternal grandfather through that Court of the foregoing particulars The Court can issue a permission for marriage fifteen days after the date of notification to the guardian if no response has been received from the guardian to satisfy refusal.

Article 1044 - If the father or the paternal grandfather are not present in the place and obtaining their permission is customarily impossible and the girl is in need of marriage, she can marry. Note - Registration of such a marriage in the Marriage Registry shall be pending on proving the above - cited instances in the Special Civil Court.

## CHAPTER 3

### ONIMPEDIMENTS TO MARRIAGE

Article 1045 - Marriage with the following relations by blood is forbidden, even if the relationship is based on mistake or adultery:

1- Marriage with father or grandfather, mother or grandmothers, or to their ancestors to whatever generation.

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2 - Marriage with children, or descendants to whatever generation.

3 - Marriage with the brother and sister and their children, or their descendants to whatever generation.

4 - Marriage with one's own paternal aunts and maternal aunts and those one's father, mother, grandfathers and grandmothers.

Article 1046 - Foster - relationship is the same as relationship by blood as far as impediments to marriage are concerned, provided that:

Firstly - The milk of the woman takes its source from a legitimate conception.

Secondly - The milk is sucked directly from the breast.

Thirdly - The child has at least had full milk for 24 hours (one night and on day) or for 15 consecutive times without taking in between any other food or milk of another woman.

Fourthly - The child has taken the milk before it has reached the full age of two years (from its birth): and

Fifthly - The milk taken by the child is from the same woman with the same husband. If, therefore, a child takes during twenty - four hours some milk from one woman and some from another, this fact does not debar marriage even if the two women have a common husband.

In the same way, if a woman has a foster - daughter and a foster - In the same way, if a woman has a foster-daughter and a

foster - son whom she has milked each from the milk belonging to a separate husband, that son and daughter cannot be considered as foster brother and sister and their marriage

is not prohibited for this reason.

Article 1047 - Marriage between the following persons is permanently forbidden because of relationship by marriage.

1 – Marriage, between a man and his mother - in - law or his grand - mother - in - law of any degree, whether the relationship is by blood or foster - relationship

2 - Marriage between a man and woman who has formerly been the wife of his father or of one of his grandfathers, or of his son or of one his grandchildren even though the



relationship may be of the foster kind

3 - Between a man with females of descent from his wife, no matter of what degree no exception being made even if the woman is a foster - relation, provided that the husband and wife have already consummated the marriage.

Article 1048 - Marrying of two sisters by the same by one man is forbidden even if the marriage of each one of them is of temporary nature.

Article 1049 - No one can marry the daughter of his brother - in - law or the daughter of his sister - in - law unless his wife permits him to do so.

Article 1050 - Every person who marries a woman knowing of the existence of marriage ties binding the wife and of prohibition of his own marriage with that woman, or who marries a woman who has not yet passed the period of "uddeh" of divorce or of death,

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with knowledge of the existence of the "uddeh" and the prohibition of the marriage, his marriage will be null and void and the woman in question will definitely and permanently be incapable of becoming the wife of that man.

Article 1051 - The provisions of the foregoing Article will also be applicable in the case where the marriage was solemnized with ignorance of all or some of the facts mentioned in the foregoing Article, and the marriage has been consummated. In the case of ignorance, but where matrimonial relations have not taken place, the marriage will be null and void but marriage between the two does not become permanently prohibited.

Article 1052 - Separation caused by a solemn imprecation (li'an) involves a permanent bar to the marriage of the parties concerned. Article 1053 - A marriage contract will not be valid while the party concerned is covered with the pilgrimage garment . If the party concerned marries with knowledge of the fact that such a marriage is prohibited, the marriage will be barred forever.

Article 1054 - Adultery with a married woman who has not yet passed the period of uddeh, will entail a permanent bar to the marriage of the parties concerned.

Article 1055 - Sexual intercourse by mistake or by adultery if preceding marriage is tantamount to the existence of marriage as far as prohibition of marriage is concerned but

cannot cause cancellation of the former marriage.

Article 1056 - One who perpetrates a shameful act on a boy cannot marry his mother, sister, or daughter.

Article 1057 - A woman who has been the wife of a man for three consecutive times and

has been divorced each time will become unlawful as wife to that man unless she is married by permanent marriage to another man and, after matrimonial relations with that man, separation occurs between them by divorce or cancellation of the marriage or death.

Article 1058 - The wife of a person who has been divorced from him nine times, six of which were revocable divorce, will be illegal as wife to that man for ever.

Article 1059 - Marriage of a female Moslem with a non - Moslem is not allowed.

Article 1060 - Marriage of an Iranian woman with a foreign national is dependent , even in cases where there is no legal impediment, upon special permission of the Government.

Article 1061 - The Government can make the marriage of certain Government servants and officials and students supported by the Government with a female foreign national dependent upon special permission.

#### CHAPTER 4

#### CIRCUMSTANCES NECESSARY FOR LEGALITY OF MARRIAGE

Article 1062 - Marriage takes place by proposal and acceptance in words which explicitly convey the intention of marriage.

Article 1063 - The proposal and acceptance may be uttered by the man and woman themselves or by persons who are legally entitled to perform the act.

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Article 1064 - The person who performs the act must be sane in mind, of legal age, and capable of forming, a decision.

Article 1065 - It is a necessary for the validity of a marriage that acceptance should follow close upon proposal, in accordance with custom.

Article 1066 - If one or both of the parties to the marriage are dumb, the ceremony can be

conducted by signs made by the dumb person or persons provided that the signs clearly convey the intention of entering into the contract of marriage.

Article 1067 - It is a necessary condition for the validity of a marriage that the wife and husband should be so declared that neither party is in doubt as to the identity of the other.

Article 1068 - Making marriage conditional will render it void.

Article 1069 - A provision in the marriage contract reserving the right of cancellation of

the contract, if made, will be null and void. But in a permanent marriage, a provision entitling one of the parties withhold the dowry is permissible provided that duration of this is definitely mentioned . After cancellation of the grant of dowry (sudaq) the situation will be as if no dowry is mentioned in the contract of marriage.

Article 1070- Consent of the marrying parties is the condition upon which depends the enforcement of the marriage contract, and if a party showing at first reluctance authorises

the making of the contract subsequently, the contract will be binding unless the reluctance is so acute that the reluctant person cannot be considered as having been in possession of any intention.

## CHAPTER 5

### DEPUTING A THIRD PARTY FOR GIVING CONSENT TO MARRIAGE

Article 1071 - Either the man or woman can depute a third party with power to contract the marriage.

Article 1072 - If power is given without conditions as to the identity of the, husband, the attorney cannot himself marry his principal under that power unless this permission is explicitly given to him in the power of attorney.

Article 1073 - If the attorney does not observe what his principal has laid down in connection with the person or the dowry or other particulars, the authenticity of the marriage will depend upon corroboration from the principal.

Article 1074 - The provisions of the preceding Article will also be binding where the power was without any reservation and the attorney did not act according to the best interests of his principal.

## CHAPTER 6

### ON TEMPORARY MARRIAGE

Article 1075 - Marriage is called temporary when it is for a limited period of time.

Article 1076 - The duration of the temporary marriage must be definitely determined.

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Article 1077 - In the case of temporary marriage , provisions concerning inheritance of the wife and her dowry are the same as fixed in the Chapter on inheritance' and in the following Chapter.

## CHAPTER 7

### ON THE DOWRY (MAHR)

Article 1078 - Anything which can be called property and which can be owned and

possessed can be designated as a marriage portion.

