Disclaimer: The English language text is provided by the Translation and Terminology Centre for information only; it confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published. Only the latter is authentic. The original Latvian text uses masculine pronouns in the singular. The Translation and Terminology Centre uses the principle of gender-neutral language in its English translations. In addition, gender-specific Latvian nouns have been translated as gender-neutral terms, e.g. *chairperson*.

Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with amending laws of:

7 July 1992;
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If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*[1] has adopted and
the President has proclaimed the following Law:

THE CIVIL LAW

Introduction

1. Rights shall be exercised and duties performed in good faith.

2. This Law is applicable to all legal issues, to which its text or interpretation relates.

Rights based on custom may neither set aside nor vary law. Rights based on custom are applicable in the cases specified by law.

3. Every civil legal relation shall be adjudged in accordance with the laws, which are in force at the time when such legal relations are created, varied or terminated. Previously acquired rights shall not be affected.

4. The provisions of this Law shall be interpreted firstly in accordance with their direct meaning; where necessary, they may also be interpreted in accordance with the structure, basis and purposes of this Law; and, finally, they may also be interpreted through analogy.

5. Where a matter is required to be decided in the discretion of a court or on the basis of good cause, the judge shall decide the matter in accordance with a sense of justice and the general principles of law.

6. The general provisions regarding obligations are applicable *mutatis mutandis* to family, inheritance and property legal relations.

[1] The Parliament of the Republic of Latvia

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7. Place of residence (domicile) is that place where a person is voluntarily dwelling with the express or implied intent to permanently live or work there.

A person may also have more than one place of residence.

Temporary residence does not create the legal consequences of a place of residence and shall be adjudged not on the basis of duration, but in accordance with intent.

8. The legal capacity and capacity to act of natural persons shall be determined in accordance with the law of their place of residence. If a person has a number of places of residence and one of them is in Latvia, then such person's legal capacity and capacity to act, as well as the consequences of his or her legal acts shall be adjudged in accordance with Latvian law.

Foreign nationals, who do not have capacity to act, but who could be acknowledged to have such capacity pursuant to Latvian law, are bound by their legal acts performed in Latvia, if this is required in the interests of administering justice.

The rights and capacity to act of a legal person shall be determined pursuant to the law of the place where its board of directors is located.

The provisions of the laws of Latvia, which restrict the legal capacity or capacity to act of foreign nationals in Latvia, are not affected.

9. Guardianship and trusteeship shall be established in accordance with Latvian law, if the place of residence of the persons subject to guardianship or trusteeship is in Latvia. If the property of such persons is located in Latvia they, in respect of such property, shall be subject to Latvian law notwithstanding that they do not have a place of residence in Latvia.

The adoption of the other spouse's child shall be approved according to Latvian Law if the place of residence of the person to be adopted is Latvia.
[10 March 2005]

10. Missing persons may be declared presumed dead in accordance with Latvian law, if their last place of residence was in Latvia. If the property of such persons is located in Latvia they, in respect of such property, shall be subject to Latvian law notwithstanding that they did not have a place of residence in Latvia.

11. If a marriage is entered into in Latvia, the right to marry, the formalities of entering into marriage and the effect of marriage shall be determined in accordance with Latvian law.

Similarly, the right of a citizen of Latvia to marry in a foreign state shall be determined in accordance with Latvian law. In that case, the law of the state, where the marriage is entered into, shall determine the formalities of entering into marriage.

12. Dissolution of marriage and the declaration of a marriage as annulled, if done in a Latvian court, shall be adjudged in accordance with Latvian law, without regard to the nationality of the spouses. In this respect, an exception may be allowed to the provisions of Section 3, in the sense that the relations of the spouses before they become subject to Latvian law, may also be adjudged in accordance with Latvian law.

A dissolution or declaration as annulled of a marriage of citizens of Latvia, done in a foreign state, shall also be recognised in Latvia, except in a case where the grounds submitted as the basis therefor do not conform to Latvian law and are in conflict with the social or moral standards of Latvia.

13. Personal and property relations of spouses shall be determined in accordance with Latvian law, if the place of residence of the spouses is in Latvia. If property of the spouses is located in Latvia they, in respect of such property, shall be subject to Latvian law notwithstanding

that they themselves do not have a place of residence in Latvia.

14. Legal relations, which are associated with the paternity of a child and the dispute thereof shall be adjudged in accordance with Latvian law, if the place of residence of the mother of the child at the time of the birth of the child was in Latvia.

Latvian law is also applicable where a dispute regarding the paternity of a child arises in Latvia.
[12 December 2002]

15. Legal relations between parents and children shall be subject to Latvian law if the specified place of residence of the child is Latvia.

In respect of such property as is located in Latvia, parents and children are subject to Latvian law also when the specified place of residence of the child is not in Latvia.
[12 December 2002]

16. Inheritance rights regarding an inheritance located in Latvia shall be adjudged in accordance with Latvian law.

17. The distribution, in a foreign state, of an inheritance shall be allowed only after the lawful claims against the inheritance, of persons whose place of residence is in Latvia, are satisfied first.

18. Property rights - including possession -shall be determined in accordance with the law of the place where the property is located.

Where there is a change in the location of movable property, the property rights of third persons acquired pursuant to the laws of the place where such movable property was previously located, shall not be affected.

The consequences of elapse of prescriptive periods or periods of limitation, in regard to property rights shall be adjudged in accordance with the law of the place where the property is located when the period elapses.

The acquiring, varying or termination of property rights, if related to immovable property located in Latvia, and obligation rights arising from legal transactions, on the basis of which such property rights may be acquired, varied or terminated, shall, in respect of form and substance, be determined solely in accordance with Latvian law, regardless of what persons made the relevant legal transactions and where they made them. Conflicting provisions and forms as are in such legal transactions are not in force in Latvia.

19. In respect of obligations rights and duties arising from contract, it must first be ascertained whether the contracting parties have agreed as to what laws their mutual relations shall be adjudged in accordance with. Such agreement shall be in effect, insofar as it is not in conflict with mandatory or prohibitory norms of Latvian law.

If there is no agreement, it shall be presumed that the contracting parties have made their obligation, in accordance with its substance and consequences, subject to the laws of the state where the obligation is to be performed.

If the place where the obligation is to be performed is not able to be determined, the law of the place where the contract was entered into is applicable.

Contracts entered into by institutions of the State of Latvia and local governments of Latvia shall be adjudged, in respect of their substance and consequences, in accordance with Latvian law, provided it is not otherwise stipulated in the contract itself.

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20. Obligations not based on contract shall be adjudged, in respect of their substance and consequences, in accordance with the law of the place where the basis, from which the obligation arose, was created. Obligations arising from wrongful acts shall be adjudged in accordance with the law of the place where the wrongful acts took place.

21. Either the law of the place where a legal transaction was made or the law of the place where it is to be performed may be applied to the form of a legal transaction.

The provisions of Section 18, Paragraph four shall be complied with in regard to the form of such transactions as relate to immovable property in Latvia.

22. Where Latvian law allows the application of the law of a foreign state, the substance thereof shall be determined in accordance with the procedure prescribed in the Civil Procedure Law. If that is not possible, it shall be presumed that the legal system in the relevant foreign state, in the area of law to be adjudged, conforms to the Latvian legal system in the same area.

23. If pursuant to the provisions of this introduction the law of a foreign state must be applied, but such law in turn stipulates that Latvian law is applicable, then Latvian law shall be applied.

24. The law of a foreign state is not applicable in Latvia if is in conflict with the social or moral ideals of Latvia, or mandatory or prohibitory norms of Latvian law.

25. The provisions of this introduction are applicable insofar as it is not prescribed otherwise in international agreements and conventions to which Latvia is a party.

PART ONE
Family Law

CHAPTER 1
Marriage

SUB-CHAPTER 1
Betrothal

26. A betrothal is a mutual promise to join together in marriage. A betrothal does not give rise to a right to bring court action to enforce the entering into of a marriage. A contractual penalty stipulated in the event that someone refuses to enter into marriage is void.

27. If the betrothal is cancelled or if one of the betrothed withdraws from it, each of the betrothed shall return all the property that has been given to him or her as a gift by the other, his or her parents or another person in connection with the intended marriage. The right to request the return of gifts does not devolve to the heirs of the deceased donor, but the heirs may continue an action brought by the deceased donor.

Gifts need not be returned, if the marriage does not take place because:

1) the betrothed donor has died;

2) the donor has refused to marry without good cause; or

3) the behaviour of the donor has been good cause for the other betrothed to refuse to marry.

28. If one of the betrothed refuses to enter into marriage without good cause or so behaves that such behaviour is good cause for the other betrothed to repudiate the marriage, the latter betrothed, his or her parents or persons who have incurred some expenditure for the benefit of the betrothed, may claim from the defaulting betrothed compensation for the direct losses caused to them in connection with the fact that he or she, in prospect of the intended marriage, have incurred some expenditure or have entered into some obligations.

Independently of this, the betrothed himself or herself may request from the other betrothed who has given cause to cancel the betrothal, compensation for losses which he or she has suffered from such actions as pertain to his or her property and potential earnings and to what he or she have done in connection with the intended marriage.

The amount of compensation for losses shall be in accordance with the financial means of the defaulting betrothed.
[12 December 2002]

29. Deleted.

30. Deleted.

31. Actions arising from the betrothal are terminated through prescription after a period of one year calculated from the day when the betrothal was cancelled or when a betrothed withdrew from it, but in the case of a pregnant fiancée, from the day when the child was born if at such time the betrothal had already been cancelled or the betrothed had withdrawn from it

SUB-CHAPTER 2
Entering into Marriage and Termination of Marriage

I. Impediments to Entering into Marriage

32. Marriage prior to the attaining of eighteen years of age is prohibited except in the case provided for in Section 33.

33. By way of exception, a person who has attained sixteen years of age may marry with the consent of his or her parents or guardians if he or she marries a person of age of majority.

If the parents or guardians, without good cause, refuse to give permission, then permission may be given by an Orphan's court for the place where the parents or appointed guardians reside.

34. Persons who have been found by a court to lack capacity to act due to mental illness or mental deficiency are prohibited from marrying.

35. Marriage is prohibited between kin in a direct line, brothers and sisters, and half-brothers and half-sisters (Section 213). Marriage between persons of the same sex is prohibited.

36. Deleted.

37. Marriage between an adopter and an adoptee is prohibited, except in cases where the legal relationship established by adoption has been terminated.

38. A new marriage for a person who is already married is prohibited.

Similarly, marriage by a guardian with his or her ward, and by a trustee with the person under trusteeship, before the termination of the relations of guardianship or trusteeship, is prohibited.
[12 December 2002]

39. Deleted.

II. Application for Entering into of Marriage. Publishment.
[10 March 2005]

40. Before a marriage is solemnised, it shall be published.

41. Except in the cases provided for in Section 51, persons who intend to marry shall submit an application to the General Registry office.
[10 March 2005]

42. Together with the application regarding intent to marry persons who have previously been married shall present one of the following documents:

1) a death certificate for the previous spouse;

2) a dissolution of marriage certificate or an extract or statement from the dissolution of marriage act record; or

3) a court judgment which has come into lawful effect and by which the marriage was dissolved or annulled, or also an extract or a statement from the Marriage Register with an entry regarding such a judgment.

Similarly, they shall, before the marriage is entered into, in relevant cases, submit written permission from parents, guardians or an Orphan's court

For submitting information, as provided in this section, which is false, offenders may be held criminally liable.
[12 December 2002; 10 March 2005]

43. If it is not possible to obtain the documents mentioned in the first part of the previous Section (42), they may be substituted for by a court judgment concerning the determination of the applicable facts.

44. Publishment shall take place in the General Registry office where the application has been submitted regarding intent to enter into a marriage.

Publishment is not permitted:

1) if, in submitting the application, the provisions of the law have not been complied with;

2) if it is evident from the documents that there are impediments to the entering into of the marriage.

In disallowing a publishment, the manager of the General Registry office shall render a reasoned decision, which the persons seeking to be published may, within a period of two weeks, appeal to a court.
[10 March 2005]

45. A publishment shall be effected by posting a notice for one month at the General Registry office where the application regarding the intent to enter into a marriage was submitted.

In urgent cases, having regard to the circumstances, the manager of the General Registry office, at his or her discretion, may reduce the time period for the publishment.
[10 March 2005]

46. During the time period provided for in the previous Section (45), persons, whose rights are affected by the marriage, may raise objections against its being entered into, making reference to legal impediments.

Objections may also be raised by a prosecutor pursuant to Sections 61-64.

Objections shall submitted in writing to the General Registry office according to the place of the publishment (Section 45).

47. If an objection has been raised, the General Registry office where the application regarding the intent to enter into a marriage was submitted (Section 41) shall, without delay, notify the published persons about the objection raised.
[10 March 2005]

48. If the published persons consider the objection unfounded, they shall, within two weeks from the day of receipt of the notification, notify the General Registry office thereof.

The Office shall, without delay, notify the objector of thereof.

49. If the objector, within two weeks calculated from the day when he or she received the answer from the published persons, submits to the General Registry office a certificate that a court action has been brought to prohibit the published persons from marrying, the General Registry office shall suspend the publishment process until the matter is decided by the court.

50. If there have been no objections raised nor action brought, or it has been dismissed, the

marriage may be entered into at the General Registry office, or it shall issue an application regarding the intent to enter into a marriage with a notation about the publishment, so that the marriage may be entered into with a minister of a church or at another General Registry office.
[10 March 2005]

51. If the persons to be married belong to the Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers, Methodist, Baptist, Seventh Day Adventist or believers in Moses (Judaism) denominations and wish to be married by a minister of their denomination who has the relevant permission from the leaders of the denomination, the publishment shall take place in accordance with the procedures of the denomination concerned.

52. The published persons are entitled to marry within a six-month period, calculated from the day when it became known that there were no impediments to the entering into of the marriage (Section 50).

Persons may marry in a General Registry office or in the presence of a minister (Section 53). At the same time, a minister may also marry persons who have been published pursuant to Section 51.

III. Entering into of Marriage

53. A marriage shall be solemnised by the manager of a General Registry office or a minister from the denominations set out in Section 51, if the provisions regarding the entering into of marriage have been complied with.
[10 March 2005]

54. The manager of a General Registry office or a minister shall not solemnise a marriage if he or she know of impediments to the entering into of the marriage.
[10 March 2005]

55. The manager of a General Registry office or a minister may solemnise the marriage without prior publishment, if the bridegroom or the bride is going on active duty or if the bridegroom or the bride have a life-threatening illness.
[10 March 2005]

56. A marriage shall be solemnised in the personal presence of the bride and the bridegroom, and two witnesses of age of majority.

In a General Registry office, a marriage shall be solemnised publicly on the office premises or in other appropriate premises.

A marriage may be solemnised outside of these premises only on the grounds of illness of the bridegroom or the bride or for other good cause.
[10 March 2005]

57. The manager of the General Registry office shall ask the bridegroom and the bride if they wish to marry. If both express such a wish, the manager shall proclaim that on the basis of this agreement and the law the marriage has been entered into.

A minister shall solemnise a marriage in accordance with the regulations of his or her denomination.

58. Ministers shall, for each solemnised marriage, within a period of forty days, send to the

General Registry Office in which territory the marriage has taken place, the necessary information required for the Marriage register. For failure to perform this duty, the minister may be held administratively liable.

IV. Annulment of Marriage

59. A marriage may be declared annulled only in the cases provided for in the following Sections (60-67).

60. A marriage that has not been solemnised at a General Registry office or by a minister shall be declared annulled (Section 53).

A marriage that has been entered into fictitiously, i.e., without the intent to create a family, shall be declared annulled.

61. A marriage shall be declared annulled if it has been entered into before the spouses or one of them have attained the age provided for in Sections 32 or 33.

Such marriage shall not be declared annulled if, following the marriage, the wife has become pregnant or if both spouses have attained the specified age by the tune of the court judgment.

62. A marriage shall be declared annulled in which, at the tune of its being entered into, one of the spouses had been declared as lacking the capacity to act due to mental illness or mental deficiency, or was in such condition that such spouse was not able to understand the meaning of his or her actions or able to control them.

63. A marriage prohibited due to the kinship relations of the spouses (Section 35) shall be declared annulled.

64. A marriage shall be declared annulled in which, at the time it is entered into, one of the spouses is in another marriage.

The second marriage shall not be declared annulled if the first marriage has been terminated by death, divorce or annulment prior to the court judgment being rendered.

65. In the cases set out in Sections 60 to 64, an action for the annulment of a marriage may be brought by an interested person, as well as by the prosecutor.

Where a marriage is terminated by a death or divorce, only those persons whose rights have been affected by the marriage may bring action. If both spouses have died, action may not be brought to annul the marriage.

66. In the cases set out in Sections 60 to 64, there is no prescriptive period for bringing an action for marriage annulment.

67. A spouse may contest a marriage if the spouse has married under the influence of criminal threats.

Such an action shall be submitted within six months of the termination of the influence of the threats.

68. In the cases set out in the previous Sections (60 - 64 and 67), the marriage shall be considered to be annulled from the moment it is entered into.

V. Dissolution of Marriage

69. A court may dissolve a marriage only in the cases provided for in the following Sections (72-75). A marriage is dissolved as of the day when the court judgment concerning the marriage dissolution comes into legal effect.
[12 December 2002]

70. A court may dissolve a marriage based upon the application of one or both spouses.
[12 December 2002]

71. A marriage may be dissolved if the marriage is broken down. A marriage shall be deemed to have broken down if the spouses no longer cohabit and there is no longer any prospect that the spouses shall renew cohabitation.
[12 December 2002]

72. A marriage is presumed to have broken down if the spouses have lived apart for at least three years.
[12 December 2002]

73. Spouses shall have lived apart if they do not have a common household and one of the spouses explicitly does not want to renew it and disavows the possibility of cohabitation in marriage. A common household may not exist also when the spouses live separately in a common dwelling.
[12 December 2002]

74. If the spouses have lived separately for less than three years, the marriage may be dissolved only in the case if:

1) the continuation of the marriage for the spouse who has requested the dissolution of the marriage is not possible due to reasons that are dependent upon the other spouse and due to which cohabitation with him or her would be intolerable cruelty towards the spouse who has requested the dissolution of the marriage;

2) both spouses request the dissolution of the marriage or one spouse consents to the request of the other spouse for the dissolution of the marriage; or

3) one of the spouses has commenced cohabitation with another person and in such cohabitation a child has been born or the birth of a child is expected.

If a court believes that given the circumstances referred to in Paragraph one of this Section it is possible to save the marriage, for the purposes of the reconciliation of the spouses the adjudication of the matter may be adjourned for a period of up to six months.
[12 December 2002]

75. If one spouse requests the dissolution of the marriage due to a reason, which is not referred to in Section 74 of this Law, and the other spouse does not consent to the dissolution of the marriage, the court shall not dissolve the marriage prior to the time period indicated in Section 72 of this Law and for the purposes of the reconciliation of the spouses shall adjourn the adjudication of the matter.
[12 December 2002]

76. A marriage shall not be dissolved even though it has broken down if and insofar as the preservation of the marriage as an exception due to special reasons is necessary in the interests of the minor children born in the marriage.
[12 December 2002]

77. A marriage shall not be dissolved if and insofar as the custody of children born in the marriage, maintenance for the children, the division of common property or relevant claims have not been resolved prior to the dissolution of the marriage and are not raised together with the request for the dissolution of the marriage.
[12 December 2002]

78. [12 December 2002]

VI. Consequences of Annulment and Dissolution of Marriage

79. If a marriage is declared to be annulled and only one of the former spouses, on entering into the marriage, knew that it would be declared as such, then the other spouse, who did not know, has the right to claim from him or her:

1) compensation for non-material injury; and

2) means commensurate with his or her financial state if such is necessary to ensure or maintain the previous level of welfare.
[12 December 2002]

80. In dissolving a marriage or after the dissolution of a marriage, a former spouse may claim means from the other former spouse commensurate with his or her financial state if the latter by his or her actions has promoted the break down of the marriage and the means are necessary to ensure or maintain the previous level of welfare.
[12 December 2002]

81. The duty to ensure the previous level of welfare or maintenance of the former spouse terminates when the same amount of time has passed subsequent to the dissolution of the marriage or the declaration of the annulment of the marriage as the duration of the relevant dissolved marriage or cohabitation in the marriage, which has been declared annulled. In cases where the common child of the former spouses has in this period not reached the age of majority and he or she is under the custody of a former spouse, who has the right to claim means, such duty shall continue until the child reaches the age of majority.

The duty to ensure the previous level of welfare or maintenance of the former spouse ceases if:

1) the former spouse has entered into a new marriage;

2) the income of the former souse ensures the previous level of welfare or maintenance;

3) the former spouse avoids obtaining means for maintenance through his or her own work; and

4) there are other circumstances, which testify that the need to obtain means from the former spouse has disappeared.
[12 December 2002]

82. A spouse whose marriage is declared annulled, shall reacquire his or her premarital surname. If he or she, on entering into the marriage, did not have knowledge that the marriage shall be declared annulled, the court may, pursuant to his or her petition, allow him or her to

retain the marital surname.

A spouse who, upon entering into a marriage, has changed his or her surname, is entitled also after the dissolution of the marriage, to use such surname, or also, pursuant to his or her petition, the court shall grant use of the premarital surname. On the basis of a petition from the other spouse, a court, if it does not affect the interests of the child, may prohibit the spouse who has promoted the break down of the marriage to use the surname acquired in marriage.
[12 December 2002]

83. If a marriage is declared to be annulled, each of the former spouses shall keep his or her own premarital property, as well as such property as he or she has acquired himself or herself during cohabitation. Property acquired in common shall be divided between the former spouses in equal shares.

If both spouses upon entering into marriage did not have knowledge that the marriage shall be declared annulled, or this was not known by one of them, the property acquired in common shall be divided according to the provisions regarding the division of lawfully acquired property in marriage: in the first case – in relation to both former spouses, and in the second case – in relation to the spouse who did not have knowledge that the marriage shall be declared annulled.
[12 December 2002]

SUB-CHAPTER 3
Personal Rights of Spouses

84. Marriage creates a duty on the part of a husband and a wife to be faithful to each other, to live together, to take care of each other and to jointly ensure the welfare of their family.

85. Both spouses have equal rights in regards to the organisation of family life. In the event of differences of opinion, spouses shall endeavour to reach an agreement. Spouses may apply to the court for the resolution of disputes.

86. Upon entering into marriage, the spouses, pursuant to their wish, may select the premarital surname of one of the spouses as their common surname.

During marriage, each spouse may retain his or her premarital surname and not assume a common marital surname.

Upon entering into marriage, one of the spouses may add to his or her surname the surname of the other spouse, except in cases where one of the spouses already has a double surname, or also the spouses may make a joint double surname from the premarital surnames of both spouses.
[12 December 2002; 10 March 2005]

87. Independently of their property relations, spouses have the right, within the domain of household financial matters, to act on behalf of each other. Transactions entered into by a spouse within the domain of such matters shall be deemed to also have been made in the name of the other spouse unless it is otherwise apparent from the circumstances.

If there is good cause, one spouse may restrict or deprive the other spouse of this right, but such restriction or deprivation shall be in effect against third parties only if they have been notified of it, or if it has been recorded in the Spousal Property Relations Register (Section 140).

88. Each spouse, regardless of the form of property relations of the spouses, has the right, on the basis of general principles, to act independently regarding their property in the event of death.

SUB-CHAPTER 4
Property Rights of Spouses

I. Lawful Property Relations of the Spouses

89. Each spouse retains the property, which belonged to him or her before the marriage, as well as the property he or she acquires during the marriage (Section 91).

Everything acquired during the marriage by the spouses together, or by one of them, but from the resources of both spouses, or with the assistance of the actions of the other spouse, is the joint property of both spouses; in case of uncertainty, it shall be presumed that such property belongs equally to both spouses.

If, during the marriage, some valuable property belonging to a spouse is replaced by other property, the latter is the property of such spouse.

90. Throughout the time the marriage subsists, each spouse has the right to administer and use all of his or her own property that he or she owned before the marriage, as well as that acquired during the marriage.

The spouses shall jointly administer and act in regard to the joint property of both spouses (Section 89, Paragraph two), but upon both spouses agreeing it may also be administered by one of them. Any acts regarding such property by one of the spouses shall require the consent of the other spouse.

In the interests of third parties, it shall be presumed that such consent has been given, except for cases where the third party knew or ought to have known that there was no consent given, or where the property regarding which a spouse has acted is such that it manifestly belongs to the other spouse.
[12 December 2002]

91. The separate property of each spouse is:

1) property owned by a spouse before the marriage, or property the spouses have, by contract, designated as separate property;

2) articles, which are suitable only for the personal use of one spouse, or are required for his or her independent work;

3) property, which was acquired *gratis* during the marriage by one of the spouses;

4) income from the separate property of a spouse that is not assigned to the needs of the family and joint household finances; and

5) property that replaces the property referred to in the previous Paragraphs (1-4).

The burden of establishing that certain property is separate shall lie upon the spouse who asserts such. The fact that immovable property is the separate property of one spouse shall be recorded in the Land Register.

92. Deleted.

93. A spouse may assign his or her property or his or her share of the joint property of the spouses to be administered by the other spouse who shall preserve and protect such property with all of his or her resources. If the joint immovable property of the spouses is recorded in

the Land Register in the name of one of the spouses, it is presumed that the other spouse has assigned his or her share in such property to be administered by him or her.
[12 December 2002]

94. If a spouse manages buildings belonging to the other spouse, he or she shall not only carry out the repairs required, but also make improvements to the extent income from the property of the other spouse permits.

The immovable property of a spouse may be leased or rented by the other spouse, for a term not exceeding three years and without recording the contract in the Land Register.

In order that a spouse, whose administration the valuable property of the other spouse is subject to, may so act that he or she exceeds the normal limits set for administration, the spouse must obtain the consent of the other spouse.
[12 December 2002]

95. Both spouses have a duty to cover the family and joint household expenses out of the joint property of the spouses.

If the joint property of the spouses is insufficient to support the family, each spouse may require that the other spouse share the family and joint household expenses commensurately to his or her own separate financial state.

If spouses live separately, a spouse, if necessary, may claim from the other spouse who promoted the separated life, that he or she ensure a level of welfare commensurate with his or hers and equal to the last financial state, or to claim means for maintenance, by which is meant food, clothing, housing and, in case of need, personal care.
[12 December 2002]

96. For obligations that the spouses jointly have entered into for family or joint domestic financial needs, they shall be held liable to the extent of their joint property, and each to the extent of their separate property, if the joint property does not suffice.

For obligations regarding family or joint domestic financial needs that have been entered into by one of the spouses, such spouse shall be held liable to the extent of his or her property if the joint property of the spouses does not suffice. For these obligations, the other spouse shall be held liable to the extent of his or her property only if the consideration pursuant to such obligations has been used for family and joint household needs.

97. [12 December 2002]

98. For obligations arising from the wrongful acts of one spouse, such a spouse shall be held liable, firstly, to the extent of his or her separate property (Section 91), but, if that does not suffice, to the extent of his or her share in the joint property of the spouses.

99. In respect of obligations, which a spouse has entered into on his or her own account or without the consent of the other spouse, such spouse shall be held liable firstly to the extent of his or her separate property, but if that is insufficient, also to the extent of his or her share of the joint property of the spouses.
[12 December 2002]

100. The property of one spouse shall not be applied to satisfy the obligations of the other spouse.

If, in respect of the debts of one of the spouses, recovery proceedings are brought against the separate property of the other spouse, the other spouse may request that such

property be released from the recovery proceedings.

If, in respect of the debts of one of the spouses, recovery proceedings are brought against the joint property of the spouses, the other spouse may request that such property be divided and his or her share be released from the recovery proceedings.
[12 December 2002]

101. If one spouse, while administering the property of the other spouse, has made necessary expenditures from his or her own property, then only upon the termination of such administration may he or she request from the other spouse reimbursement of these expenditures to the extent he or she himself or herself are not required to cover them.
[12 December 2002]

102. [12 December 2002]

103. Deleted.

104. [12 December 2002]

105. [12 December 2002]

106. Deleted.

107. When the rights of administration of one spouse are terminated, all of the property of the other spouse shall be returned to him or her together with all augmentations thereto as may have taken place during the marriage, including also property acquired in place of that damaged or destroyed. Fungible property shall be given back in equal kind and quality.
[12 December 2002]

108. The settlement of accounts regarding property between the spouses themselves, upon the cessation of administration by one spouse, shall not deprive the creditors of the spouses of their rights. The rights acquired by third parties shall remain in effect.

109. The legal property relations of spouses shall be terminated:

1) on the basis of an agreement between the spouses;

2) if one of the spouses dies; or

3) in the dissolution of the marriage or in an existing marriage – on the basis of a request from one of the spouses if the debts of the other spouse exceed the value of his or her separate property or also as a result of his or her actions the property may be significantly reduced or dissipated.

If the legal property relations of the spouses is terminated with the death of one of the spouses, then after the splitting off of the share of the surviving spouse, the share of the deceased spouse shall pass to his or her heirs.

In dividing the joint property of the spouses, the whole of the property of the spouses, which is not recognised as the separate property of one of the spouses (Section 91) shall be taken into account – movable and immovable property with all appurtenances, as well as the claims and obligation of the spouses.

The joint property of the spouses shall be divided on the basis of the general provisions of the procedures for the division of an estate (Section 731 and subsequent sections)
[12 December 2002]

110. If in an existing marriage, the joint property of the spouses has been divided, to their property relations shall be applied the provisions regarding the separation of all of property of the spouses (Section 117 and subsequent sections). Contracts and court judgments shall acquire binding effect against third persons after the recording thereof in the Spousal Property Relations Register, but regarding immoveable property – after the recording thereof in the Land Register.

The division of spousal property shall not take away the rights of the creditors of the spouses. Rights acquired by third persons shall remain in force.
[12 December 2002]

II. Dowry

111. A dowry, which, in the event of marriage, parents, kin or other persons have endowed a woman, shall be the property of the wife even if it has been given to the husband.

112. For a promise to give as a dowry movable property more than five hundred lats in value or immovable property to be binding, it must be expressed in writing.

Fulfilment of a promise of dowry may be claimed by the wife herself or, on her behalf, by the husband; in addition, the right to bring an action for provision of the dowry is prescribed two years after the entering into of the marriage or the day specified for the provision of the dowry.

A dowry may not be claimed if the marriage has been entered into without the knowledge or assent of the person who has promised the dowry.

113. Rights, which are based on the promise of a dowry may not be assigned to a third person; these rights may devolve, by way of inheritance, only to the children of that marriage for the entering into of which the promise of dowry was given, and to the husband who has been left with the children.

III. Contractual Property Relations of Spouses

1. General Provisions

114. The spouses may establish, alter or terminate their property rights in a marriage contract before marrying as well as during marriage.

If the persons to be married are under guardianship, they shall enter into a marriage contract with the consent of their parents or guardians.

Marriage contracts, which contain instructions in the event of death, are subject to the general provisions regarding inheritance contracts.
[12 December 2002]

115. The parties to a marriage contract may not be replaced by an authorised representative. Such contracts shall be entered into in accordance with notarisation procedures, in the personal presence at the same time of both betrothed or of both spouses, but, if the person to be married is a minor – also of his or her lawful representative.

For marriage contracts to have binding effect as against third parties, they shall be registered in the Spousal Property Relations Register and in respect of immovable property, also in the Land Register.

The provisions of a marriage contract that limit the rights acquired by a third party in

respect of marital property, shall not be binding upon such third party.
[12 December 2002]

116. In a marriage contract, the parties entering into it, may, in place of lawful property relations of the spouses (89 and subsequent Sections), stipulate separate ownership (117 and subsequent Sections) or joint ownership (124 and subsequent Sections) of all property of the spouses.