Article 1079 - The marriage portion must be known to the marrying parties to the extent that their ignorance is removed.

Article 1080 - Fixing of the amount of marriage portion depends upon the mutual consent of the marrying parties.

Article 1081 - If a condition is laid in the marriage act that if the marriage portion is not paid within a fixed period that marriage will be cancelled, the marriage and the marriage portion will remain binding and authentic but the condition will be null and void.

Article 1082 - Immediately after the performance of the marriage ceremony the wife becomes the owner of the marriage portion and can dispose of it in any way and manner that she may like.

Article 1083 - A duration of time or instalments can be fixed for the payment of the marriage portion, as a whole or in parts.

Article 1084 - If the marriage portion consists of a designated property and it is found out that before the celebration of the marriage, that property was defective, or that after the marriage celebration and before the delivery of the property it becomes defective or it was destroyed

Article 1085 - So long as the marriage portion is not delivered to her, the wife can refuse to fulfil the duties which she has to her husband provided, however, that the marriage portion is payable at once. This refusal does not debar her from right of maintenance expenses.

Article 1086 - If the wife proceeds to fulfil the duties that she has towards her husband by her own free will, she cannot subsequently avail herself of the provisions of the foregoing Article, but never the less she will not forfeit the right that she has for demanding the payment of the marriage portion due to her.

Article 1087 - If a marriage portion is not mentioned, or if the absence of marriage portion is stipulated in a permanent marriage, that marriage will be authentic and the parties to it can fix the marriage portion subsequently by mutual consent. If previous to this mutual consent matrimonial intercourse takes place between them, the wife will be entitled to the marriage portion ordinarily due.

Article 1088 - In the case of the foregoing Article, if one of the marrying parties dies before the fixing of the marriage portion and before the consummation of marriage, the wife will not be entitled to any marriage portion.

Article 1089 - Authority for fixing the marriage portion can be entrusted to the husband or a third party, in which case both of them can fix it at any amount they may wish.

Article 1090 - If the authority for fixing the marriage portion is vested in the wife, she cannot fix an amount which exceeds reasonable marriage portion.

Article 1091 - In fixing of the reasonable marriage portion the status of the wife in respect of her family's station and other circumstances and peculiarities concerning her in

comparison with her equals and relatives and also the customs of the locality, etcetera, must be considered.

Article 1092 - If the husband divorces his wife before the consummation of marriage, the wife be entitled to half of the marriage portion and if the husband has already paid more than half of the marriage portion he has the right to demand the return of the surplus, in original, in the equivalent, or in value.

Article 1093 - If no marriage portion is mentioned in the act of marriage and the husband divorces his wife before the consummation of marriage and the fixing of the marriage portion, the wife is entitled to a reasonable marriage portion, and if she is divorced after the consumption of marriage, she will be entitled to the equivalent of marriage portion.

Article 1094 - The status of the man in respect of wealth or poverty will be considered in fixing the reasonable marriage portion.

Article 1095 - Absence of marriage portion in the act of a temporary marriage will render the contract void.

Article 1096 - The death of the wife in a temporary marriage during the period of marriage will not cause the forfeiture of the marriage portion; the same will be true if the husband did not have any relations with her up to the end of the period of the marriage.

Article 1097 - If the husband waives his rights to the whole period of marriage in a temporary marriage before having any relations with the wife, he must pay half of the marriage portion.

Article 1098 - If the marriage, whether temporary or permanent, was void, and there has not been any matrimonial relations, the wife will not be entitled to any marriage portion and the husband can demand the refund of the marriage portion if it has been settled

Article 1099 - If the wife was ignorant of the fact that the marriage was unauthentic, and if in such case matrimonial relations have occurred, the wife will be entitled to a reasonable marriage portion.

Article 1100 - If the specified marriage portion is unknown or if it is not of such a nature

that it can be owned or if it belongs to reasonable marriage portion and in the third case to the equivalent of the value of the property which proved to be that of a third party, unless the latter authorizes the transfer.

Article 1101 - If the marriage is cancelled before matrimonial relations for any reason, the wife is not entitled to any marriage portion . If the reason of cancellation is impotency, the wife will be entitled to half the marriage portion notwithstanding the cancellation of the marriage.

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## CHAPTER 8

### RECIPROCAL DUTIES AND RIGHTS OF PARTIES

#### TO A MARRIAGE

Article 1102 -As soon as marriage takes place in due form, relations of matrimony will automatically exist between the marrying parties and rights and reciprocal duties of husband and wife will be established between them.

Article 1103 - Husband and wife are bound to establish friendly relations.

Article 1104 - Husband and wife must cooperate with each other for the welfare of their family and the education of their children.

Article 1105- In relations between husband and wife; the position of the head of the family is the exclusive right of the husband.

Article 1106 - The cost of maintenance of the wife is at the charge of the husband in permanent marriages.

Article 1107 - Cost of maintenance includes dwelling, clothing, food, furniture in proportion to the situation of the wife, on a reasonable basis, and provision of a servant if the wife is accustomed to have servants or if she needs one because of illness or defects of limbs.

Article 1108 - If the wife refuses to fulfil duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance.

Article 1109 - Cost of maintenance of a divorced wife during the period of "uddeh" is to be borne by the husband, unless the divorce has taken place because of disobedience . But if the uddeh arises from the cancellation of the marriage or a final divorce, the wife is not entitled to cost of maintenance, unless she is with child from her husband in which case she 1 be entitled to cost of maintenance till her child is born.

Article 1110 - The wife is not entitled to cost of maintenance if she is passing through the uddeh period due to the death of her husband.

Article 1111 - The wife can refer to the court if her husband refuses to provide for her maintenance. In such a case the court will fix the amount and will compel the husband to pay it.

Article 1112 - If the enforcement of the provisions of the foregoing Article is impossible , the provisions of Article 1129 must be followed.

Article 1113 - In the case of a temporary marriage the wife is not entitled to the cost of maintenance, unless provision has been specially made for this, or the marriage has been arranged on this condition

Article 1114- The wife must stay in the dwelling that the husband allots for her unless such a right is reserved to the wife.

Article 1115 - If the existence of the wife and husband in the same house involves the risk of bodily or financial injury or that to the dignity of the wife, she can choose a separate dwelling: and if the alleged risk is proved the court will not order her to return to 110

the house of the husband and, so long as she is authorized not to return to the house, her cost of maintenance will be on the charge of her husband.

Article 1116 - In the case of the foregoing Article, so long as litigation is not concluded between the married couple, the dwelling of the wife will be fixed by mutual consent of both parties and failing such consent, the court will fix the dwelling after duly obtaining the views of near relatives, and in the absence of relatives the court itself will fix a suitable dwelling.

Article 1117 - The husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife.

Article 1118 - The wife can independently do what she likes with her own property.

Article 1119 - The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents him self during a certain period, or discontinues the payment of cost of maintenance, or attempts the life of his wife or treats her so harshly that their life together becomes unbearable, the wife has the power, which

she can also transfer to a third party by power of attorney to obtain a divorce herself after

establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgment to that effect.

## SECTION 2

On Dissolution of Marriage

Article 1120 - Marriage may be dissolved by cancellation, by divorce, or by waiver of the remaining period in the case of a temporary marriage.

## CHAPTER 1

### ON THE POSSIBILITY OF CANCELLATION OF MARRIAGE

Article 1121 - Madness of either of the married couple, provided that it is settled, whether it is permanent or recurrent, will give the other person the right of cancellation.