2. Separate Ownership of all Property of the Spouses

117. If a marriage contract provides for the separate ownership of all the property of the spouses, each of the spouses not only retains the property which belonged to him or her prior to the marriage, but also, during the time of the marriage, may independently acquire, use and act in regard to it independently of the other spouse.

118. A spouse may not administer, use or in any other way act regarding the property of the other spouse without his or her consent.

A spouse, whose property the other spouse is administering, may require an accounting from him or her. Any prior waiver of the right to revoke administration or to require an accounting is void.

119. A spouse who administers the property of the other spouse shall be liable for the losses that have arisen from his or her gross negligence. From the time when one spouse has given notice to the other spouse that he or she will henceforth administer his or her property, as well as when, generally, a duty for a spouse to return property arises, the latter is liable in accordance with provisions applicable generally.

120. Each spouse shall share family and joint domestic financial expenses commensurately with his or her financial state.

121. Each spouse shall be liable for his or her own debts to the extent of his or her own property.

122. If one spouse disposes of or pledges the movable property of the other spouse, the person who has received such shall be acknowledged as having acquired that property or pledge in good faith, if he or she did not know or ought not to have known that the property was that of the other spouse or of both spouses and that it had been disposed of or pledged contrary to the volition of the other spouse.

123. When, during the marriage, the separate ownership of all the property of the spouses has been terminated and the spouses do not provide in a contract for joint ownership of property in its place, Section 89 and subsequent Sections are applicable.

Rights acquired by third parties shall remain in effect.

3. Joint Ownership of the Property of the Spouses

124. If the marriage contract provides for joint ownership of the property of the spouses, the property which has belonged to them prior to marriage, as well as the property which has been acquired during the marriage, except for their separate property (Section 125), shall be combined in one joint, indivisible whole which, during the duration of the marriage, shall not

belong to either of the spouses as separate parts. In the marriage contract, when providing for the joint ownership of their property, the spouses shall agree which of them shall be the administrator of the property in joint ownership (the husband, the wife or both jointly). If the administrator of the property in joint ownership is one of the spouses, such spouse may, subject to the limitations set out in Section 128, use the property without accounting therefor and act with the property in his or her own name, and it is his or her duty to cover family and joint domestic financial expenses.

If the spouse, who administers the property in joint ownership, due to illness or absence is not able to enter into a transaction, which pertains to property, which forms a part of the joint whole, or of conducting court proceedings pertaining to this property, the other spouse may replace him or her, if delay is risky.

If the spouse who is administering the joint property, finds that a transaction entered into by the other spouse has harmed those property interests which are part of the joint property, he or she may, within a one year period from the day when he or she became aware of it, contest it. In such a case, he or she must prove that the other spouse did not have grounds as mentioned in the second part of this Section to replace them.

125. During the joint ownership of the property of the spouses, there shall not be included therein property which the spouses have specified in a marriage contract as the separate property of each spouse.

Each of the spouses may act independently regarding their separate property.

126. Each of the spouses shall, with his or her separate property, proportionally participate in meeting the family and joint domestic financial expenses, to the extent that the property in joint ownership does not cover them.

127. The fact that immovable property rights or rights respecting things are included in the joint property shall be entered in the Land Register.

Each of the spouses may request that such immovable property rights or rights respecting things which are included in the joint ownership of the property of the spouses be entered in the Land Register in the names of both spouses.

128. The alienating, mortgaging or encumbering with property rights of immovable property included in the joint property, where done by one spouse, shall require the consent of the other spouse.

129. The consent of the other spouse is also required for a gift of movable property included in property in joint ownership, if the amount of such gift exceeds that of an ordinary, small gift size.

130. A spouse shall be liable to the extent of his or her separate property, but if that is insufficient, also property included in joint property:

1) for his or her obligations, which have arisen before marriage;

2) for his or her obligations, which have arisen from the duty to support his or her needy relatives;

3) for obligations, which have arisen from an inheritance that he or she has accepted with the consent of the other spouse;

4) for his or her obligations which have arisen from an independent undertaking owned by him or her, which is his or her separate property, or from his or her independent occupation; and

5) for all of his or her other obligations which have been assumed with the consent of the other spouse.

A spouse shall also be liable to the extent of his or her separate property for the debts of the other spouse on behalf of the family and joint domestic finances, but only if property included in joint property and the separate property of the other spouse are insufficient.

131. A spouse shall be liable to the extent of his or her separate property only for obligations arising from an inheritance accepted by the spouse without the consent of the other spouse.

132. A spouse shall be liable to the extent of his or her separate property only:

1) for obligations which he or she has entered into solely on his or her own account or without the consent of the other spouse; and

2) for obligations that he or she has entered into which infringe upon rights given to the other spouse for the administration of property included in the joint property.

The provisions regarding wrongful self-enrichment are applicable if, in connection with the obligations set out in this Section, property included in the joint property has increased in value.

133. For obligations, which have arisen from the wrongful acts of one spouse, the liability of the spouse extends to his or her separate property, but extends to property, which forms a part of the joint property only when the separate property of the liable spouse is insufficient.

134. The joint ownership of the property of the spouses provided for by a marriage contract is terminated:

1) when one of the spouses dies;

2) when the marriage is dissolved or declared annulled;

3) when one of the spouses is recognised as insolvent; or

4) by agreement of the spouses regarding termination of the joint ownership of their property.

The spouse who is not administering the property may request the court to terminate the joint ownership of property if:

1) the property, in remaining in the hands of the other spouse, may be significantly reduced or dissipated;

2) the spouse who is administering the property is not providing means for family and joint domestic financial needs;

3) the spouse who is administering the property has, without the consent of the other spouse, violated the ordinary administration and utilisation limits; or

4) the spouse who is administering the property is placed under trusteeship.

The spouse who is administering the property may request the termination of the joint ownership of property if debts of the other spouse exceed the value of his or her separate property.

The joint ownership of the property of the spouses is terminated from the moment when one of them has died or there has been an entry made in the Spousal Property Relations Register in respect of the termination of joint ownership of property. The termination of the joint ownership of the property of the spouses shall not divest the creditors of the spouses of their rights.

[12 December 2002]

135. If the joint ownership of the property of the spouses (Section 124) has been terminated by the death of one of the spouses, then, after the payment of the debts to which this property

is subject, half of the property included in the joint property remains the property of the surviving spouse, but the other half devolves to the heirs of the deceased.

A different division of property may be provided for by a marriage contract. Forced heirs, whose rights are affected by such a contract, may contest it.

136. If one of the spouses has died, the surviving spouse shall be personally liable for all the debts against property included in the joint property independently of the liability of the heirs of the deceased spouse, on the basis of general principles.

The surviving spouse may limit his or her liability regarding the debts associated with the property mentioned to that which he or she has received as an inheritance from the deceased spouse, in compliance with the provisions for the acceptance of an inheritance with rights of inventory.

137. Where the joint ownership of the property of the spouses is terminated while the spouses are alive, after debts have been discharged, any remaining property shall be divided equally between the spouses, if the marriage contract does not provide otherwise.

138. A spouse has a duty to reimburse what he or she, from the property included in the joint property, has spent for the benefit of his or her separate property.

If one of the spouses has made expenditures out of his or her separate property for the benefit of the property included in the joint property, then he or she may already during the time of marriage require repayment for such expenditure from the property included in the joint property.

139. Where, during the marriage, the spouses voluntarily terminate the joint ownership of the property of the spouses and in its place, in the marriage contract, provide for the separation of all marital property, Section 89 and Sections subsequent thereto shall apply.

Rights acquired by third persons remain in effect.

4. Spousal Property Relation Registers

140. The property relations of spouses provided for in marriage contracts, to the extent that they are required to be in effect as against third persons, as well as other information required by law shall be registered in the Spousal Property Relations Register.
[11 June 1998; 12 December 2002]

141. Registrations in the Register shall be made on the basis of the request of one or both spouses, certified pursuant to the applicable procedure, or court judgment.
[12 December 2002]

142. Contracts, judgments, decisions, and notices that pertain to the property relations of the spouses shall be registered in the Register.

143. Extracts of registrations in the Spousal Property Relations Register shall, without delay, be published for information in the official newspaper and notices regarding immovable property shall be given to the Land Registry Office for registration in the Land Register.
[12 December 2002]

144. [12 December 2002]

145. Anyone may examine a Register and request extracts from it.

CHAPTER II
Rights and Duties, as Between Parents and Children

SUB-CHAPTER 1
Determination of Filiation of Children

[12 December 2002]

146. As the mother of a child shall be recognised the woman who has given birth to the child, which is certified by statement from a physician.

As the father of the child who is born to a woman during marriage or not later than 306 days thereafter if the marriage has ended due to the death of the husband, the dissolution of the marriage, or the declaration of the marriage as annulled, shall be considered to be the husband of the mother of the child (paternity presumption).

A child who is born to a woman not later than 306 days after termination of a marriage, shall, if the woman has already remarried, be considered born of the new marriage. In such cases, the former husband or his parents have the right to contest the filiation of the child (Section 149).

Filiation of the child from the father, who is in marriage or has been in marriage with the mother of the child shall be certified by a record in the marriage register.
[12 December 2002]

147. [12 December 2002]

148. The paternity presumption may be contested in court.
[12 December 2002]

149. The husband of the mother of a child may contest the paternity presumption within a two-year period from the day when he found out that he is not the natural father of the child.

The mother of the child has the same right to contest the paternity presumption.

If the mother of the child or the husband of the mother of the child has been recognised as lacking capacity to act due to mental illness or mental deficiency, a trustee may bring a claim contesting the paternity presumption.

The child himself or herself may contest the paternity presumption within two years after reaching age of majority.

The parents of a husband may contest the paternity presumption within the period provided for in Paragraph one of this Section, if the husband until the moment of his death did not know of the birth of the child.

The right to contest the filiation of a child is personal. It does not pass to the heirs of the deceased, but his or her claim brought before a court may be continued by the heirs.
[12 December 2002]

150. If a court satisfies a claim with which the paternity presumption is contested, a record regarding the father in the Birth Register shall be acknowledged as null and void from the day it was made.
[12 December 2002]

151. The surname of a child shall be determined by the surname of the parents. If the parents

have different surnames, the child shall be given either the surname of the father or of the mother, in accordance with the agreement of the parents.

If the parents cannot agree to a surname for a child, it shall be determined by decision of an Orphan's court.

In the event the surname of the parents changes, minor children shall acquire a surname in accordance with the procedure set out above.

152. [12 December 2002]

153. [12 December 2002]

154. If the filiation of a child from the father cannot be determined in conformity with the provisions of Section 146 of this Law or a court has acknowledged that the child has not been born of his or her mother's husband, the filiation of the child from the father shall be based upon the voluntary acknowledgement of paternity or by the determination thereof by a court proceeding.
[12 December 2002]

155. Acknowledgement of paternity shall occur when the father and mother of a child personally submit a joint application to the General Registry office or at a notary a publicly certified application. The acknowledgement of paternity shall be officially registered by an entry in the Birth Register.

An application for recognition of paternity may be submitted when the birth of a child is registered, as well as after the registration of the birth of the child, or already prior to the birth of the child.

If the mother of the child has died, or has been found by a court to be lacking capacity to act due to mental illness or mental deficiency, or her whereabouts are unknown, an application for recognition of paternity may be submitted by the father of the child alone. If the child is a minor, the consent of the guardian of the child is required or of an Orphan's court if a guardianship has not been established for the child.

If a court has found that the father of the child lacks capacity to act due to mental illness or mental defect, an application for recognition of paternity on his behalf may be submitted by his trustee with the consent of an Orphan's court.

The father of a child who has not attained age of majority may submit an application for the recognition of paternity of the child with the consent of his parents or his guardian.

[10 March 2005] (Paragraph six)

Recognition of paternity requires the consent of the child if he or she has attained twelve years of age.
[12 December 2002; 10 March 2005]

156. A court may declare an acknowledgement of paternity null and void only if a person who has acknowledged that a child is his, cannot be the natural father of the child and he has recognised the child as his as a result of mistake, fraud or duress.

Paternity may be contested by the person who has acknowledged paternity, the trustee of the person if such person has been found to be lacking the capacity to act due to mental illness or mental deficiency, or by the mother of the child within two years calculated from the day when they have found out about the circumstances that preclude paternity. Children themselves may contest the acknowledgement of paternity within a two-year period after reaching age of majority if their parents have died.

The right to contest the acknowledgement of paternity is personal. It does not pass to

the heirs of the deceased, but his or her claim brought before a court may be continued by the heirs.
[12 December 2002]

157. A court shall determine paternity if a joint application has not been submitted to the General Registry office regarding the acknowledgement of paternity or the impediments indicated in Section 155 of this Law exist for the making of a record of paternity in the Births Register.

In examining a claim for the determination of paternity, a court shall take into account any evidence, with which it is possible to prove that a specific person is the parent of the child or to preclude such fact.
[12 December 2002; 10 March 2005]

158. A claim for the determination of paternity by a court may be submitted by the mother of the child or the guardian of the child, or the children themselves after reaching age of majority, as well as the person who considers himself the father of the child.

If a person from whom the child is descended has died, the mother of the child or the guardian of the child, or the children themselves after reaching age of majority may claim by a court proceeding the determination of the fact of paternity.
[12 December 2002]

159. Paternity that has been determined by a court judgment that has come into legal effect may not be disputed.

160. If the father of the child voluntarily acknowledges paternity, the surname of a child, also after the registration of the child, shall be determined in conformity with the provisions of Section 151 of this Law.

If the paternity has been determined by a court proceeding or also a court has satisfied a claim of contested paternity, the surname of the child shall be determined by the court taking into account the interests of the child.
[12 December 2002]

161. [10 March 2005]
[12 December 2002; 10 march 2005]

SUB-CHAPTER 2
Adoption

162. The adoption of a minor child shall be permitted if it is in the interests of the child.

A minor child may be adopted if prior to the approval of the adoption he or she has been in the care and supervision of the adopter and the mutual suitability of the child and adopter has been determined, as well as there is a basis for considering that as a result of the adoption between the adopter and the adoptee shall be established a true child and parent relationship.
[12 December 2002; 10 March 2005]

163. The adopter must be at least twenty-five years old, and be at least eighteen years older than the adoptee.

The conditions regarding the minimum age of the adopter and the eighteen-year difference may be disregarded if ones own spouse's children are being adopted. Nevertheless,

also in such case the adopter must be at least twenty-one years of age, but the age difference between the adopter and the child may not be less than sixteen years.

The conditions regarding the eighteen-year difference may be disregarded if several children are being adopted (brothers and sisters). Nevertheless, also in such case the age difference between the adopter and the child may not be less than sixteen years.

The adopter must have capacity to act.
[12 December 2002; 10 March 2005]

164. Spouses shall adopt a child jointly, except in cases where:

1) the children of the other spouse are adopted;

2) the other spouse has been declared missing (absent without information as to whereabouts); or

3) the other spouse has been recognised as lacking capacity to act due to mental illness or mental deficiency.
[12 December 2002]

165. Several children may be adopted at the same time. In adoption, brothers and sisters shall not be separated. In the interests of the children, the separation of brothers and sisters is permissible if one them has an incurable disease or there are impediments, which hinder the adoption of brothers and sisters together.
[12 December 2002]

166. Persons who are not married to each other may not adopt one and the same child.
[12 December 2002]

167. A guardian may not adopt his or her ward so long as he or she have not submitted the pertinent accounting and not been released from guardianship.

168. An adoption may not be limited by any conditions or terms whatsoever.

169. It is necessary that all parties to the adoption give their consent to the adoption:

1) the adopter;

2) the adoptee if he or she has reached the age of twelve years;

3) the parents of a minor adoptee if they have not had custody rights removed, or a guardian.

A mother may not give her consent for the adoption of her child earlier than six weeks after the birth.

A court may relieve the parties from the attestation of such consent if, according to the factual circumstances, it is shown that this is impossible due to some permanent impediment or also if the place of residence of the persons whose consent is required is unknown. The court shall publish in the newspaper *Latvijas Vēstnesis* [the official Gazette of the Government of Latvia] an invitation to the referred to person to respond.

If custody is vested in only one of the parents and the other parent, without good cause, refuses to give consent to the adoption, consent may be given by the Orphan's court of the place where the adoptee resides.

For the adoption of a child, a decision by an Orphan's court that such an adoption in the interests of the child is required. The Orphan’s court in taking such a decision shall ascertain the views of the adoptee if only he or she is able to formulate such, as well as shall take into account information regarding the adopter, including his or her identity, religious faith if there is such, material circumstances, household circumstances, capacity to raise a

child, as well as information regarding the adoptee, including his or her identity, religious faith if there is such, health and ancestry.

A child may be adopted pursuant to a request from an alien who does not have a permanent residence permit in Latvia or person who is a foreign resident, with the permission of the Minister for Children and Family Affairs and only in the event it is not possible to provide for the raising of the child in a family and his or her appropriate care in Latvia.
[12 December 2002; 10 March 2005]

170. [12 December 2002]

171. The adoption shall be considered as effected as soon as the court has approved such.

A court may permit the non-registering of the adopters in the Birth Register as the parents of the adoptee, if such a request from the adopters is justified.

Information regarding the adoption until the child reaches the age of majority shall not be divulged without the consent of the adopters.
[12 December 2002; 10 March 2005]

172. The adoptee shall become a member of his or her adoptive family and, the adopter shall acquire the right to implement custody. The adoptee may be granted the surname of the adopter in conformity with the provisions of Section 151 of this Law. The adopter may request the joining of his or her own surname to the surname of the adoptee, except in cases where the adopter or the adoptee already have a double surname.

If the name of the adoptee does not conform to the nationality of the adopters or it is difficult to pronounce, the name of the adoptee is permitted to be changed or a second name added thereto, except in cases where the adoptee already has a double name.

On the basis of a petition from the adopter a court may also permit the personal identity number of the adoptee to be changed. It is prohibited to change the date of birth of the adoptee.
[15 June 1994; 12 December 2002; 10 March 2005]

173. In relation to the adopter and his or her kin, the adopted child and his or her descendants shall acquire the legal status of a child born of a marriage in regard to personal as well as property relations.

With adoption the kinship relations and related personal and property rights and duties of the child with regards to his or her parents and their kin shall be terminated.
[12 December 2002; 10 March 2005]

174. [10 March 2005]
[12 December 2002; 10 March 2005]

175. An adoption may be revoked by a court if an adoptee of age of majority has agreed with the adopter regarding the revocation of the adoption. When an adoption is revoked, the adoption terminates as of the day that the court judgment regarding the revocation of the adoption comes into effect.
[12 December 2002; 10 March 2005]

176. The legal kinship relations between the adoptee, their descendants and the natural parents of the adoptee and their kin are renewed by the revocation of the adoption.

If in the establishment of the adoption the adoptee has acquired the surname of the adopter or another name or if the personal identity number of him or her has been changed, a

court if it is in the interests of the adoptee may retain the acquired surname, given name and personal identity number after the revocation of the adoption.
[12 December 2002; 10 March 2005]

SUB-CHAPTER 3
Custody

[12 December 2002]

I. Personal Relations of Parents and Children

[12 December 2002]

177. Until reaching age of majority (Section 219), a child is under the custody of his or her parents.

Custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal and property relations.

Care for a child means his or her care, supervision and the right to determine his or her place of residence.

Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).

Supervision of the child means care for the safety of the child and the prevention of endangerment from third persons.

By the right to determine the place of residence of the child is understood the choice of the geographic place of residence and choice of dwelling.

Care for the property of the child means care for the maintenance and utilisation of the property of the child by preserving and increasing it.
[12 December 2002]

178. Parents living together shall exercise custody jointly. If any differences of opinion arise between the parents, such differences shall be resolved by an Orphan's court unless otherwise provided for by law.
[12 December 2002]

178.[1] If the parents are living separately, the joint custody of the parents continues. Daily custody shall be implemented by the parent with which the child is living. In respect of issues, which shall significantly affect the development of the child the parents shall take a joint decision. Differences of opinion shall be resolved according to the procedures specified in Section 178 of this Law.

The joint custody of the parents shall terminate upon the establishment on the basis of an agreement between the parents or a court adjudication of the separate custody of one parent.

The parent with whom the child is located in separate custody has all the rights and duties, which arise from custody. The other parent has access rights in conformity with the provisions of Sections 181 and 182 of this Law.

Disputes between parents regarding custody rights shall be decided taking into account the interests of the child and ascertaining the views of the child if only he or she is able to formulate such.

If the parent in whose custody the child is located dies, as well as if it is not possible for him or her to implement custody, the child shall pass to the custody of the other parent,

except in the case, where an Orphan's court has recognised in the interests of the child the need to appoint a guardian for him or her.
[12 December 2002]

179. Parents, commensurate to their financial state, have a duty to maintain the child. Such duty lies upon the father and the mother until the time the child is able to provide for itself.

The duty to provide for the maintenance of the child shall not terminate if the child does not live together with one of the parents or with both parents.

If children have their own property, but that owned by their parents does not suffice to cover the expenditures necessary for the maintenance of the children, then these expenditures may be covered from the income derived from the property of the children; if such income does not suffice, then part of the property of the children may be used, but only with the permission of the Orphan's court.

If the parents are absent or they are not able to maintain the child, this duty shall lie in equal shares upon the grandparents. If the financial state of the grandparents is unequal, a court may specify for them the maintenance duty commensurate with the financial state of each.

The minimal amount of maintenance, which is the duty of each of the parents to ensure for the child irrespective of his or her financial state, shall be determined by the Cabinet taking into account the State specified cost of living and the age of the child.

If a dispute has arisen regarding means of maintenance for the child, a court shall on the basis of a petition from the plaintiff without delay take a decision regarding the amount the defendant shall temporarily until the adjudication of the dispute cover the expenditures necessary for the maintenance of the child. The amount of temporary means of maintenance for the child may not be less than the minimal amount of means of maintenance of the child specified by the Cabinet.
[12 December 2002]

180. [12 December 2002]

181. A child has the right to maintain personal relations and direct contact with any of the parents (access rights).

Each of the parents has a duty and the right to maintain personal relations and direct contact with the child. This provision shall be applicable also if the child is separated from one of the parents or both of the parents. The parent who does not live with the child has the right to receive information regarding him or her, especially information regarding his or her development, health, educational progress, interests and domestic circumstances.

A child has the right to maintain personal relations and direct contact with brothers, sisters and grandparents, as well as with other persons with which the child has lived with for a long time in an undivided household if such conforms to the interests of the child.

Parents and persons who have access rights in relation to the child or in whose care the child is located, have a duty to refrain from such activities as may negatively influence the relationship of the child with one of the parents.
[12 December 2002]

182. In case of dispute, the procedures by which access rights may be utilised shall be determined by a court, requesting an opinion from the Orphan's court. As soon as the opinion of the Orphan's court has been received, the court shall without delay invite the parties to submit an explanation and shall determine temporary access rights utilisation procedures.

A court may specify that the child spend a certain period of time (weekends, school

holidays, parents leave periods and similar) with such parent who has not been granted custody rights, or also his or her meeting times.

Access rights in relation to a child may be restricted, moreover, if necessary, it may be specified that it is allowed to meet with the child only in the presence of third persons or at a specific place insofar as this conforms to the interests of the child. A court may temporarily revoke access rights if the access is harmful to the interests of the child and the harm cannot be otherwise prevented.
[12 December 2002]

183. While children receive maintenance from their parents, they shall do work in and about the home of their parents without the right to require any remuneration for this unless it has been specifically promised to them.

184. [12 December 2002]

185. If the children disobey or do not submit to being raised by the parents, the parents may apply for assistance to an Orphan's court.

A child may turn for help to an Orphan's court if the parents have specified unjustified restrictions or have caused other differences of opinion in their relations.

For the resolution of differences of opinion, if necessary, a guardian shall be appointed for the child.
[12 December 2002]

186. Parents jointly shall represent a child in his or her personal and property relations (joint representation). If the parents are living separately, joint representation is possible only if both parents have agreed regarding joint custody or it is presumed that joint custody of the parents exists (Section 178.[1]).

One of the parents solely shall represent a child in his or her personal and property relations if:

1) the other parent has not reached age of majority, except in the case when he or she has entered into marriage;

2) the other parent has died;

3) with an agreement or a court judgment custody rights have been granted to one parent, except in the case where in accordance with law the personal relations of the child are represented by both parents; or

4) a trusteeship has been established regarding one of the parents in relation to him or her being recognised as lacking capacity to act due to mental illness or mental deficiency or in relation to him or her living dissolutely or wastefully, excessively using alcohol or narcotics.

Each of the parents has the right to perform legal activities, which are in the interests of the child if there exists a default risk. In respect of the activities performed, he or she has a duty to without delay notify the other parent, except in the case where such activities have been performed by the parent who has the right to solely represent the child.
[12 December 2002]

187. In implementing the right to determine the place of residence of their children, parents may request their children from any third person. Such parental rights may be restricted if an Orphan's court recognises that there are factual impediments which deprive the parents of the possibility of caring for the child (Section 203).
[12 December 2002]

188. The duty to maintain parents and, in cases of necessity, also grandparents, lies upon all of the children equally.

If the respective financial state of the children is unequal, a court may determine their duty of maintenance commensurately to the financial state of each child.

A child may be released from the duty to maintain parents if it is determined that the parents without good reason have avoided the fulfilment of the duties of parents.

Grandchildren shall maintain each of the grandparents if the spouse of the latter and children cannot do so.
[12 December 2002]

189. Children may conclude all manner of lawful transactions with their parents. During minority, such transactions may be concluded only with the participation of the Orphan's court, which shall appoint guardians in this case.

II. Property Relations of Parents and Children

[12 December 2002]

190. The property of minor children, except for the property referred to in Section 195, shall be under parental administration; if one of the parents dies or for other reasons is not able to administer the property, it shall be administered by the other parent alone.

191. In the administration of the property of children, parents have the same rights and duties as guardians, but they are relieved from the duty of providing detailed information in accounts regarding expenditures for maintenance of the children, and shall set out only the total amount of such expenditures.

192. Only pursuant to their rights as guardians may parents dispose of the property of a child.

193. If some property has devolved to a child, then the parent who has the right to administer such property shall make an inventory of the property and submit it to an Orphan's court.

194. If the parents administer the property of a child not in conformity with the interests the child, an Orphan's court may impose a duty upon the parents to provide detailed accounting also of expenditures for the maintenance of the children (Section 191), require that the property of the children be satisfactorily secured, as well as remove them from the administration of the property of the child, and assign this to one of the parents or a guardian appointed specifically for this purpose.
[12 December 2002]

195. As the independent property of children, which is removed from parental administration if the children have attained the age of sixteen, shall be acknowledged:

1) everything that the children have acquired by their personal work or by with the consent of the parents independently working in an occupation, industry or commerce, etc.;

2) everything that is transferred by the parents, from the property owned by children, to their independent administration; and

3) all the property given gratuitously to the children by kin or other persons on the condition that the children administer and utilise such property independently, except for property, which is granted for a specific purpose.
[12 December 2002]

196. Where children have a dispute with their parents concerning their property, they may defend their rights by court process.

197. Parents are not liable for obligations entered into, without the consent of their parents, by minors who are in the custody of their parents, if they themselves have not gained some benefit therefrom. Similarly, parents shall also not be liable to have their property subjected to collection proceedings resulting from the wrongful acts of their children, except in the cases specifically set out in law.
[12 December 2002]

III. Termination and Restriction of Custody Rights

[12 December 2002]

198. Custody is terminated:

1) upon the death of the parents or the child;
2) when a missing child is presumed to be dead;
3) when the child is adopted by a third party;
4) when a child has attained their majority; or
5) when custody rights of parents is removed by a court judgment (Section 200).

[12 December 2002]

199. Custody rights removed by a court judgment (Section 198, Clause 5) may be renewed only by a court judgment.
[12 December 2002]

200. A parent may have custody rights removed if:

1) the parent treats a child especially badly;
2) the parent does not care for the child or does not ensure the supervision of the child and it may endanger the physical, mental or moral development of the child; or
3) the parent has given his or her consent for the adoption of the child.

As a final means, the removal of custody rights from one or both parents shall be applied by a court. The court, not removing custody rights, may also warn the parents and impose upon them a duty to implement specific activities for the prevention of the endangerment of the child.

In removing custody rights from one parent, a court shall place the child under the separate custody of the other parent. If the custody, which can be exercised by the other parent, due to his or her incapacity to act does not adequately protect the child from endangerment or custody rights are removed from both parents, a court shall assign to the Orphan's court the appointment of a guardian for the child.
[12 December 2002; 10 March 2005; 22 June 2006]

201. If a minor marries, the parents shall lose the right to act on behalf of their minor child and to administer the dependent property of the child (Section 190). If such a marriage is dissolved or declared annulled, the rights of the parents to administer the dependent property shall not be renewed.

202. [12 December 2002]

203. Care of the child rights shall be removed from a parent if an Orphan's court finds that:

1) there are factual impediments which prevent the parent from the possibility of

caring for the child;

2) the child is located in circumstances dangerous to health or life due to the fault of the parent (due to the deliberate actions or negligence of the parent);

3) the parent misuses his or her rights or does not ensure the care and supervision of the child;

4) the parent has given his or her consent for the adoption of the child; or

5) violence against the child by the parent has been established or there is good cause for suspicion regarding violence against the child by the parent.

In such cases, care shall be implemented by the other parent; but, if there are impediments to this as well, the Orphan's court shall ensure out-of-family care for the child.

The removed care rights shall be renewed when an Orphan's court finds that the circumstances referred to in Paragraph one of this Section no longer apply. If within a period of one year from the removal of care rights it is not possible to renew them, the Orphan's court shall decide regarding the necessity to remove the custody rights of the parent, except in cases where the care rights cannot be renewed due to circumstances independent of the parent. *[12 December 2002; 22 June 2006]*

204. Where one of the parents is found to be an insolvent debtor, the property of the children shall be administered by the other parent or a guardian appointed for this purpose.

205. Where a proceeding against one of the parents for insolvency is dismissed, or the trusteeship established in regard to him or her is terminated, the right to administer the property of the children may be renewed only pursuant to permission of an Orphan's court.

CHAPTER III
Kinship and Affinity

206. The relationship between two or more persons created by birth is called kinship.

The nearness of kinship is determined in accordance with lines and degrees.

Descent of one person by birth directly from another creates one degree. With each new birth a new degree is created. The connection between several unbroken continuous degrees is called a line. Lines are direct or collateral.

207. Kin in a direct line are those who have descended from each other by birth and are called either ascending or descending kin, depending on whether the calculation is from children to parents, or vice versa In accordance with that the line itself is divided into an ascending and a descending line. The father, mother, grandfather, grandmother, great-grandparents, etc., belong to the first line, while sons, daughters, grandchildren, children of the latter, etc., belong to the second line.

208. Collateral kin are those who have descended from one common third person, an ancestor or ancestress. Such kin are brothers and sisters, their children, uncles, aunts with their descendants and brothers and sisters of a grandfather and grandmother with their descendants etc.

209. Collectively all of the kindred descended from one common third person are called a stirps.

210. The nearness of kinship between two persons in a direct line is determined in accordance with degrees, i.e., the number of births. A son in relation to his father stands in the first degree

of kinship, a grandchild in relation to his or her grandfather stands in the second degree of kinship, and a great-grandchild in relation to his or her great-grandfather stands in the third degree of kinship, etc.