Article 1122 - The following defects in man will give the woman the right to cancel the marriage

- 1 - Castration.
- 2 - Impotency, provided he has not even once performed the matrimonial act.
- 3 - Amputation of the sexual organ to the extent that he is unable to perform his marital duty.

Article 1123 - The following defects in a wife bring about the right for a man to cancel the marriage:

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- 1 - Protrusion of the womb (qaran).
- 2- Black leprosy (juzam).
- 3 - Leprosy (baras).
- 4- Connection of the vaginal and anal passages (ifza).
- 5 - Being crippled.
- 6- Being blind in both eyes.

Article 1124 - The defects of the wife entitle the man to a right of cancellation of marriage if they existed at the time of marriage.

Article 1125 - Madness and impotency create the right for the wife to cancel the marriage even if they occur after the date of the marriage.

Article 1126 - Any one of the married couple who was cognisant of the existence of the defects above mentioned in the other party before the marriage was celebrated , has no



right after that date to cancel the marriage.

Article 1127 - If the husband contracts a venereal disease after the performance of the marriage act, the wife have the right to refuse to have any sexual relations with him and this refusal will not debar her from the right to cost of maintenance.

Article 1128 - If a special qualification is mentioned , as a condition of the marriage, to exist in one of the marrying parties and if after the marriage it is found out that the party concerned lacks the desired qualification, the other party has the right to cancel the marriage.

The foregoing is true whether the qualification is mentioned explicitly in the marriage contract or whether the marriage has been performed with the qualification understood mutually by the parties concerned.

Article 1129 - If the husband refuses to pay the cost of maintenance of his wife, and if it is impossible to enforce a judgment of the court and to induce him to pay the expenses, the wife can refer to the judge applying for divorce and the judge will compel the husband to divorce her.

The same stipulation will be binding in a case where the husband is unable to provide for the maintenance of the wife.

Article 1130 - In the following circumstances, the wife can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage causes difficult and undesirable conditions, the judge can for the sake of avoiding harm and difficulty compel the husband to, divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge.

Article 1131 - The option of cancellation of marriage must be exercised immediately and, if the party who is entitled to the option does not cancel the marriage after becoming cognisant of the reason upon which he could cancel the marriage, he forfeits the option, provided also that he had full knowledge of the existence of the option and its urgent character. Determination of the duration of time during which the option can remain valid depends upon custom and usage.

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Article 1132 - The observance of the arrangements stipulated in the case of a divorce is not obligatory in a case of cancellation of marriage.

## CHAPTER 2

### ON DIVORCE 1 - On General Considerations

Article 1133 - A man can divorce his wife whenever he wishes to do so.

Article 1134- The divorce must be performed in the actual form of utterance and in the presence of at least two just men who must hear the actual form of divorce.

Article 1135 - Divorce must be in clear and precise wording, a conditional divorce is null and void.

Article 1136 - The divorcer must be of legal age, must be in possession of his faculties, must intend the act and must be free in his action.

Article 1137 - The guardian of a permanently made person, can divorce the wife of the latter if the interests of the person under his custody allow him to do so.

Article 1138 - The actual ritual utterance of the divorce can be performed by an attorney.

Article 1139 - Divorce is specially appointed for cases of permanent marriage: a temporary wife is relieved from marriage by the expiry of the period of marriage or by waiver of the remaining period by her husband.

Article 1140- It is not proper to divorce a wife during her monthly period or during the convalescent period after childbirth unless when the wife is pregnant or when the divorce occurs before matrimonial relations with her, or when the husband is absent so that he cannot obtain information concerning her monthly period.

Article 1141 - It is not proper to divorce a wife between two monthly periods during which intercourse has taken place unless the wife is pregnant or is incapable of conception.

Article 1142- The divorce of a wife who although of child - bearing age has no monthly period, will be valid only when three months have passed from the date of the last matrimonial relations with her.

## 2. On Various Forms of Divorce

Article 1143 - There are two forms of divorce, irrevocable divorce and revocable divorce.

Article 1144 - After an irrevocable divorce the husband has not the right to renounce his intention of divorcing.

Article 1145 - A divorce is irrevocable in the following instances

1 - A divorce performed before the occurrence of matrimonial relations

2- Divorce of a wife who is incapable of conception.

3 - (a) a divorce which a wife achieves by giving a consideration to her husband and (Khul'a) and (b) a divorce by mutual consent (mubarat), as long as the wife has not demanded the return of the consideration.

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4 - A third divorce, performed after three consecutive marriages (of the same parties)

whether by mere renouncement by the husband of his desire to divorce the wife or by a new marriage between the two parties.

Article 1146 - A Khul'a divorce occurs when the wife obtains a divorce owing to dislike of her husband, against property which she cedes to the husband. The property in question may consist of the original marriage portion, or the monetary equivalent thereof, whether more or less than the marriage portion.

Article 1147 – A “Mubarat” divorce occurs when the dislike is mutual in which case the compensation must not be more than the marriage portion.

Article 1148 - The husband has the right to renounce divorce in a revocable divorce provide the period of “Iddah” has not expired.

Article 1149 - Return to the wife after divorce can be effected by any word or deed which may convey the idea, provided that it is based on an intention to do so.

### 3. On wife's period of Waiting (Iddah)

Article 1150 - Iddah consists of a period during which a woman whose matrimonial bond has been dissolved cannot marry.

Article 1151 - The period of Iddah for a divorce or for the dissolution of a marriage consists of three consecutive monthly periods of a woman unless the woman concerned though of child bearing age has no monthly period, in which case the period of Iddah will be three months.

Article 1152 - The period of Iddah for divorce or dissolution of marriage or waiver of the remaining period or its expiry in the case of temporary marriage for a non - pregnant woman is the expiry of two monthly periods unless contrary to the nature of her age, she no such periods, in which case the period will be 45 days.

Article 1153 - The period of Iddah for divorce or dissolution of marriage act or waiver or expiry of the period of marriage in the case of a woman who is pregnant will be until she given birth to a child.

Article 1154- The period of Iddah in the case of death (of husband) in both permanent and temporary marriages will be four months and ten days, unless the wife is pregnant when the uddeh comes to an end with the birth of the child provided that the interval between the death of the husband and the birth of the child is longer than four months and

10 days: if not, the period of uddeh will be the same four months and 10 days.

Article 1155 - There is no Iddah in the case of a wife who has not had any matrimonial intercourse with her husband, or in the case of a wife beyond the age of conception who

is not affected by any uddeh for divorce or for dissolution of marriage. But the uddeh for death must be observed in both cases.

Article 1156 - The wife of a continuously absent husband whose whereabouts are unknown, if divorced by a judge, must observe uddah for death, starting from the date on which the divorce was granted

Article 1157- A woman who has had matrimonial relations by way of mistake with someone must observe the uddah laid down in cases of divorce.

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## BOOK 8

### On Children

#### CHAPTER 1

##### ON PARENTAGE

Article 1158 - Any child born during married life belongs to the husband provided that the interval between intercourse and the birth of the child is not less than 6 months and not more than 10 months.

Article 1159 - Any child born after the dissolution of marriage belongs to the husband provided that the mother has not yet married again and that not more.

Article 1160 - If the marriage is dissolved after matrimonial intercourse and the wife has married again and a child is born to be, the child belongs to the husband who can be identified as the child's father according to the foregoing Articles. If the child could be attributed to both husbands according to the foregoing Articles, the child belongs to the second husband unless definite indications show otherwise.

Article 1161 - In the cases coming under the foregoing Articles, if the husband has explicitly or implicitly admitted that he is the father, his subsequent denial of this will be of no validity.