211. For the purposes of determining nearness of kinship between two persons in a collateral line, only degrees or the number of births shall be considered, and the calculation shall begin from one of these persons, excluding himself or herself, in a direct line ascending to a third person, common to both, and from the latter descending to the second of such persons. Brothers and sisters of the whole blood are in the second degree of kinship, an uncle and his niece and an aunt and her nephew in the third degree and cousins in the fourth degree of kinship, etc.

212. Kinship connecting persons in two or more kinship relations is called a double or multiple kinship relation.

213. Kinship between brothers and sisters may be either full or partial. Such kinship shall be considered full, when the brothers and sisters have descended from one and the same parents, and partial, when they have descended from the same father but different mothers or, vice versa, from the same mother but different fathers; in the first case brothers and sisters are called brothers of the whole blood and sisters of the whole blood, whereas in the second case they are called half-brothers and half-sisters.

Note. Children of two spouses, which each of them have from a previous marriage, shall not be regarded as kin to each other.

214. In the narrow sense of its definition, a family consists of the spouses and their children while they are still part of a common household.

215. The relationship of one spouse to the kin of the other spouse is called affinity.

Affinity established by marriage also continues in effect after termination of the marriage.

The degree of affinity with one of the spouses is the same as the degree of kinship with the other spouse.

CHAPTER IV
Guardianship and Trusteeship

General Provisions

216. Persons in need of protection, and property left without an administrator, shall be entrusted to the care of guardians and trustees who shall act on behalf of these persons and such property.

217. Guardianship is established over minors. Trusteeship is established:

1) over persons found by a court to be lacking capacity to act due to mental illness or mental deficiency (Section 358);

2) over persons due to their living dissolutely or wastefully (Section 365);

3) over the property of absent and missing persons (Section 371);

4) over the entirety of property of an estate; or

5) over an entirety of property subject to concursus proceedings.

218. Matters of guardianship and trusteeship are under the purview of the Orphan's courts.
[12 December 2002; 22 June 2006]

SUB-CHAPTER 1
Guardianship of Minors

I. Minority

219. The minority of persons of both genders continues until they attain the age of eighteen.

220. In exceptional circumstances and for especially good cause, when the guardians and closest kin of a minor attest that the behaviour of the minor is irreproachable, and he or she are able to independently protect and defend his or her rights and perform his or her duties, the minor may be declared as being of age of majority even before he or she have attained the age of eighteen, but not earlier than before he or she fully attain the age of sixteen.

221. The granting of majority before term (Section 220) shall be by the appropriate Orphan's court, and its decision is subject to being confirmed by a court

A person who, pursuant to the procedures established by law, has married before attaining the age of eighteen, shall be deemed to be of age of majority.

II. Establishment of Guardianship

222. Guardians shall be appointed for children left without parental custody.
[12 December 2002]

223. A father and mother already are, on the basis of custody rights, the natural guardians of their minor children.
[12 December 2002]

224. Parents who have lost custody rights cannot also be guardians of a child. If both of the parents have lost custody rights over the child after a court judgment or for some other reason independent of their will, a guardianship shall be established over the child, but if it is lost by only one parent, guardianship shall be established in cases where it is necessary in the interests of the child.

The same also applies to property of a minor, which has been given or bequeathed to them on condition that it not be administered by the parents.
[12 December 2002]

225. When one of the parents dies, guardianship passes to the other parent without confirmation from an Orphan's court if the child has been in the joint custody of both parents.
[12 December 2002]

226. When one of the parents dies and the other parent remarries, the latter nevertheless remains the natural guardian for the minor children of his or her previous marriage; but he or she have a duty to notify an Orphan's court of the intended marriage, to distribute the property of the deceased pursuant to the provisions respecting inheritance rights and to provide to or appropriately ensure for the children their appropriate share of the property. Such distribution

shall be carried out with the participation of the appropriate Orphan's court that in such cases, to protect the interests of the children, shall appoint special guardians who, upon the completion of the distribution, shall be immediately released.

If the parent in whose separate custody a child is located remarries, an Orphan's court if required by the interests of the child, shall perform the necessary supervision measures and in case of need shall appoint a guardian for the child. The parent who administers of the property of the child and who remarries is subject to the general provisions of guardianship.
[12 December 2002]

227. If a spouse, who has survived the other spouse, remarries, then in administering the property of the children from his or her previous marriage the spouse shall be subject to the general provisions regarding guardianship, and shall make and submit to the Orphan's court an inventory of the property of the children, and an account of his or her administration annually.

228. [12 December 2002]

229. Both parents shall have the right to appoint guardians in their will for their children, both for existing as well as anticipated children.

A direction regarding guardianship shall remain in effect even in such will as the other provisions of which have been found to be invalid.

The definitely and indisputably evidenced intention of the father and the mother to appoint certain persons as guardians for their children has the same effect as a testamentary appointment.
[12 December 2002]

230. Guardians appointed in the will of parents are permitted to perform their duties as guardians without the confirmation of an Orphan's court.
[12 December 2002]

231. Any other persons, who bequeath anything to a minor in a will, may also appoint guardians for them for the administration of the bequeathed property; the same right belongs to any other person who, while alive, confers any part of their property upon a minor. Nonetheless, guardians appointed by such procedure shall be confirmed by an Orphan's court.

232. In every case, where the guardians appointed in a will must be confirmed by an Orphan's court (Section 231), they may be confirmed only upon the court being convinced as to their abilities and qualities.

233. Parents may give specific instructions regarding the guardianship to the guardians to be appointed in a will, and also attach certain conditions or time limitations to their appointment.

234. If a child has been left without custody, everyone, but especially the nearest kin of the child have a duty to apply to an Orphan's court regarding the appointment of a guardian.
[12 December 2002]

235. Guardianship over minors, except in the case referred to in Section 229 of this Law, in the first instance, devolves to their nearest kin, but for this the confirmation of an Orphan's court is necessary.

The nearest kin of minors shall be regarded as those who, upon the death of such

minors, would be their heirs by intestacy.

An Orphan's court shall select as guardians the most suitable from equally near kin, but if the nearest kin should appear to be unsuitable, then from more distant kin.
[12 December 2002]

236. If among the kin of a minor no one capable is to be found, or those who are capable are unable to assume guardianship, or they are discharged from the position of guardianship for legal cause, or, if a minor does not have any kin, the Orphan's court shall appoint guardians from among other persons, and the court shall act on its own accord as soon as it is informed that there are such complete orphans.

237. If a guardian is temporarily prevented from assuming guardianship, pending such obstacles being removed the Orphan's court shall appoint a temporary guardian.
[12 December 2002]

238. No one may assume the rights of a guardian over minors or their property before they are appointed as guardian pursuant to law or a will. Accordingly, any actions of such persons who have arbitrarily assumed guardianship have no legal effect, and they shall compensate the minors for all losses caused thereby. Notwithstanding, the nearest kin, but in their absence also other persons may take minors into their care and temporarily safeguard their property until an Orphan's court, after notice from such persons, gives appropriate directions.
[12 December 2002]

239. Guardians shall be appointed by a decision of an Orphan's court, regarding which a certificate shall be issued to the guardian.

III. Persons who may be Appointed as Guardians

240. In all those cases, where the confirmation or appointment of a guardian is dependent on an Orphan's court, it shall examine the person to be confirmed or appointed to ensure he or she has the abilities and qualities necessary for the performance of such duty.

241. The Orphan's court has a duty generally to not allow to be guardians, but if an appointment has already been made, to remove from guardianship, all those whose administration may pose the threat of any loss to the minor or his or her interests may suffer.
[12 December 2002]

242. The following may not be Guardians:

1) persons who are under trusteeship ;

2) deleted;

3) persons from whom custody rights has already once been taken away by court judgment and who have been removed from guardianship due to improperly performing the duties of guardianship;

4) persons who have been found to be insolvent debtors;

5) persons who parents have by will rejected regarding guardianship over their surviving minor children;

6) persons whose interests manifestly are in conflict with significant interests of the ward;

7) the members of the Orphan's court that has jurisdiction regarding the guardianship concerned;

8) aliens, except in cases where guardianship is established over citizens of their state or they are close kin to the child; and

9) minors.

[12 December 2002]

243. A guardian must reside in the same city or parish where the ward resides; only in exceptional cases, when circumstances require it, may the Orphan's court allow persons who reside elsewhere to also be guardians.

244. All the reasons indicated in Section 242, which are impediments to the appointment of a person as a guardian, shall also be cause for his or her removal, if they are disclosed only after his or her appointment.

IV. Persons who have the Right to Refuse the Position of Guardian

245. The position of guardian is a public duty that no one may refuse without lawful cause.

246. Lawful cause for refusal is as follows:

1) state or local government service, with which it is difficult to combine the duties of guardianship;

2) inability to read or write;

3) age of more than sixty years;

4) supervision over three guardianships or trusteeships, or even over only one but over such as is associated with great effort;

5) a large family;

6) poverty;

7) illness, which hinders the proper performance of the duties of a guardian;

8) moving to another Orphan's court district; or

9) frequent and lengthy official absences, or such distance between place of residence and the location of the guardianship as makes difficult the performance of guardianship duties.

247. Anyone who has in good faith assumed the position of a guardian, although he or she had the right to refuse such on the basis of any of the causes set out in Section 246 may not, on the basis of the same cause, later request that he or she be released from the position of guardian. However, if any such cause arises after the time when he or she has already assumed the position mentioned, he or she have the right to request release from it.

248. The reasons for refusal set out in Section 246 may not be used for his or her own benefit by:

1) a person who has directly renounced from these rights either by a promise given to the parents of the minor or otherwise; or

2) a person who has accepted a bequest by the same will in which he or she is appointed as a guardian.

249. Lawful causes for refusal may be used by anyone regardless of whether he or she are appointed as a guardian pursuant to law or in a will; anyone who intends to exercise such right shall notify an Orphan's court of this cause and, where there is more than one cause, of such causes, but all at one and the same time, as soon as he or she are informed of his or her appointment

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250. If anyone appointed as guardian does not, in due time, give notice regarding his or her refusal and does not provide lawful cause for the delay, or an Orphan's court disregards his or her submitted causes, he or she shall be liable for everything that has occurred during guardianship from the time notification was given him or her by the respective Orphan's court of the appointment

251. While the lawfulness of the cause for refusal provided by an appointed guardian is under consideration, the Orphan's court shall safeguard, to the extent possible, the interests of the minor and if necessary appoint for him or her an interim guardian.

V. Administration of Guardianship

1. Duties of a Guardian towards a Ward

252. Guardians shall assume the place of parents for their wards.

253. If a ward does not obey or submit himself or herself to being brought up by his or her guardian, the guardian may apply for assistance to an Orphan's court.

254. A guardian must support and act on behalf of his or her ward in every respect.

255. A guardian especially shall provide for the upbringing of his or her ward with the same care as conscientious parents would provide for their children. If the parents are no longer alive, and also where the parents have not appointed a specific person to bring up a child, the guardian himself or herself may assume the upbringing, or entrust it to some other person who has the required abilities for this. Moreover, in the latter case, the guardian shall supervise the upbringing.

256. The goal in the upbringing of minors, in addition to their health care, shall include their moral and intellectual development commensurate to their financial state, abilities and inclinations.

257. In regards to making education and future life-style choices for a minor, the will of the parents, if it has been expressed, shall be considered; however, if they have left no directions, the advice of their nearest relatives shall be considered.

If directions left by parents turn out to be disadvantageous for the ward, the guardian may, with the consent of an Orphan's court, deviate from them.

258. For the maintenance of a ward only what is indispensable may be utilised, covering living expenses from the annual income derived from his or her property and generally making all expenditures proportional to it, so that part of this income, if at all possible, is still saved each year. In case of doubt, the guardian shall ask for the advice of an Orphan's court which, having regard to the circumstances, shall reduce unnecessary expenditures and endeavour to find the means to cover shortages. In cases of pressing need, particularly if the ward demonstrates special abilities, which it is appropriate be developed, part of his or her capital may also be utilised to cover the expenditures required for upbringing, but only with the consent of an Orphan's court.

If the means of a ward do not suffice to provide for his or her maintenance, the guardian does not have a duty to maintain the ward at his or her own expense.

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259. Guardians, and also their descendant kin and their heirs in general, may enter into a marriage with their wards only with the permission of an Orphan's court.

2. The Guardian as the Representative of a Minor

260. Minors shall administer their unrestricted property independently (Section 195). They may conclude transactions in respect of this property within the limits of normal administration and they shall be liable for such to the extent of their unrestricted property.

If a minor, in accordance with the law enters into employment relations or is independently working in some trade, in a craft, in sales etc., he or she may conclude transactions which are necessary in connection with his or her independent work, and he or she shall be liable for such transactions to the extent of all his or her property.

In such cases, a minor also may not independently enter into such transactions as a guardian may not enter into without the permission of an Orphan's court.
[12 December 2002]

261. Except in the cases set out in Sections 221 and 260, minors do not have capacity to act and therefore they shall be represented by a guardian in all legal transactions.

If a minor has concluded a transaction, albeit without the participation of his or her guardian, but which is manifestly beneficial to him or her, it shall be in effect and binding upon the other party.

The legal transactions of a minor shall acquire binding effect if the minor, having attained age of majority and gained the capacity to defend his or her rights, expressly acknowledges the obligations arising from these transactions.

262. A guardian shall, in all matters pertaining to his or her ward, act independently and shall conduct such on the basis of proprietary rights. However, in all of the most important cases, the guardian shall request directions from an Orphan's court.

263. Legal transactions that a guardian has entered into in an Orphan's court or with its consent, shall be binding and may not be contested later.

264. A guardian must represent his or her ward in court proceedings. Without the guardian he or she may not bring action, not defend an action, except in cases provided for by law.

265. Court proceedings where the subject matter is of importance and value, and which may be associated with large expenditures, as well as those whose outcome may be difficult to predict, may be commenced on behalf of the minor by the guardian, after he or she obtains the consent of an Orphan's court and necessary directions. If losses occur to the minor from failure to comply with this provision, the guardian shall reimburse all costs and losses to the ward.

266. Guardians are liable to the extent of their property for the court costs in such actions as they, through negligence have permitted to be brought against a minor entrusted to them.

267. Where court proceedings arise between a guardian and a minor, and also in general where the interests of a guardian and a ward conflict, an Orphan's court shall appoint a special guardian for the ward. However, if the ward has several guardians, then one of them, who is a disinterested person, may conduct legal proceedings against the others.

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268. Contracts and other legal transactions between the minor and his or her guardian may be entered into only with the consent of an Orphan's court. If the minor has only one guardian, then in such case another one shall be appointed for him or her.

3. Administration of the Property of a Minor

269. A guardian shall administer the property of a ward with the same care and conscientiousness as he or she, as a good proprietor, administer his or her own things.

270. After assuming guardianship, the guardian firstly shall ascertain what the property of the minor comprises and record this in a detailed and carefully prepared list. The list shall be prepared in duplicate, of which one copy shall remain with the guardian and the other shall be kept by the Orphan's court.

Valuables, debt claim documents, notes of financial institutions and securities found during the preparation of the list, shall be kept by the Orphan's court.

271. If anyone assumes the administration of the property of a minor without preparing a list thereof, he or she may be removed from guardianship and are liable for all losses caused to the ward as a result of his or her guardianship.

272. A parent who, after the death of the other parent, has become the guardian of a child, shall, without delay, prepare a list of the property the deceased has left and submit a copy thereof to an Orphan's court.

273. If an estate, which has been left to the ward, is encumbered with debts, the guardian firstly shall submit to the relevant notary a petition for notification of creditors.
[12 December 2002]

274. When the creditors are ascertained, the guardian shall endeavour to satisfy them insofar as possible from the existing cash assets of the estate or from the net income which remains, deducting expenses and also taking into account reciprocal claims respecting debts.

275. If it is not possible to satisfy the creditors from the funds set out in the previous Section (274), the guardian may for this purpose, with the consent of the Orphan's court, enter into a loan, but, where this is not possible, sell the most superfluous of the property of the minor.