Article 1162 - In the cases coming under the foregoing Article, the plea of repudiation of the child can only be preferred within the delay ordinarily admissible for the preferment of such claims after the father known of the birth of the child. The plea will in any case not be heard after the expiry of two months from the date that the husband was informed of the birth of the child.

Article 1163 - In a case where the husband did not know the real date of birth of the child and was misguided by a wrong date according to which the child would belong to him and when the husband is informed subsequently of the real date of birth, the period of limitation for the plea of repudiation of the child is two months from the date on which he

discovered the fraud.

Article 1164 - The provisions of the foregoing Articles will also be applicable in the case of a child born from sexual intercourse when one party was in error as to the other's identity , although the mother may not have made any mistake.

Article 1165 - A child born after such mistaken sexual intercourse will belong to the party who made a mistake and if both parties were in error child belongs to both of them.

Article 1166 - If marriage between the parents of a child is illegitimate owing to the existence of any legal impediment, the relation of the child to that one of the parents who was ignorant of the existence of the impediment is legitimate, and its relation to the other party is illegitimate. If both parents were ignorant of the impediment, the relationship of both of them to the child is legitimate.

Article 1167 - A child born of adultery shall not belong to the adulterer.

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## CHAPTER 2

### ON MAINTENANCE AND EDUCATION OF THE CHILDEN

Article 1168 - Maintenance of children is both the right and duty of the parents.

Article 1169 - A mother has preference over others for two years from the birth of her child for the custody of the child and after the lapse of this period custody will devolve on the father except in the case of a daughter who will remain under the custody of the mother till 7 years.

Article 1170 - If the mother becomes insane or marriage another man during her period of custody, the custody will devolve on the father.

Article 1171-If one of the parents dies, the custody will be the duty of the surviving although the deceased be the father and he may have appointed a guardian for the child.

Article 1172 - Neither of the parents can refuse to maintain the child during the time when he or she is responsible for its custody If he or she does so, the court must induce him or her, on application by the other party or the guardian or one of the relatives or the Public Prosecutor, to assume the custody . If such enforcement is impossible or ineffective the court must arrange the custody at the expense of the father, or of the mother in the event of the death of the former.

Article 1173 - If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother who are in charge of its custody the court can take any decision appropriate for the custody of the child on the

request of its relatives or its guardian or the Public Prosecutor.

Article 1174 - If the parents of the child do not live in the same house owing to divorce or any other reason, either of the parents who is not in charge of custody of the child has the

right to visit the child. Determination of the time and place of visit and other particulars will be decided by the court if there is any dispute between the parents about them.

Article 1175 - A child cannot be taken from the parents or the father or the mother who is in charge of its custody except in cases where just fiction exists for doing so.

Article 1176 - The mother is not obliged to suckle the child unless the child cannot be fed except with the milk of its mother.

] Article 1177 - A child must obey its parents and must respect them whatever its age.

Article 1178 Parents are bound to take such measures as circumstances and their means

allow for the education of their children. They must not leave their talents undeveloped.

Article 1179 - Parents are entitled to punish their children but they must not abuse this right by punishing their children beyond the limits of correction.

### CHAPTER 3

#### ON THE NATURAL GUARDIANSHIP OF THE FATHER AND PATERNAL GRANDFATHER OVER THE CHILD

Article 1180 - A minor child is under the guardianship of its father or paternal grandfather. Such is also the case with a immature or insane child provided that the immaturity or mental unfitness continues from the age of minority.

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Article 1181 - Either the father or the paternal grandfather has the right of guardianship over his children.

Article 1182 - If the child has both father and paternal grandfather and one of them becomes himself incapacitated or is prevented by some reason or other from administering the estate of his ward, his legal guardianship will cease.

Article 1183 - In all matters pertaining to the estate, and the civil and financial concerns of the ward, the guardian will be his or her legal representative.

Article 1184 -If the natural guardian of the child is unworthy of the administration of the estate of his ward or if he misappropriates property, the court will, on application by the relatives of the child or on the request of the Public Prosecutor who has to be a party to the suit, and after the establishment of the incapacity or dishonesty of the guardian, also

appoint a financial trustee to work with the guardian. This provision will be applicable in a case where the guardian of the child is unable to administer the estate of his ward owing

to old age or sickness or similar reasons.

Article 1185 - If the natural guardian of the child becomes incapacitated, the Public Prosecutor is obliged to appoint a guardian for the child according to the regulations governing the nomination of guardians.

Article 1186 - In cases where strong indications exist showing the dishonesty of the natural guardian in respect of the estate of his ward, the Public Prosecutor is obliged to apply to the Court of First Instance requesting that his actions may be investigated. The court will examine the complaint and will act according to Article 1184 if his dishonesty is proved.

Article 1187 - If the only natural guardian of a child cannot administer the estate of his ward owing to absence or imprisonment or owing to any other reason, and if he has not nominated anyone else to represent him, the court will appoint provisionally a guardian on the proposal of the Public Prosecutor for taking charge of the estate and attending to all matters pertaining to it.

Article 1188 - Either the father or the paternal grandfather can appoint after the death of the other, an executor for the child under his guardianship in order that the executor may attend, after his death, to the bringing up and the education of the children and may administer their estate

Article 1189- Neither the father nor the paternal grandfather can appoint an executor for his ward while the other is still living. Article 1190 - A father or paternal grandfather can authorize the guardian to nominate another guardian for his ward after the guardian's death.

Article 1191 - If the guardian appointed by the natural guardian does not take steps for the maintenance or the education of his ward or for the administration of his estate or if he abstains from fulfilling his duties he will be discharged.

Article 1192 - A Moslem guardian cannot appoint a non - Moslem guardian for his ward.

Article 1193- As soon as a child reaches the age of maturity, he will cease to be under ward ship and if he becomes subsequently mentally deficient or insane, a guardian will be

appointed for him.

Article 1194- The father, the paternal grandfather and the guardian appointed by one of them will be called the “special guardian” of the child.

BOOK 9

On the Family

CHAPTER 1

ON OBLIGATION OF MAINTENANCE

Article 1195 - Provisions for the maintenance of the wife are those stipulated in Chapter 1, Part 1 of Book 7 and those stipulated in this Chapter.

Article 1196 - Only relatives by blood in a direct line ascending or descending are under reciprocal obligation to provide maintenance for each other.

Article 1197- A person is entitled to maintenance expenses if he or she is poor and cannot earn a living by adopting an occupation.

Article 1198 - A man is only obliged to maintain another if he is in a position to do so, that is to say he can provide such maintenance without thereby causing himself distress. To determine whether a man can maintain another his obligations and his manner of life must be taken into consideration.

Article 1199 - Maintenance of children is the duty of the father on his death or his incapacity for maintenance, this duty devolves on the paternal grandfathers, the nearer of his kin coming before the father. In the absence of a father or paternal grandfathers or in the event of their incapacity, the duty of maintenance devolves on the mother. If the mother is dead also or is unable to maintain the child, the duty will devolve on maternal grandfathers and the grandmothers and paternal grandmother who are sufficiently wealthy to provide maintenance, giving preference to the nearer of kin over the father. If a number of the grandparents are similar in degree of kinship, the maintenance expenses must be paid by them in equal shares.

Article 1200 - Maintenance expenses of parents must be paid by the nearest related child or grandchild in the order of kinship.