276. A guardian has authority, with the consent of an Orphan's court, to enter into settlements with the creditors of the minor for his or her benefit; but, if the guardian himself or herself is a creditor, he or she, in the application of his or her claim, shall be satisfied under the same conditions as provided for the other creditors.

277. If the debts encumbering an estate exceed its worth and a settlement is not made with the creditors, the guardian shall petition an Orphan's court for its consent to initiate either the establishment of administration or the commencement of concursus proceedings respecting the entirety of the estate.

If the Orphan's court gives its consent for the commencement of concursus proceedings respecting the entirety of the estate, the guardian shall apply to the administrator of the concursus proceedings and the creditors, so that the means necessary for the maintenance of the minor are given to him or her during the period of the concursus

proceedings.

278. Movable property that has devolved to the ward which deteriorates or generally becomes worthless and, in addition, is not needed for his or her use, shall be sold by the guardian without delay for the best price obtainable, without requesting particular permission for this purpose, but he or she shall provide an accounting to the Orphan's court regarding the sale and the money received.

279. Sale of a minor's movable property, which does not deteriorate, may be permitted:

1) if it is necessary to pay for debts which encumber the estate accruing to the minor, or else for his or her maintenance; and

2) if the property in question consists of goods which the estate-leaver was trading in.

For each such sale, the guardian shall, in advance, request permission from the Orphan's court.

280. Sale of immovable property belonging to a minor may be permitted:

1) to distribute an estate among heirs who are and who are not of age of majority

2) for payment of unpostponable debts which have devolved to the minor together with an estate;

3) if there are no other means for his or her maintenance; and

4) if the sale is the only means to avert significant loss threatening the minor.

The guardian shall inform the Orphan's court concerning such cases, which, having considered the circumstances presented and being convinced of the need for or suitability of the intended sale, may itself permit the sale if the immovable property has been valued at not more than ten thousand lats or else, if it is valued at more, shall submit the matter to a court for a decision thereon.
[22 June 2006]

281. Court permission for a sale is not required in these cases:

1) where it is carried out in executing a court judgment, which has come into effect;

2) where the person, from whom inherited property has devolved to the ownership of a minor, has himself or herself by will or otherwise provided that it be sold; or

3) where a third party, who has a right to it, requests it.

In all such cases, the sale shall be done under the supervision of an Orphan's court.

282. If the estate-leaver has specifically prohibited the sale of any property which, if retained by the minor would result manifestly in loss, the guardian may petition the Orphan's court to set aside such prohibition.

283. Movable and immovable property of the minor may be sold by auction or on the open market by the guardians themselves, having regard to what the Orphan's court finds most advantageous. Guardians, their spouses and children shall not, under any circumstance, purchase the property of a ward.

284. The provisions regarding sale in Sections 279 to 283 shall also apply to all other ways of alienating the property of wards.

285. If the immovable property of a ward is alienated or encumbered with property rights or debts without the permission of the Orphan's court in cases where such is required by law, such alienation or encumbrance is void and may not be corroborated.

Such transactions regarding movable property regarding rights related to obligations, if they are harmful to a ward, may be contested.

As soon as such cases become known to the Orphan's court, it shall ensure that a newly appointed guardian brings action as appropriate against the former guardian, the opposing party in a contract with the ward, or more distant persons who have acquired the property in bad faith.

The former ward may himself or herself bring an action within the period of a year after attaining age of majority.

286. Without permission from the Orphan's court, a guardian may neither give notice of nor cede capital claims belonging to a minor.

287. If the claim of a third party against a minor is ceded to the guardian, the right of the guardian to make a claim on behalf of the minor is revoked.

288. If the property of a minor consists of rural immovable property, the guardian shall take particular care that the fields are properly cultivated, animals well taken care of, buildings maintained in good repair, all income properly collected, fees and other public charges paid in time and undertakings maintained.

289. The guardian shall maintain urban immovable property in a usable state and in good order, collecting income therefrom and paying rates imposed thereon on time.

290. New buildings and installations, expenses in connection with which are unable to be covered from the income of the immovable property, may not be constructed or installed by the guardian without the prior permission of an Orphan's court.

291. If leasing of the immovable property is more advantageous to the ward, the draft leasing contract shall be submitted to an Orphan's court for approval. The leasing of the immovable property of the ward by the guardian himself or herself, his or her spouse or children is prohibited.

292. A trading, manufacturing or any other undertaking inherited by a minor shall be continued by the guardian at the expense of the minor only if this continuation is not associated with risk or there are not any obstacles as exist thereto. The issue as to whether an undertaking shall continue or be terminated shall be decided by the Orphan's court.

293. A guardian may enter, in the interests of a minor, into any type of contract concerning his or her affairs, as well as accept and make payments. All such transactions bind the minor, provided the guardian has acted in good faith, therewith remaining within the limits of proprietary administration and not binding the minor, in the absence of special need, for a longer term than until he or she attains age of majority.

294. If a guardian regards it in the interests of and advantageous to the ward, to acquire immovable property, or special rights or servitudes for immovable property already owned, he or she shall request the prior permission of an Orphan's court for this purpose.

295. An estate which a ward has inherited from his or her parents or from any other person may be accepted only with rights of inventory (Section 708) by the guardian. The guardian may not accept or renounce an estate without the permission of the Orphan's court.

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296. All cash, except that which is required for the regular expenses of the minor, shall be deposited by the guardian to bear interest in any financial institution.

With the permission of the Orphan's court, the guardian may invest the moneys of the minor to bear interest provided adequate security is obtained against immovable property.
[12 December 2002]

297. The guardian shall be liable to the minor respecting such capital as he or she have invested, to bear interest, without adequate security.

Similarly, guardians shall be liable for each unjustified delay in investing moneys of the minor to bear interest, and he or she shall repay the loss of interest to the minor that results from this.

298. Guardians are prohibited from borrowing from his or her ward and he or she may not use the property of the ward.

299. If the guardian has been compelled to turn to other persons for assistance in matters concerning his or her ward, then he or she shall be responsible for the actions of such persons.

The guardian, in selecting persons to assist in the administration of immovable property or the carrying on of the undertakings of his or her ward, shall ensure that these persons provide adequate security. If there are no such persons with security, the guardian may also employ assistants without security but only with the permission of an Orphan's court and after information has been obtained regarding their trustworthiness. Otherwise, the guardian shall be liable for the actions and negligence of assistants.

4. Accounting

300. A guardian shall provide an accounting annually to the relevant Orphan's court regarding his or her administration as guardian.

Even those guardians who have been relieved by a testator from such a duty, shall not be relieved from providing an accounting.

301. An annual accounting must be submitted to an Orphan's court in writing at the beginning of each year, not later than February; it shall contain a description of the contents and a detailed inventory of the property, attaching, to the extent possible, receipts, including for all the expenditures made during the year on behalf of the minor, as well as indicating income collected and amounts of income which have remained uncollected.

If the Orphan's court has no objection to the annual accounting, it shall issue a certificate to the guardian that the annual accounting is correct.

302. The Orphan's court shall examine the accuracy of the accounting provided by guardians annually, ascertaining errors and, in general, actions by guardians which are disadvantageous to the interests of the minor, shall request explanations from them and shall take appropriate measures.

5. Compensation of Guardians for Expenses and Work

303. All expenses of a guardian for travel in respect of the affairs of a minor, as well as wages and remuneration for assistants, clerks etc. shall accrue to the minor, and the guardian shall put these on his or her account.

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304. Everything that a guardian has advanced from his or her own resources for the affairs of a minor shall be reimbursed to him or her with interest, from the property of the minor if, even with frugal management, it has been necessary to advance or to borrow moneys.

These expenditures must be set out in the first accounting subsequent to their being made.

305. A guardian shall recover expenditures and resources advanced (Sections 303 and 304) even when the matter he or she have been used for ends unfavourably, provided he or she have initiated the matter with the intent of advancing the interests of the minor and in addition thereto with appropriate care.

306. Unintentional losses which have resulted to the guardian, without his or her fault, in fulfilling his or her duties, and also the losses caused to him or her due to the fault of the ward, shall be compensated for from the property of the ward.

307. The Orphan's court shall determine remuneration for a guardian that is just and commensurate to the property of the ward, but not more than five percent of the net income after confirmation of the annual accounting.

Having regard to the circumstances, the Orphan's court may, in lieu of annual remuneration provide for a one-time payment to the guardian after the termination of the guardianship, review of the guardian's report and acceptance and a final settling of accounts with the guardian. This remuneration shall not exceed five thousand lats.

Guardians who are in direct line kinship with a ward shall not receive remuneration .

Note: If the remuneration for guardians exceeds three hundred lats, the decision of the Orphan's court shall be submitted to a court for confirmation by it.

308. When there are several guardians, remuneration shall be divided in equal parts among them, if the Orphan's court does not determine a different division.

309. The capital property of the minor may not be used for the payment of remuneration.

310. If a person who has left an estate to a minor has pursuant to a will stipulated specific remuneration for the guardian, he or she no longer have the right to receive the remuneration provided for in this law (Section 307), provided the testator has not directly stipulated otherwise.

VI. Liability of the Guardian

311. A guardian shall be liable for all losses that he or she have caused to the ward by not fulfilling his or her duties (Section 269).

312. A guardian who has proved that he or she have observed the same care as with which he or she as a good proprietor administer his or her own affairs, is released from any liability.

313. If, in collecting the inherited capital of a minor or capital invested by his or her former guardian, or in purchasing immovable property for a minor, any losses result to him or her, the guardian is liable only for bad faith and gross negligence.

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314. If a duty to compensate a ward has resulted for a guardian by reason of his or her administration, this also devolves to his or her heirs.

315. Heirs of a guardian are liable only for the bad faith and gross negligence of the guardian. However, if an action for compensation has been brought while the guardian is alive, his or her heirs are liable without distinction for all that the estate-leaver himself or herself as the guardian would have been liable for.

VII. Joint guardians and their Reciprocal Relations

316. One guardian shall be appointed for the administration of each guardianship. For particularly difficult and complicated guardianships several guardians may also be appointed, however, not more than three.

317. If one guardian has been appointed in a will, an Orphan's court may, contrary to the volition of such guardian appoint a joint guardian only when this does not directly contradict the will, but also in the latter case may appoint a joint guardian if, in not doing so, significant losses would be foreseeable for the minor.

318. By way of general provisions, joint guardians shall administer the guardianship jointly and without division, and, therefore, in regard to administration, they have equal rights and equal duties.

Each separately performed action by a guardian in guardianship matters is in force and binding, provided he or she have not in general violated his or her rights as a guardian and the joint guardians have not raised specific objections against their actions. The taking of such an action as will result in the termination of guardianship, as, for example, adoption of the minor, shall require the consent of all the guardians.

319. The guardians are solidarity liable for all claims made by a ward that arise from the administration of the guardians.

320. If losses caused to a ward due to the joint actions or negligence of the joint guardians have been compensated for by only one of the guardians, then he or she have the right to request proportional participation from the others in such compensation. If any guardian is insolvent, his or her share shall be proportionally divided among the others.

321. If only one of the guardians is at fault in regard to the actions or negligence due to which the losses have resulted, he or she must reimburse the others for compensation paid for the losses on his or her behalf.

If in such case, due to the guardian at fault being insolvent the compensation is paid by another guardian, the latter shall have the right to request proportional participation in such compensation from the other joint guardians able to pay.

322. If a person who has attained age of majority brings his or her action against each guardian separately, each of them shall be required to pay only his or her share, and solidary liability in this case shall not be imposed on all of the guardians for a guardian who proves to be insolvent.

323. The solidary liability of guardians devolves to their heirs. The heirs of a ward, in the same way as the ward himself or herself, at their own discretion, may also apply their claims

to each guardian separately.

324. The solidary liability of guardians is in effect only during their administration period. For act or negligence, which occur after the withdrawal of a joint guardianship or the termination of guardianship, only a guardian who is at fault is liable.

325. If, after the termination of the guardianship, the person who has attained age of majority gives a signed statement to one of the guardians regarding the appropriate transfer of the property which was under guardianship, then the signed statement also protects the joint guardians against any subsequent actions.

326. If the guardians agree to divide among themselves the joint duties of guardianship, they may do so only on the basis of their own liability therefor, and in addition, such division has no effect in any way upon the rights of a ward or third parties.

Nevertheless, in such case also, the one performing any action is firstly liable therefor.

327. If, several guardians have been appointed, they may request that the appropriate Orphan's court divide the duties of guardianship among them.

If the Orphan's court does divide the duties of guardianship among the guardians or if such a division has been provided for by a person who has left an estate to the minor, then each individual guardian shall administer only their indicated part and is liable only therefor.

328. A guardian who becomes informed that as a result of the administration by the joint guardians, there is a threat to the minor of losses arising, shall notify the Orphan's court of this. A guardian who has not observed this duty, together with a joint guardian who is at fault, is liable for the action or negligence of such joint guardian and may not rely on the fact that the guardianship has been divided.

329. If, apart from the guardians who have been entrusted with all of the guardianship, there is additionally appointed a special guardian for some independent action (Sections 226,267,268) or for administration of such immovable property as is remotely located, then such guardian shall act independently from the others and is liable for all of his or her own actions and negligence.

VIII. An Orphan's Court and its Relationship to Wards and Guardians

330. An Orphan's court has the duty to appoint a guardian for a minor without delay and without waiting for a petition from kin or other relatives. (Section 222)

As soon as State or local government institutions receive information about a case where a guardian must be appointed for a minor, they shall notify the appropriate Orphan's court of this. Family members, kin and persons in whose care the minor has been have the same duty.

331. The Orphan's court shall provide for the preparation of an inventory of the property of the minor, constantly monitor the actions of the guardian, and do all that is required by and support the interests of the minor.

332. Upon irregularities being discovered, the Orphan's court, without delay, shall rectify them, and if, pursuant to information received from joint guardians or kin, or in its own opinion, it finds the guardian unsuitable, it shall dismiss the guardian and appoint another in

his or her place.

If the Orphan's court starts an investigation of a matter, during the period of investigation, the guardian under suspicion shall be removed from his or her position and, if necessary, particularly where there are no joint guardians, replaced with an interim guardian until the matter is determined.

333. The Orphan's court may impose a monetary fine of not more than one hundred lats on guardians for failing to comply with its directions or decisions. The moneys shall be credited to the income of the local government concerned.

Within a month after receipt of a notice regarding the imposition of a fine, the guardian may apply to the Orphan's court that imposed the fine, indicating reasons by way of justification, with a petition for reduction or cancellation of the penalty.

334. In special cases, pursuant to a petition by the guardian, the Orphan's court shall give him or her directions as required.

335. If the Orphan's court permits the illegal actions or negligence of guardians, but the guardians are not able to compensate the ward for losses caused thereby, such shall be covered by the local government.

336. Deleted.

337. A local government shall be liable for the negligence of the Orphan's court, particularly in the following cases:

1) where, having been informed about some minor, it does not appoint a guardian for him or her;

2) where it appoints or confirms as a guardian a manifestly unsuitable person;

3) where it insufficiently investigates the person to be appointed as to trustworthiness; or

4) where it fails to take the necessary measures in tune against an unsuitable guardian.

338. If the Orphan's court has deliberately infringed the interests of the ward, the local government under subrogation procedures may claim full compensation for the losses from the members of the Orphan's court.

IX. Termination of Guardianship

339. Guardianship for a ward is terminated:

1) by his or her death;

2) by his or her attaining age of majority;

3) by his or her adoption; or

4) if custody rights have been renewed for the parents.

[12 December 2002]

340. If one of several wards who are under one and the same guardianship is released from such for reasons set out in Section 339, Clauses 2 and 3, then the guardian shall inform the Orphan's court of this. In such a case, the person released from guardianship shall have the share to which he or she is entitled distributed to him or her.

341. Guardianship is terminated with respect to a guardian:

1) by his or her death;
2) if he or she are released for lawful reasons by the Orphan's court;
3) if he or she are dismissed from the position of guardian; or
4) in guardianships, which have been established with certain conditions or for a prescribed time, upon the conditions coming into effect or the prescribed time elapsing.