Article 1201 - If a person has relatives both ascending and descending in the direct line who are equally under an obligation to provide for his living, the relatives in question must share the expenses in equal shares. It follows therefore that if the person who is to be maintained has father, mother and direct children his expenses should be shared in



equal portions by his father and children, without the mother being required to pay any share. In a like manner if a person who is to be maintained has a mother and direct children, his expenses must be borne in equal shares by the mother and the children. Article 1202 - If the relatives who are to be maintained are numerous and the supporter cannot pay for them all, the claim of the relatives in the descending direct line has priority over that of relatives in the ascending direct line.

Article 1203 - If there are a wife and one or more relatives who are to be supported, the claim to support of the wife precedes that of others.

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Article 1204 - Maintenance of relatives consists of providing dwelling, clothing, food and furniture to the extent of bare necessities and subject to the means of the person who provides the maintenance.

Article 1205 - In cases of absence or refusal to pay maintenance, if it is impossible to oblige the person whose duty it is to pay the maintenance, the court can, when persons entitled to maintenance bring claim, place from the assets of the absentee or the refuser, amount of the maintenance , at their own disposal or at the dispose of their supporter (s):

and in the event that the assets of the absentee or the refuser are not available, his wife or

another person may on the court's authorization pay the maintenance as loan and claim it

from the absentee or the refuser.

Article 1206 - A wife can always and in any case prefer a claim for her past expenses, and her right to these expenses is preferential. In the event of bankruptcy or insolvency of the husband her dues must be paid before any liquidation payment is arranged.

Relatives, however, entitled to provision of maintenance expenses can claim only their expenses for a future period.

BOOK 10

Regarding Guardianship and Tutorship

CHAPTER 1

ON GENERAL CONSIDERATION

Article 1207 - The following persons are considered as under disability and are forbidden to take possession of their property and their pecuniary rights:

1 - Minor children.

2 - Persons who have not matured.

3 - Lunatics.

Article 1208 - By the words "persons who have not matured" is meant persons whose method of dealing in their property and rights is not in accordance with reason.

Article 1209 - Repealed on 29 December 1982.

Article 1210 - No one, when reaching the age of majority, can be treated as under disability in respect of insanity or immaturity unless his immaturity or insanity is proved.

Note 1 - the age of majority for boys is fifteen lunar years and for girls nine lunar years.

Note 2 - The properties which had belonged to a minor who has now reached the age of majority may be given to him only if it has been proved that he has full legal capacity.

Article 1211 -Lunacy, to whatever degree, incurs disability.

Article 1212 - The acts and words of minor children are null and void and of no effect so far as their acts and words relate to the IT property and pecuniary rights . A discriminating minor child, however, can take possession of property for no consideration, such as accepting a gift, or a free transfer, or assuming possession of unclaimed property.

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Article 1213 -A permanent lunatic and a periodical lunatic in his state of lunacy cannot make any intervention whatever in his property and his pecuniary rights even with the permission of his guardian. But judicial acts made by a periodical lunatic during a period of sanity are binding provided that his sanity is established.

Article 1214 - Transaction and legal acts performed by a person not of age are not binding except with the permission of his natural guardian or his guardian, whether the permission has already been given or will be given after the transaction is made.

Never the less, all kinds of possessory acts against no consideration are binding even without permission.

Article 1215 - If anyone hands certain property to the possession of a non discriminating minor child or a lunatic, the minor child or the lunatic shall not be held responsible for damage or loss to the property.

Article 1216 - In case the minor child, lunatic or immature person, causes loss to another person ,he shall be considered a guarantor for the same.

Article 1217 - The management of the property of minor children and insane and immature persons is entrusted to the care of their guardian, as is laid down in Part 3 of Book 8 and the subsequent Articles.

## CHAPTER 2

### REGARDING THE APPOINTMENT OF A GUARDIAN AND THE PROCEDURE RELATING THERETO

Article 1218 - Guardians will be appointed for the following persons:

- 1 - For minor children not having a "special guardian's.
- 2 - For insane and immature persons whose insanity, or immaturity directly followed their attaining full age and who have no "special guardian".
- 3 - For insane and immature persons whose insanity or immaturity did not follow directly after attaining full age.

Article 1219 - In the case mentioned in the preceding Article regarding the appointment of a guardian for their children each of the parents is bound to report the matter of the Public Prosecutor of the district of his residence or to his representative, and to request him to take necessary action for the appointment of a guardian.

Article 1220 - In the absence of the parents or their lack of knowledge it is the duty of the relatives who are living in the same place as the person needing a guardian to perform the

task mentioned in the preceding Article.

Article 1221 - If a person for whom a guardian should be appointed as stipulated in Article 1218, has a wife or a husband, the wife or husband is also bound to carry out the formality prescribed in Article 1219.

Article 1222 - In any case where the Public Prosecutor happens to know in any way of the existence of a person for whom a guardian ought to be appointed in accordance with 120

Article 1218, he (the Public Prosecutor) would have to refer the matter the Special Civil Court and introduce to the court those persons whom he considers fit to be guardians. The Special Civil Court will then appoint one or several persons as guardian and issue a decision of appointment. The court also can appoint one or several persons to act as supervisors. In this case the court would have to fix the limits of the supervisor's authority.

In case the court does not consider reliable the person thus introduced, it will ask for other persons to be introduced by the Office of the Public Prosecutor.

Article 1223 -With regard to lunatics the Public Prosecutor should refer the matter beforehand to the experts and submit the views of the latter to the Special Civil Court. In the event of lunacy being established, the Public Prosecutor will refer the matter to Court

for the appointment of the guardian. In respect of immature persons also, the Public Prosecutor is bound to obtain adequate information regarding their lack of maturity through well-informed people and to file a suit in the Special Civil Court should he (the Public Prosecutor) find the immaturity indisputable, and to refer the matter to the Special Civil Court for the appointment of a guardian after the issue of a decision regarding the immaturity.

Article 1224 - The safeguarding as well as the superintendence of the property of minor children, lunatics and immature persons shall be entrusted to the care of the Public Prosecutor so long as no guardian has been appointed for them.

The procedure relating to the safeguarding and superintending of the property by the Public Prosecutor shall be designated by virtue of regulations of the Ministry of Justice.

Article 1225 - As soon as a decision declaring the lunacy or immaturity of a person is issued and a guardian is appointed by the Ecclesiastical Court for the said person, the Public Prosecutor can declare the state of disability.

The declaration of the state of disability of any person who may, in view of the conditions of his property, become the subject of comparatively important transactions, is obligatory.

Article 1226 - The names of persons who, after reaching the old age and maturity become under disability because of lunacy or weakness of intellect should be put down in a special register. This book can be seen by anybody.

Article 1227 - The courts, departments and notaries-public can recognize as guardians only those persons whose appointment is made by virtue of the law through the Court.

Article 1228 - Outside Iran the Iranian Consular Officers have the right to appoint temporary guardians in respect of the Iranians for whom guardians will have to be appointed in accordance with Article 1218 and who are residing or staying within the limits. of their area of jurisdiction . They must, by the day following the appointment of guardians, send the documents showing their action to the Ministry of Justice through the

Ministry of Foreign Affairs. The appointment of the said guardian will only become definite when the Special Civil Court of Tehran corroborates the decision taken by the Consular Officer.

Article 1229 - The duties and authority which are prescribed by virtue of the relevant laws and regulations in respect of the intervention Public Prosecutors in matters concerning minor children, lunatics, and immature persons are, So far as these matters concern foreign countries, entrusted to the care of Consular Officers.

Article 1230 -If any stipulation is made contrary to the provisions of the preceding Article in the treaties and agreements concluded between the Iranian Government and the

Government in whose consular Officer concerned is exercising his duties, the officers concerned shall put into force the provisions of the two Articles so far as they do not conflict with the stipulations of the agreement or treaty.

Article 1231 - The following persons should not be appointed as guardians:

1 - Those persons who are themselves under guardianship.

2 - Those persons who, by reason of perpetrating a felony or the following misdemeanours been convicted by a final judgment

Theft , abuse of confidence (breach of trust) , swindling embezzlement, rape or immoral acts, offences against children, and fraudulent bankruptcy.

3 - Persons for whom orders of bankruptcy are issued and whose bankruptcy has not yet been settled.

4- Persons who are notorious for their immoral acts.

5-A person who either in his own name or in that of his relatives of the first degree has a claim against the person under incapacity.

Article 1232 - The relatives of the person under capacity shall have priority over others in the matter of guardianship, if they are competent.

Article 1233 - A woman cannot accept guardianship without, the consent of her husband.

Article 1234 - When the court appoints more than one person as guardian, it can determine the duties of the guardians separately.

### CHAPTER 3

#### POWERS, DUTIES AND RESPONSIBILITIES OF THE

#### GUARDIAN AND THE LIMITS THEREOF

#### SUPERINTENDENCE OF THE PUBLIC PROSECUTOR

#### OVER THE MATTERS RELATING TO MINOR CHILDREN,

#### LUNATIC AND IMMATURE PERSONS

Article 1235 - The protection of the person who is under guardianship as well as his legal representation in all matters relating to his property and financial rights, are entrusted to

the guardian.

Article 1236 - The guardian is bound, before interfering in the matters relating to financial affairs of the person placed under guardianship to make an inventory of all the latter's property and to send a copy of same duly signed by himself to the Public

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Prosecutor in whose district the person under guardianship resides, and the Public Prosecutor or his representative should make necessary inquiries with regard to the amount of the property of the ward.

Article 1237 - The Public Prosecutor or his representative should, after seeing the list of the property belonging to the person under guardianship, fix the amount of the annual expenses of the said person as well as the sum which may be necessary for the management of the said property. The guardian cannot spend more than the said amounts

unless with the permission of the Public Prosecutor.

Article 1238 - The guardian who fails to safeguard the property of the person placed under guardianship, will be held responsible for negligence or excessive use which may be incurred by the shortage or destruction of the said property even if the loss or wasting be not caused by negligence or excessive use on the part of the guardian.

Article 1239 - In case it is proved that the guardian deliberately failed to put down in the list of the property of the person placed under guardianship some part of the same and caused this part of property not to be entered in the list, he (the guardian) shall be held responsible for any damages and losses which may be caused on that account to the person placed under guardianship. Further, should it be proved that the said act was based

on bad faith, the guardian shall be dismissed.

Article 1240 - The guardian cannot transact any business on behalf of the ward between himself and the ward, whether by transferring to himself the property of the ward or by transferring his own property to the latter.

Article 1241 - The guardian cannot sell, mortgage or dispose of the immovable property of the ward in such a way that he (the guardian) becomes indebted to his ward unless in the interests of the ward and with the approval of the Public Prosecutor. In the latter case

an indispensable condition for the approval of the Public Prosecutor consists in the financial standing of the guardian Likewise, he (the guardian) cannot raise any

unnecessary or needless loan for the person placed under guardianship unless with the approval of the Public Prosecutor.

Article 1242 - The guardian cannot settle a lawsuit relating to the ward by compromise unless with the approval of Public Prosecutor.

Article 1243 - In case of existence of adequate reasons the Public Prosecutor can ask the

Special Civil Court to require from the guardian certain guarantees regarding the management of the property of the ward. The nature of these guarantees is to be fixed by

the court. If the guardian is not prepared to give the required guarantees, he will be dismissed from the guardianship.

Article 1244 - The guardian should submit to the Public Prosecutor or his representative an account of his guardianship at least once a year. If he (the guardian) fails to submit the account within a month from the 'date of request made by the Public Prosecutor, he shall be dismissed on the demand of the Public Prosecutor.

Article 1245- The guardian shall give an account of his tenure to the person formerly placed under his guardianship when the person concerned has reached full age and maturity or removal of his incapacity. If the guardianship comes to an end before the removal of incapacity, the account must be submitted to the subsequent guardian.

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Article 1246 - The guardian can ask for fees for the fulfilment of his duties as guardian. The amount of the fees in question will be fixed with relation to the nature of the work undertaken by the guardian, the amount of occupation caused to the guardian by his duties as such, and the place where the guardian resides as well as the amount of the income of the ward.

Article 1247- The Public Prosecutor can entrust to reliable persons, to a committee, or to an institution either totally or partly the right of exercising supervision in the affairs relating to the person placed under guardianship. The person, committee or institution appointed for carrying out such a control shall be held responsible for any loss or damages which may be caused to the person placed under guardianship in the case of failure or dishonesty on the part of such person or body.

CHAPTER 4

ON THE CIRCUMSTANCES OF DISMISSAL  
OF THE GUARDIAN

Article 1248-A guardian is dismissed in the following circumstances:

- 1 - If it be established that the guardian lacked honesty or loses this quality.
- 2 - If the guardian commits a felony or perpetrates one of the following misdemeanours and is convicted by a final judgment Theft, breach of confidence, swindling, embezzlement, rape or moral acts, offences against children, bankruptcy by fraud or culpable bankruptcy.
- 3 - If the guardian is convicted to imprisonment for a reason other than those mentioned above and consequently cannot manage the financial affairs of the ward.
- 4- If the guardian is declared bankrupt.
- 5 - If the incompetence or inability of the guardian in the management of the affairs of the ward is established.
- 6 - In respect of Articles 1239, 1243 and 1244 at the request of the Public Prosecutor.

Article 1249 - If the guardian be insane or immature, he will be dismissed.

Article 1250- If the guardian is prosecuted by the Public Prosecutor in the matters relating to the property of the person placed under guardianship or in respect of a felony or misdemeanour concerning his ward, another guardian will, at the request of the Public Prosecutor, be appointed by the court for supervising temporarily the affairs of the ward.

Article 1251 - If a woman without a husband who is appointed as guardian, even if she be

the mother of the person placed under guardianship, re - marries, she will have to report the matter within a month from the date of the contract of marriage to the Public Prosecutor of the district of her residence or to his representative In such a case the Public

Prosecutor or his representative can, while taking into view the new position of that woman, ask for the appointment of a new guardian or the addition of a supervisor.

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Article 1252 - With regard to the preceding Article, in case the guardian fails to report her marriage to the Public Prosecutor or his representative within the prescribed period, the Public Prosecutor can ask for her dismissal.

## CHAPTER 5

### ON THE RELINQUISHMENT OF GUARDIANSHIP

Article 1253 - On the removal of the grounds which have caused the appointment of a guardian the guardianship will be extinguished.

Article 1254 - The person placed under guardianship or any other interested person can



ask for the removal of the guardianship The application for this purpose can be submitted

to the Special Civil Court of the district where the ward resides either direct or through the Public Prosecutor of the said district or his representative.

Article 1255 - In respect of the preceding Article the Public Prosecutor or his representative is bound to make enquires before hand as to the grounds for the removal of

the ground and to express his views in court with regard to the result of his enquiries.

In respect of persons whose incapacity is announced in accordance with Article 1225, the

removal of the incapacity should also be notified.

Article 1256 - The removal of incapacity of any ward should be recorded in the register mentioned in Article 1226 against the name of the ward.

### VOLUME III

#### ON EVIDENCE IN SUBSTANTIATION OF CLAIMS

##### On Evidence in Substantiation of Claims

Article 1257 - Anyone who claims a right has to establish the same and if the defendant, wishing to defend himself, claims something which may require evidence, it is he who must prove it.