342. In the cases set out in the previous section (341), the Orphan's court shall, in place of the removed guardian, appoint another. If one of the guardians dies, the remaining guardians shall, without delay, notify the Orphan's court regarding this.

343. Impediments, which temporarily do not permit the performance of the duties of a guardian, do not give a guardian the right to renounce his or her position entirely; until such an impediment is eliminated, the Orphan's court, if necessary, shall appoint an interim guardian.

344. A guardian shall be released by the Orphan's court that has appointed or confirmed him or her.

345. If one of the kin or also a stranger becomes informed of danger threatening the ward from the administration of a guardian, then any of them, as well as the ward himself or herself have the right to notify the Orphan's court of this.

346. The right of an Orphan's court to dismiss a guardian applies to all guardians, not excepting those appointed in a will or even the parents of the minor themselves.

347. Upon termination of a guardianship, the guardian shall provide a final accounting to his or her former ward in the Orphan's court. In the review of such, the guardian may not be held liable for those accounts that the Orphan's court has previously examined and acknowledged, except in cases where the guardian has allowed error or fraud.

348. Together with the submission of final accounts, guardians shall, in accordance with the inventory and final accounting, transfer all the property under their administration to the former ward, but the latter, for his or her part, shall pay all that is owed to the former guardian.

349. If the person released from guardianship without good cause fails to accept his or her property, the guardian may protect himself or herself from all consequences of the delay by delivering such property for safekeeping to the Orphan's court.

350. When the guardianship is terminated, the person released from guardianship shall give the former guardian a signed statement that he or she has received all the property that is rightfully theirs and that he or she have no claims against the guardian. When such a signed statement has been submitted to the Orphan's court, together with a request for release, the Orphan's court shall release the guardian. The signed statement referred to may only be disputed if, at a later date, manifest fraud or error is discovered.

351. A former minor shall raise any objections against the final accounting of the guardian within six months from the date of receipt of the final accounting. The Orphan's court, having required clarification from the guardian, shall within two weeks render its decision and in appropriate cases apply the provisions of Section 1308**.**

352. Regardless whether an objection is or is not raised in the Orphan's court as to its decision (Section 351), the former minor has the right within one year from the date of receipt of the final accounting or the transfer of property, if this occurs at a later date, to bring an action against the former guardian in the Orphan's court concerned. Within one year from the date of submission of the accounting, the former guardian may also bring an action against the former ward.

353. If the ward dies, not having attained age of majority, the guardian shall submit his or her final accounting to the heirs of the ward.

354. Guardians who have been released or dismissed from guardianship before its termination, shall give an accounting to their successors or joint guardians. If a guardian dies, this duty devolves to his or her heirs.

SUB-CHAPTER 2
Trusteeship of Adults

I. General Provisions

355. Trustees of adults shall be appointed pursuant to judgment of a court, by the appropriate Orphan's court, which shall, in the first place appoint as trustee, the spouse of the person to be placed under trusteeship or one of the nearest kin, as well as observe the last will instructions of such person who has left him or her an estate.

356. Trusteeship for adults shall be subject to the relevant provisions regarding guardianship for minors, insofar as these provisions do not conflict with the following Sections.

II. Trusteeship of the Mentally ill

357. Persons who are mentally deficient but, nonetheless, do not lack the intellectual capacity for management of ordinary matters, may administer their own property and deal with it freely.

358. The mentally ill, who lack all or a large part of their mental capacity, shall be acknowledged as lacking the capacity to act and as legally incapable to represent themselves, administer their property and to deal with it, for which reasons trusteeship may be established for them.

359. Mental illness or mental deficiency is associated with legal consequences only when a person has been found by a court to be lacking the capacity to act due to mental illness or mental deficiency. Each family in which there is a mentally ill person, as well as members of each such family may notify the court regarding this according to the place of residence of the mentally ill person. Any other person who has proved his or her interest in the matter, as well as the prosecutor, may similarly notify.

360. If the court finds a person as lacking capacity to act due to mental illness or mental deficiency, it shall inform the Orphan's court of this, which, as necessary, shall appoint one or more trustees for the mentally ill person, to whom shall be entrusted the administration of his

or her property and special care of his or her person, but without imposing on the trustees a duty to themselves tend to the mentally ill person.

361. The actions of a mentally ill person who is under trusteeship, particularly the alienation of his or her property, do not have legal effect. The same also applies to acts that he or she have committed in a condition of mental illness prior to the establishment of a trusteeship.

362. An act that a mentally ill person has committed during lucid intervals prior to the establishment of a trusteeship has legal effect and therefore legal transactions concluded during these intervals bind the person himself or herself, as well as other parties to the transaction.

363. A person, who bases any claims on the legal meaning and legal effect of such a transaction (Section 362), must prove that the mentally ill person, in making the transaction, in fact had done so during such a lucid interval.

364. If a court has found a mentally ill person as having recovered their health, i.e. as having the capacity to act, it shall direct the Orphan's court to release the trustees from their appointment after they have submitted an accounting and transferred the property which was under their administration to the person who has recovered his or her health.

III. Trusteeship of Persons with Dissolute or Spendthrift Lifestyles

365. A court, pursuant to the petition of kin or relations, or a motion by a prosecutor, may establish a trusteeship regarding persons, whose dissolute and spendthrift lifestyle or whose excessive use of alcohol or narcotics threatens to drive them or their family into privation or poverty.

366. In establishing a trusteeship, a court shall remove from the person referred to in the previous Section (365) the administration of and capacity to act regarding their property and shall instruct the relevant Orphan's court to transfer such administration to one or more trustees.

367. In respect of the administration of property for persons mentioned in Section 365, the provisions regarding minors are applicable. In removing from them the administration of property and capacity to act, they shall nevertheless be permitted freedom of action with the net income, which remains after every expense related to the administration of property and maintenance of their family has been covered.

368. The actions of the person mentioned in Section 365 done before he or she is removed from the administration of property and such removal has been published, are in legal effect and binding.

369. Trusteeship for the person referred to in Section 365 shall continue until such tune as there is no doubt that he or she have finally changed his or her nature and lifestyle, and for so long as the same court that established the trusteeship has not acknowledged that.

IV. Trusteeship for the Property of Absent or Missing Persons

370. Person who have departed from their permanent place of residence, if they have not left

an authorised person in their place, may be represented in regard to their rights by a manager who has not been authorised.

371. If such an unauthorised manager (Section 370) does not exist or if non-appointed management is inadmissible, but representation in regard to rights in a relevant case is nevertheless necessary, then the court as had personal jurisdiction over the person before he or she left his or her place of residence, has the right and the duty to establish a trusteeship.

372. A trustee shall protect and administer the property of an absent person, but he or she shall not have the right to interfere in other matters in regard to the absent person, except in cases of compelling necessity.

373. The trustee shall make an inventory of the property entrusted to him or her and submit an accounting annually to the Orphan's court.

374. If an estate devolves to an absent person, this may be accepted by a trustee in the same manner as a guardian accepts an estate which devolves to his or her ward. However, if prior to the expiration of the prescriptive period provided by law, it is proved that the absent person was no longer alive at the time of the opening of the succession, the estate shall devolve to those, who at the time mentioned were the nearest heirs after the absent person.

375. Trusteeship of the property of an absent person is terminated:

1) when he or she return to his or her place of residence or notify about himself or herself and himself or herself give instructions regarding the administration of his or her property;

2) when definite information as to his or her death has been received; or

3) when a court has declared him or her presumed dead.

376. If reliable information has been received regarding the death of an absent person, his or her property shall be subject to the general provisions regarding inheritance and shall be transferred as inventoried and accounted for to that person, who at the time of death of the absent person was his or her nearest heir.

377. A missing person shall be declared presumed dead pursuant to a petition by interested parties, but if such do not exist, by the trustee of his or her property or a prosecutor, which may be submitted, as soon as ten years have elapsed from the end of the year when the last information was received regarding the missing person.

If a missing person, when the last information regarding him or her was received, had attained seventy years of age, then a request may be made to have him or her declared presumed dead as soon as five years after receipt of such information.

378. A missing person may be declared presumed dead:

1) if he or she have gone missing on a battle-field and within a two year period after the end of active hostilities there is no news of him or her; and

2) if he or she were in a ship or an aeroplane disaster or had found himself or herself in other mortal danger and within a six month period there is no news of him or her.

379. When a court has declared a missing person as presumed dead, his or her property, if he or she did not leave a will, shall devolve to those heirs who were, on the assumed day of death, if such has been determined by court decision, or, if this day cannot be determined, at

the moment when the matter was commenced, his or her nearest kin or spouse.

380. If a missing person whom a court had declared presumed dead (Section 377) returns, he or she may recover his or her property from the persons to whom it had been transferred (Section 379), or their heirs, but only to the extent as preserved, or for so much as the heirs have enriched themselves with such property during this period.

381. If, after the declaration of presumption of death of the missing person, it is proved that he or she died at another time, then those persons who during such time had inheritance rights may claim for the remaining property to be transferred to them, but also only with the restrictions set out in Section 380.

PART TWO
Inheritance Law

CHAPTER 1
General Provisions

382. An estate is the whole, which comprises all immovable and movable property, as well as transferable rights and obligations, which may be transferred to others and which, at the actual or legally presumed time of death, were owned by the deceased or a person legally presumed dead. In this context the deceased or the person legally presumed dead shall be called an estate-leaver.

383. An estate is a legal person. An estate may acquire rights and assume obligations.

384. The right to enter into the whole of the rights and obligations pertaining to the estate of the deceased shall be called the right of inheritance. A person who has such a right shall be called an heir.

385. Anyone who has the right to acquire property also has the right to take all or part of an estate. Natural persons and legal persons have the capacity to inherit.

386. A natural person has the capacity to inherit if, at the time the succession is opened, such person has been conceived, but has not yet been born.

387. Those legal persons, the founding of which the estate-leaver has foreseen in his or her instructions in contemplation of death by making them heirs and bequeathing them property, also have the capacity to inherit. The legal person to be founded shall acquire its status as a legal person upon its affirmation or registration on a general basis, but it shall be considered an heir from the day the succession was opened.

388. The capacity to inherit must exist on the day the succession was opened (Section 655) and must continue to exist until the inheritance has been accepted (Section 687).

389. An invitation to inherit shall come into effect when the succession is opened (Section 655). The basis of the invitation shall be the lawfully expressed intent of the estate-leaver, or law.

The estate-leaver may express his or her intent in a will or an inheritance contract.

A contractual right to inherit shall have priority over a right derived from a will, and the first as well as the second shall have priority over a right based on law; all three kinds of inheritance rights may exist simultaneously.

CHAPTER 2
Intestate Succession

SUB-CHAPTER 1
General Provisions

390. When there is no inheritance contract or will or when it is void (Sections 784 and 820),

heirs shall inherit pursuant to law.

If an instruction in contemplation of death exists but was given or remains valid for only one share of the estate, the remaining shares shall pass in accordance with the procedures of intestate succession.

391. Pursuant to law, invited to inherit are 1) the spouse, 2) kin and 3) adoptees (Section 173).

SUB-CHAPTER 2
Inheritance by Spouses

392. The surviving spouse shall inherit from the deceased regardless of the form of property relationship that was in effect between the spouses during their marriage.

393. The spouse shall receive a share equal to that of a child if the number of surviving children is less than four, but if there are four or more children - a one fourth share.

394. If the estate is so small that, if divided, it is not sufficient for the maintenance of minor children, the surviving spouse shall have the right to administer and use the entire undivided estate, but the spouse shall, from all the income of the estate, firstly cover the expenses for the maintenance of the children (Section 179).

The right of the surviving spouse to administer and use the undivided estate shall terminate:

1) upon all the children reaching the age of majority;

2) upon the spouse renouncing this right;

3) upon the voluntary division of the estate;

4) regarding the share of an individual child - upon the separation of his or her share from the estate pursuant to agreement or by the unilateral decision of the spouse; or

5) upon the demand of a child who is of age of majority - for good cause.

Note: The permission of an Orphan's court is required in the cases referred to in this Section, Clauses 3-5.
[12 December 2002]

395. If the surviving spouse administers or uses the inheritance carelessly, an Orphan's court, upon application by the children that are of age of majority or in its own discretion, having received notice thereof and verified the facts, may revoke the right of the spouse to administer and use the estate, and transfer such administration to a guardian appointed specifically for this purpose.

396. If the deceased spouse has neither surviving descendants nor adoptees, the surviving spouse shall receive half of the estate and, in addition, the furnishings of the dwelling.

If the deceased spouse has no surviving descendants, adoptees, ascendants, nor brothers or sisters or their children, or if the survivors fail to take their share, then the surviving spouse shall receive the whole of the estate.

397. If the marriage has ended in divorce or has been declared annulled, the former spouses shall not inherit from each other.

SUB-CHAPTER 3
Inheritance by Kin and Adoptees

I. Kinship that Establishes the Right of Inheritance

398. Intestate succession rights are based on kinship and adoption. Affinity does not confer such rights.

399. Intestate succession rights shall only be based on such kinship, as originates:

1) by birth within a lawful marriage;

2) by birth within such a marriage as is subsequently declared annulled, but not later than 306 days after termination of such a marriage; and

3) with the acknowledgement of paternity or the determination thereof by a court proceeding.

[12 December 2002]

400. Children born of parents who are not married to each other, if paternity and maternity has been determined pursuant to the procedures specified by law, shall inherit in the same way as children born within marriage. The mother and her kin as well as the father and his kin shall inherit from such children.

[7 July 1992]

401. An adoptee and his or her descendants, who were minors at the time the adoption or who were born after the adoption, shall inherit from the adopter or his or her descendants in the same way as his or her children.

From an adoptee shall inherit his or her descendants, as well as the adopter or his or her descendants. In this case, the half-brothers and half-sisters of the adoptee shall be treated equivalently to brothers and sisters of the whole blood.

[12 December 2002]

402. Persons who have multiple kinship relations to the estate-leaver (Section 212) shall receive shares of the estate equal to the number of kinship relations.

II. Order of Succession

403. The kin of the estate-leaver shall inherit in accordance with a specific order, which is based partly on the type of kinship and partly on the degree of kinship.

404. In respect of the order of succession, four classes of heirs by intestacy are distinguished:

1) in the first class inherit, without distinction as to degree of kinship, all those descendants of the estate-leaver between whom, on the one part, and the estate-leaver on the other part, there are no other descendants who would be entitled to inherit;

2) in the second class inherit the ascendants of the nearest degree of kinship to the estate-leaver, as well as the estate-leaver's brothers and sisters of the whole blood and the children of those brothers and sisters of the whole blood who had predeceased the estate-leaver;

3) in the third class inherit the estate-leaver's half-brothers and half-sisters and the children of those half-brothers and half-sisters who had predeceased the estate-leaver; and

4) in the fourth class inherit the remaining collateral kin of the nearest degree of

kinship, without distinction between full and partial consanguinity.

405. An heir of a lower class shall not inherit while an heir of a higher class is alive.

406. If, in any class, an invited heir with priority status fails, the inheritance devolves to his or her co-heirs, who have the same right of inheritance. If the co-heirs also fail, then the inheritance devolves to those persons who, in this same class, are invited to inherit from the estate-leaver. If there is no one in this class who is entitled to inherit or if all heirs in this class have failed, then the inheritance devolves to heirs in the next class.

407. Children born of several marriages of one parent shall inherit equally from their common parent, but separately from the separate parent.

408. When inheriting from an ascendant, the more remote descendants shall take the place of their parent who predeceased the estate-leaver without restriction as to the nearness of the degree of kinship and with right of representation. In compliance with the right of representation, the descendants shall receive that share of the estate that their parent would have received if he or she had survived the estate-leaver and had inherited from him or her.

409. The right of representation shall also belong to the children of the predeceased brothers and sisters of the whole blood to the estate-leaver, as well as to the children of the predeceased half-brothers and half-sisters. The children of their children shall not have such right of representation.