Article 1258 - The evidence admissible in proving a claim is as follows:

1 - Confession.

2- Written documents.

3 - Oral testimony (evidence).

4-Indications.

5 - Oaths.

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### BOOK 1

#### Regarding Confession

##### CHAPTER 1

#### ON THE CONDITIONS OF CONFESSION

Article 1259 - Confession in acknowledging the right of another person against one's own interest.

Article 1260 - Confession takes place in any expression which implies the same.

Article 1261 - A sign made by a dumb person, which clearly indicates a confession is

valid.

Article 1262 - The person making a confession must be mature, sane, capable of forming an intention, and free. Therefore, an avowal made by a minor, or an insane person in a state of lunacy, or one who has no fixed intention or one who is under compulsion is of no effect.

Article 1263 - The confession made by a person of unsound mind in financial matters is of no effect.

Article 1264 - A confession made by a destitute person or a bankrupt in respect of his property and against the interest of the creditors is not effective.

Article 1265 - A confession made by person claiming destitution and bankruptcy in matters relating to his property is of no effect in regard to the safeguarding of the rights of others unless the destitution or otherwise is proved.

Article 1266 - Capacity is not essential in respect of the person in whose favour the confession is made. But he must be capable, according to law, of possessing what the confession has conferred upon him.

Article 1267 - A confession made to the benefit of a deceased person will be effective for the latter's heirs.

Article 1268 - A conditional confession is not effective.

Article 1269 - A confession made in a matter which is practically or rationally impossible, or which is not valid in law is not effective.

Article 1270 - A confession made in respect of an unborn child is only valid when the child is born alive.

Article 1271 - If the person in whose favour the confession is made is unknown, the confession is of no value. If he is partially specified, the confession is effective; as for instance when one of two known persons is meant.

Article 1272 - The validity of the confession does not depend on the approval of the person in whose favour the confession is made. If, however, he (the latter person) denied

the substance of the confession, the said confession will have no effect in his favour.

Article 1273 - A confession made in respect of parentage is only valid when (1) the fact of such parentage is possible by law and custom and (2) the person with whom the confessor alleges relationship admits the same, except in the case of a minor who is

admitted by a person as being his child, provided that no other person disputes his statement.

Article 1274-Disagreement between the person making a confession and the person in whose favour the confession is made concerning the cause of the confession does not make a confession invalid.

## CHAPTER 2

### ON THE EFFECTS OF CONFESSION

Article 1275 - Any person admitting the right of another person is bound by his admission.

Article 1276 - In case the falseness of a confession is proved before the magistrate, the confession shall have no value.

Article 1277 - A denial, if made after a confession, is not admissible. But in case a person making a confession claims that the confession made by him was faulty or based on error or mistake, his claim will be heard. The case is similar if that person mentions an excuse for his confession which is admissible, such as a statement made by him to the effect that the confession made by him related to a sum received against a document or draft which has not been cashed. These claims, however, do not affect the confession so long as they have not been established.

Article 1278 - The confession made by a person is valid only in respect of that person or his legal representative and has no effect in respect of others unless the law has made the confession effective in respect of that person.

Article 1279 - An oral confession made outside a court can only be proved by giving evidence by witnesses, when the claim itself is capable of being proved by evidence given by witness, or when proofs or indications exist that the confession really took place.

Article 1280 - A written confession follows the same rules as an oral one.

Article 1281 - The mention of a debt in a commercial account - book is equivalent to a written confession.

Article 1282 - If the confession made in a court depends on a condition or a situation, the

person in whose favour the confession is made cannot partition the same by taking advantage of the part which is to his interest and against the interest of the confessor, while ignoring the remaining part of the confession.

Article 1283 - If the confession made contains two parts which are of different effect and which are closely related to each other, as for instance where the defendant admits to have received the amount claimed from the claimant but claims to have returned it, steps will be taken in accordance with Article 1334.

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## BOOK 2

### Regarding Documents

Article 1284 - By "document" is meant any writing which can be referred to in connection with a claim or a defence.

Article 1285 - Signed testimony is not regarded as a document; it only has the value of signed testimony.

Article 1286 - Documents are two kinds: notarial and private.

Article 1287 - Documents which have been drawn up at the General Department for Registration of Documents and Landed Properties, or at the offices of Notaries Public, or before other official authorities, within the limit of their competency and in accordance with legal Regulations, are notarial.

Article 1288 - The contents of a document are authentic if it is not contrary to the laws.

Article 1289 - With the exception of such documents as are mentioned in Article 1287, all documents are regarded as private.

Article 1290 - Official documents are binding in respect of the two parties and their successors. They are binding in respect of third persons if this has been stipulated by the law.

Article 1291 - Private documents shall in two cases have the value of notarial documents,

and shall be binding in respect of the two parties and their heirs and successors

1 - If the party against whom a document is lodged admits that the document has been issued by the person who is alleged to have issued it.

2- If it is proved in the court that the document has actually been signed or sealed by the party who has denied it or expressed doubts as to its authenticity.

Article 1292 - Denial and expression of doubt is not entertainable against notarial

documents or documents which have the value of notarial documents, but the party can claim that the documents have been forged or prove that they have for some reason lost their validity.

Article 1293 - If a document has been prepared by an official authority charged with the drawing up of documents, but that authority has not been competent to draw up the document or has not observed the legal requirements connected with the drawing up of the document, such a document, if it bears the signature or the seal of the party is regarded as private.

Article 1294 - Failure to comply with the provisions regarding stamp fees which are due on documents does not make a document lose its authenticity

Article 1295 - Iranian courts will give to documents drawn up in foreign countries the same credit as the said documents possess in accordance with the laws of the country in

which they have been drawn up, provided that:

Firstly, they have not lost their validity for any legal reason.

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Secondly, their contents are not in contravention with the laws connected with public order or good morals in Iran.

Thirdly, the country in which the documents have been drawn up gives credit to documents drawn up in Iran, in accordance with its laws or treaties.

Fourthly, the Iranian diplomatic or consular representative accredited to the country where the document has been drawn up or the diplomatic or consular representative of that country in Iran has certified that the document has been drawn up according to the local laws.

Article 1296 - In case the conformity of the documents referred to in the preceding Article with the laws of the locality where they have been drawn up has been attested by the foreign diplomatic or consular representative in Iran, the admittance of the document in the courts of Iran depends on the Ministry of Foreign Affairs in Tehran or the Governor - General and Governors in the Provinces and towns having certified as true the signature of the foreign representative.

Article 1297 - In connection with a claim lodged by one merchant against another merchant in circumstances where the claim has arisen out of commercial accounts and

dues, the commercial books will be considered as evidence, provided that the said books

have been drawn up in conformity with the Commercial Code.

Article 1298 - A merchant's book shall not be valid as against a non - merchant; but it can be accepted as one of the indications and clues. But if a person refers to the book of a

merchant, he cannot make a differentiation, accepting what is to his interest and rejecting

what is to his disadvantage, unless he proves the invalidity rejecting what is to his disadvantage, unless he proves the invalidity of what stands to his disadvantage.

Article 1299 - Commercial books are not considered as evidence in the following cases:

1 - If it is proved that new sheets have been entered into the books or that the book has erasure (s).

2 - When an irregularity or disorder is discovered in the book, being in the interest of the owner of the book.

3 - If the invalidity of the book has been formerly established in the court, for some reason.

Article 1300 - In cases where a commercial book is not evidence in favour of its owner it will be a valid document against him.

Article 1301 - A signature apposed on a script or document serves as evidence against the signatory.

Article 1302 - If at the foot or on the margin or the back of a document which is in the hand of the producer (of the document) there are endorsement made showing the invalidity or the invalidation of the whole or part of the substance of the document, the said endorsements shall be considered as valid even if they have no date or signature, or

have been cancelled by drawing a line through them or some other way.

Article 1303 - The contents mentioned in the preceding Article shall have no effect if their cancellation is accepted by the other party, or if it is proved in court.

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Article 1304 - If a signature to an undertaking is not given in the written undertaking itself but is given in a separate script, such written undertaking shall be an evidence against the signatory, if the script specifies to which undertaking or transaction it relates.

Article 1305 - In notarial documents the date of drawing up (of the document) is valid, even against third person, but in private documents the date is valid only in respect of those persons who have had participation in their drawing up and their heirs and the person in whose favour a will has been made.

## BOOK3

### Regarding Testimony

#### PART 1

##### ON THE CIRCUMSTANCES OF EVIDENCE

Article 1306 - Repealed on 29 December 1982.

Article 1307 - Repealed on 29 December 1982.

Article 1308 - Repealed on 29 December 1982.

Article 1309 - Against an official document or a document whose validity has been established at the court, no claim which is in contradiction with the substance or contents thereof can be proved by evidence.

Article 1310 - Repealed on 29 December 1982.

Article 1311 - Repealed on 29 December 1982.

Article 1312 - The rules laid down as above shall not be binding in the following cases:

1 - In cases where the testimony of a witness strengthens or completes the evidence, as when some proof is available in support of the original claim, but the quantity or the amount is unknown and the testimony is given to indicate the quantity or the amount.

2 - In cases where it is not possible to obtain a document owing to an accident, such as fire, blood, earthquake or shipwreck, in which circumstances a person who has entrusted

his property to another person cannot possibly obtain a document for it.

3 - In respect of all obligations for which documents are not usually obtained, as for instance, the goods which persons entrust to hotel, cafes, inns, and theatres and such as

the fees of doctors and midwives; also in respect of discharge or obligations for which it is not usual to obtain a document, such as works undertaken under contract or the like, even if the original undertaking is based on a document.

4 - In cases where the document has been lost or destroyed as the result of unexpected events.

5 - In cases of automatic guarantees and other affairs not involved in contracts and transactions.

Article 1313 – In a witness maturity, sanity, justice, faith and legitimate descent are required.

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Note 1 - The witness' justice must be established by a religious procedure for the Court.

Note 2 - The testimony of a person who has a personal interest, the res or profit thereof, in the subject - matter of the Claim or has the right to challenge the claim, as well as the testimony of medicants shall not be accepted.

Article 1313 bis - Repealed on 29 December 1982.

Article 1314 - The evidence of children who have not reached the full age of 15 may be heard only for supplementing information, except where the law has recognized evidence

given by such children as valid.

PART 2

ON THE CONDITIONS OF GIVING EVIDENCE

Article 1315 - Evidence must be given from a sure and certain knowledge, not by way of doubt or hesitation.

Article 1316 - Evidence given must correspond with the lawsuit, but it is not invalid if it is contradictory in words but consonant in meaning, or proves less than (the amount of) the claim.

Article 1317 - Evidence given by witnesses must agree in substance. Therefore, if witnesses give evidence found to be at variance with each other such evidence shall not have any effect unless sure conclusion can be drawn from the substance of their declarations.

Article 1318 - There will be no objection to varying statements by witnesses in respect of the details of a matter if they (such statements) do not involve contradiction on the subject about which evidence is being given.

Article 1319 - No effect will be given to the evidence given by a witness if he withdraws his evidence or he is found to have given incorrect evidence

Article 1320 - Hearsay evidence will be admissible if the first witness has died or is unable to be called owing to other impediments such as sickness, travel, imprisonment, etc.

BOOK 4

On Circumstantial Evidence

Article 1321 - By circumstantial evidence is meant conditions and circumstances which



are considered, by virtue of law, or in the view of judge, as proofs of a matter

Article 1322 - Legal circumstantial evidence are such indications which the law has regarded as evidence in a matter, such as the indications mentioned in this Act, Articles 35, 109, 110, 1158 and 1159 etc. and other proofs stipulated in other laws.

Article 1323 - Legal circumstantial evidence shall be valid in respect of all claims, even if they are such claims as cannot be proved by the evidence of witnesses, unless there is proof defeating such circumstantial evidence.

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Article 1324 - The circumstantial evidence left to the view of the judge are the conditions and circumstances regarding the issue (of a claim), and can be accepted only in cases where the claim is provable by the evidence of witnesses, or where it (the circumstantial evidence) completes other evidence.

BOOK S

Concerning Oaths

Article 1325 - In respect of claims which can be proven by the evidence of witnesses, the claimant may subject the decision to be issued respecting his claim denied by the defendant, to the latter's taking an oath.

Article 1326 - In the cases covered by the preceding Article, the defendant can also, in the event of asserting that the debt or obligation or the like has lapsed, make the decision

to be issued respecting the claim subject to an oath being taken by the claimant.

Article 1327 - The claimant or the defendant in the cases covered by the two preceding Article can request that an oath should be taken by the other party if the act or the issue of

the claim is related to the other party in person. In respect of claims against minors and insane persons, therefore, an oath cannot be required from the natural guardian, guardian

or executor for the acts done by him personally as long as he remains in their charge as natural guardian, or guardian or executor. This also applies to all cases where a matter is

related to one party.

Article 1328 - The person whose lot it is to swear must, in the event of failing to prove the nullity of the claim put forward by the other party, either take an oath or pass it on to the other party . In case he will neither take an oath nor pass it on to the other party, he

will be condemned in regard to the claim for which an oath has been requested, on the oath taken by the claimant as decided by the Court.

Article 1328(a)-added as an amendment .on 29 December 1982. The court can on the basis of The importance of the subject of litigation, the personality of the litigant, a other effective circumstances offer that the oath should be taken with certain special religious .ceremonies , or make the taking of the oath more solid in any other way.

Note - If a person who has been required to take oath with these religious formalities or solidness , does not accept these extra formalities and nevertheless takes an oath

(without

these additional formalities), will not be considered as having de the oath.

Article 1329 - An oath is to be imposed upon a person whose confession would be binding if he made a confession.

Article 1330 - The request for an oath may be delegated and the advocate in charge of the

lawsuit can ask for the other party to swear an oath, but an oath to be sworn cannot be delegated and an advocate cannot swear an oath instead of his client.

Article 1331 - An oath terminates a claim and no statement contradictory to the oath may be accepted from the other party.

Article 1332 - An oath shall have an effect only in respect of those persons who are parties to the suit and their successors.

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Article 1333 - In respect of a claim against a deceased person, if the original right has been proven but the continuance of its existence is not established in the view of the judge, the latter can ask the claimant to swear an oath as to the continuance of existence

of the right. In such circumstances, the person who has been asked to take the oath cannot

pass it on to the defendant. The provisions of this Article shall not apply in the case where the evidence for a claim is a notarial document.

Article. 1334 - In the case of Article 1283 the person who has confessed can request that

an oath be taken by the other party for anything that he (the former) claims, unless the evidence in support of the claimant's claim is a notarial document or a document whose validity has been established in the court.

Article 1335 - Taking oath is permissible only in circumstances where none of the evidences mentioned in Books One to Four of Three of this law exists to prove a claim . Only in such a case the claimant can offer an oath to resolve his claim against a defendant who denies the substance of the claim.

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