The right of representation does not arise from the right of an heir to the estate left by a parent, but rather from the independent right of inheritance of the heir as a descendant. An heir who does not accept an estate left by his or her parent shall not be liable for the debts of this parent from the property he or she inherits from the estate-leaver pursuant to the right of representation (Section 408).

410. In the fourth class there is no right of representation; therefore heirs of a nearer degree of kinship exclude those of more remote degree from inheriting; but if there are several kin of an equal degree of kinship, they shall all share the estate among themselves *per capita.* In this class there shall also be no allowance for multiple kinship relations (Sections 212 and 402) nor distinction between full and partial consanguinity (Section 213).

411. When applying the right of representation (Sections 408 and 409), the estate shall be divided not according to the number of persons, but rather, according to the number *of stirps,* i.e., all of the descendants of the person represented together shall receive that share of the estate, which would have been the share of the deceased father or mother if he or she had been still alive at the time the succession was opened.

412. When determining the degree of kinship, the time of opening the succession must be considered (Section 655). Therefore if the estate-leaver dies without leaving either a will or an inheritance contract, the degree of kinship shall be determined as of the time of his or her death; and even if a will or a contract has been left but pursuant to such no one inherits, then it shall be determined as of the time when that became known as certain. If an heir specified in a will or contract fails because the will or contract is void, then the question of the degree of kinship shall be determined *de novo* as of the time of death of the estate-leaver.

413. The procedures for the division of the estate among several co-heirs shall also be

determined as at the time the succession was opened (Section 655).

414. If the estate-leaver is survived by ascendants of the second class and, in addition, by brothers and sisters of the whole blood, as well as children of brothers and sisters of the whole blood who predeceased the estate-leaver, then half of the estate shall go to the ascendants, but the other half to the brothers and sisters or the children of the deceased brothers and sisters; the ascendants as well as the brothers and sisters shall divide their halves into equal shares, i.e., *per capita,* but the children of deceased brothers and sisters *per stirpes.*

If several ascendants inherit, irrespective of whether solely or together with brothers and sisters and the children of brothers and sisters, the nearer kin shall exclude the more remote from inheriting. Ascendants of equal degree of kinship shall inherit according to lines such that from their entire share, the paternal line shall receive one half and the maternal line the other half. If one or the other line has several branch lines, then the latter lines shall also divide the inheritance according to lines.

Other relationships among the second class heirs shall be subject to the provisions of Sections 404, 409 and 411**.**

415. Heirs of the third class (Section 404, Clause 3) shall inherit and share among themselves in accordance with the provisions of Sections 409 and 411, but heirs of the fourth class (Section 404, Clause 4) in accordance with the provisions of Section 410**.**

SUB-CHAPTER 4
Property without Heirs

416. If, following the death of an estate-leaver, there are no surviving heirs or such heirs have failed to appear or have not proven their right to inherit within the term after the publication of the opening of succession specified by law, then the property shall escheat to the State.

For debts, the State shall be liable only with that property which the State actually acquired in that manner.

417. Property remaining after the winding up of legal persons, except for-profit companies, shall be treated as property without heirs and shall escheat to the State if the law, their founding documents or their articles of association do not specify otherwise.

CHAPTER 3
Testamentary Inheritance

SUB-CHAPTER 1
General Provisions

418. Any unilateral instruction which someone has given in case of his or her death regarding all of his or her property or part of some property or regarding separate property or rights, shall be called a will.

419. A testator may revoke, amend or add to a will at any time (Section 792 and subsequent sections).

SUB-CHAPTER 2
Capacity to Make a Will

420. Any person who has the capacity to act may make a will.

Minors, if they have reached the age of 16, may make a will with respect to their independent property (Section 195).

Those who are under trusteeship because of their dissolute or spendthrift lifestyle may also make a will.

[7 July 1992]

421. Those who are unable to write or to speak understandably and therefore are unable to clearly express their intent are incapable of making a will.

The mentally ill, while they are in a condition of mental illness, are incapable of making a will.

SUB-CHAPTER 3
Forced Heirs and Preferential Shares

422. A testator may freely determine the disposition of his or her whole estate in case of his or her death, with the restriction that his or her forced heirs shall be bequeathed their preferential shares.

This restriction must also be observed when appointing a secondary heir.

423. Forced heirs are the spouse and descendants, but if there are no descendants, then ascendants of the nearest degree of kinship.

424. The preferential share of an estate shall be determined on the basis of the number of surviving heirs on the day of the testator's death, including the surviving spouse and heirs excluded by the will, but not including failed heirs.

425. The preferential share of an estate shall be one half of the value of that share of the estate which an heir would inherit pursuant to law. This share shall be determined on the basis of the contents and value of the estate on the day of the testator's death.

The preferential share includes that which the testator has left to an heir as an inheritance or a legacy, as well as that which has been received while the testator was alive, if the duty to add such in the estate applies (Section 757 and subsequent sections).

The preferential share shall be calculated on the basis of the net assets of the testator, having subtracted all the testator's debts.

426. The preferential share may not be restricted with conditions or terms, or encumbered with legacies or other charges. Such ancillary provisions are void.

SUB-CHAPTER 4
Exclusion from Inheritance

427. Exclusion from inheritance shall be understood as the intent expressed in instructions in contemplation of death such that the one who has a right of inheritance by law does not become an heir.

Forced heirs may be excluded from a preferential share of an estate only as provided for in law and directly expressed in the instructions in contemplation of death for factually appropriate causes.

428. An ascendant may exclude a descendant if the latter:

1) has committed a criminal offence against the life, health, liberty or honour of the testator, his or her spouse or his or her ascendant;

2) has knowingly instigated, against someone in Clause 1 above, a wrongful accusation about a criminal offence;

3) has left the testator in a helpless state when it was possible to provide assistance;

4) has lived extravagantly or immorally;

5) has not fulfilled the duty imposed on him or her by law to maintain the testator or his or her spouse;

6) has attempted to hinder the testator in the making of a will; or

7) has entered into a contract with some person regarding the descendant's future inheritance while the estate-leaver was still alive and without his or her knowledge and consent.

429. Descendants may also exclude, in addition to the causes provided for in Section 428, their ascendants from the preferential share of the ascendants also in those cases where the parents have never provided for the upbringing of the testator.
[12 December 2002]

430. If, before making a will, an estate-leaver has become reconciled with his or her forced heir or if the heir has mended his or her lifestyle, then the heir may not be excluded from the inheritance.

431. A testator may exclude his or her spouse from the inheritance for the causes set out in Section 428, as well as in cases where:

1) the spouse has committed adultery;

2) the spouse has threatened the life, health of the other spouse, has hit or tortured him or her; or

3) the marriage has broken down and the spouses have lived separately for more than three years.
[12 December 2002]

SUB-CHAPTER 5
Forms of Wills

432. Wills, according to their form, shall be either public or private.

I. Public Wills

433. Public wills shall be made either before a notary public, an Orphan’s court or a consul of Latvia in a foreign state.
[22 June 2006]

434. A public will shall be made in the presence of the testator in person with the participation of two witnesses.
[7 July 1992]

435. If a will is made before a notary public, an Orphan's court or a consul of Latvia in a foreign state then, in addition to the persons who may not be admitted as witnesses of notarial acts in general, persons who may not be admitted as witnesses to a private will may also not be admitted as witnesses.
[22 June 2006]

436. A will that is entered in the register of documents of a notary public or a consul or in the register of wills in an Orphan's court shall be deemed to be the original of a public will. After the original is signed, the testator shall be given a copy.
[22 June 2006]

437. The copy which is given to the testator shall be of equal validity as the original will. In case of dispute about differences between these two documents, the original shall be given priority, provided that in it erasures or corrections do not appear in the disputed paragraphs to which relevant annotations have not been made.

While the testator is still living, a second copy and subsequent copies of public wills may be issued only to the testator himself or herself or to his or her authorised representative who has been authorised by a special power of attorney.

438. Private wills may be deposited for safekeeping with a notary public or with a Latvian consul in a foreign state, observing the Notariate Law, or with an Orphan's court, observing the provisions of the Law On Orphan's Courts. When accepting a will for safekeeping the identity of the testator must be verified.
[12 December 2002; 22 June 2006]

439. A will that have been deposited with a notary public, a consul or an Orphan's court according to the previous Section (438) shall be valid as a public will if, in addition, the following provisions have been observed:

1) the will must be submitted in a sealed envelope by the testator in person;

2) in addition, the testator (Clause 1) must declare, that the document submitted expresses his or her last will;

3) the envelope must be stamped with the seal of the receiving official or institution and the testator and receiving official must sign the envelope; and

4) a special document regarding acceptance of a will for safekeeping must be prepared, which must attest that the requirements in Clauses 1-3 have been observed as well as must describe the envelope and the outer shape of the seal.
[22 June 2006]

440. A will prepared according to the procedures in the previous Section (439) does not require any other formalities or the presence of witnesses and their signatures.

441. A will that has been deposited for safekeeping with a notary public, a consul or an Orphan's court shall be returned, upon request, to a testator or his or her authorised representative who has been authorised with a special power of attorney for this.
[22 June 2006]

442. A will returned to a testator after it has been deposited with a notary public, a consul or an Orphan's court shall cease to be valid as a public will and in such a case shall be valid only if all the provisions regarding private wills have been observed.
[22 June 2006]

443. The authenticity of a public will may not be doubted; only a dispute of forgery may be raised against such a will.

444. A will that is not valid as a public will shall not be invalidated as a private will, if the provisions regarding private wills have not been infringed in its preparation.

II. Private Wills

445. For a private will to be valid there must be conviction that it has been prepared by the estate-leaver and that it correctly reflects his or her last intent.

446. For this purpose (Section 445) at least two trustworthy witnesses must be present when a private will is made, except in the case set out in Section 451. Private wills shall be made in writing, except in the cases provided for in Section 460.

447. At the time of making a will witnesses must have the capacity to witness, must be present voluntarily, not less than two at the same time, and must be able to ascertain the identity of the testator.

448. Witnesses lacking the capacity to witness wills are:

1) those who, because of physical or mental deficiencies, are unable to correctly and completely comprehend and witness the document concerned, namely the mentally ill, minors, the deaf, the mute, the blind, as well as those who can not write and read; and

2) [12 December 2002]

3) those who, by the same will have been made heirs or legatees, their spouses, as well as up to and including kin to the fourth degree and affines to the third degree of such heirs or legatees.
[7 July 1992; 12 December 2002]

449. The kinship of one witness of a will to another witness shall not affect the validity of his or her witnessing.

450. A written private will need not necessarily be written by a testator himself or herself, but he or she must sign it.

A testator must either sign the will in the presence of the witnesses or must declare to the witnesses that he or she has signed it in person.

If the testator is illiterate or is unable to write, then a third person may sign in his or her place, except for the two witnesses, but this must be mentioned in the will itself and confirmed by the witnesses.

451. If a testator has written and signed the entire will himself or herself, then it shall also be valid without witnesses.

452. Witnesses must sign at the end of the will.

453. The person who, at the request of the testator, has prepared or copied the will may also sign as a witness at the end of the will.

454. If a testator does not want the invited witnesses to know the contents of the will, then they do not have the right to require that they be informed of it, and if they can confirm that the testator, in their presence, has stated that the document placed before them and signed by them expresses the last will instructions of the testator, it shall be deemed sufficient. In such a case the witnessing by the witness shall not be invalidated even if in the will he or she is bequeathed a legacy or if he or she is appointed guardian, executor of the will, etc.

455. A private will may be made in any language.

456. Amendments to a will shall not revoke its validity if it is proven that they have been made by the testator himself or herself with his or her own hand, or that they have been made in accordance with the intent of the testator and with his or her knowledge, and in addition, clearly and legibly.

The testator himself or herself must indicate in the will all that has been intentionally crossed out or erased; but if that has not been done, then the unaltered parts of the will shall not lose their validity thereby.

When the testator has, by mistake, crossed out some instruction and, in addition, in such a way that the crossed out part can no longer be read, then such instruction shall remain valid if its substance and the fact that it is crossed out only by mistake are proven.

457. If some word is omitted or used erroneously in a will, but such that it leaves no doubt about the intent of the testator, then the will shall not be invalidated for reason of such omission or error.

458. If a testamentary instrument is evidently not finished and not concluded, then it shall not have any validity.

459. If a testator has promised in the will itself to add to it later with new instructions but has not done so while still alive, then this shall not affect the validity of the will, only if it can, in general, be complied with without the intended additions.

III. Privileged Wills

460. If, due to exceptional circumstances, an estate-leaver is unable to make a written private or public will, then he or she shall have the right to state his or her last will orally.

Such an oral will must be spoken in the presence of two witnesses invited for this purpose and who shall be subject to the provisions of Section 448, with the exception that literacy of the witnesses is not a requirement.

461. If, upon the cessation of circumstances set out in Section 460, it is possible for the estate-leaver to make a written will, then the oral will shall cease to be valid three months after the cessation of the referred to exceptional circumstances.

462. A written will made by:

1) a person under circumstances in which it was not possible to invite witnesses;
2) a person in the armed forces in time of war;
3) parents for the benefit of their children; or

4) a spouse for the benefit of the other spouse, shall be valid even if made without witnesses.

SUB-CHAPTER 6
Contents of a Will

463. The contents of a will must express the true intent of the estate-leaver. A will shall be made without duress, mistake or fraud.

464. Simple persuasion shall not be considered as duress and shall not revoke the validity of a will.

465. If there is no doubt about the intent of the estate-leaver, then a will shall not become invalid because the testator has made a mistake in a name or a description, or if a referred to quality of a person or of a thing has later disappeared.

466. If the stated reason of an estate-leaver for making a will or for giving certain instructions turns out not to correspond to reality, then that shall not revoke the validity of the will or instructions, except in cases when it is proven that without this reason the estate-leaver would never have made his or her will at all or would not have given the aforementioned instruction.

SUB-CHAPTER 7
Appointment and Substitution of Heirs

I. Appointment of Heirs

467. The appointment of an heir does not require a particular form and it shall be sufficient if the testator expresses his or her will about it clearly and understandably, regardless of the kinds of expressions used.

468. If an estate-leaver appoints only one heir, and furthermore does not restrict him or her to a particular share of the estate, then he or she or it shall receive the whole of the estate.

469. If a will provides such an heir (Section 468) with only a share of the estate, then the rest of the shares shall be received by the heirs by intestacy.

470. If several heirs are appointed in a will without indicating the share of the estate for each, then the whole estate shall be divided among them in equal shares.

471. If a will appoints several heirs and a specific share is specified for each but these together do not comprise the whole estate, then the remainder shall devolve to the heirs by intestacy. If on the other hand a testator has bequeathed to his or her appointed heirs the whole estate and has made a mistake only in calculating the shares, then the remainder shall be divided among the appointed heirs proportional to their shares.

472. If a will appoints several heirs and a share for each is specified and the sum of all these shares amounts to the whole estate, then persons whom the testator may have appointed as heirs without naming their shares or without stating that the remainder was theirs, shall receive nothing.

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473. If a will appoints several heirs and for each a certain share is specified but these shares together exceed the estate, then the share of each heir shall be reduced proportionally.

474. If a will appoints one or more heirs with specific shares and in addition one or more without specific shares, then the latter shall receive all that is left over after the former have been satisfied; if there are several, then they shall divide this balance among themselves in equal parts.

475. If one heir is appointed for the whole estate and in addition another one or more are appointed to receive specific shares of the estate, then the latter shall receive their specific shares and the former the balance. But if the specific shares equal or exceed the whole estate, then the share of the former shall be calculated as a whole share (2/2 or 3/3 or 4/4, etc.) and the estate shall be divided among all in accordance with Section 473.

476. If in a will the estate is divided among several persons such that they are bequeathed specific objects in the estate, then each of them shall receive only that which is specified for them; but if the persons mentioned have been specifically appointed as heirs, then the objects bequeathed to them shall be deemed as pre-legacies (Section 515) and the balance of the estate shall be divided in equal shares.

II. Substitution

477. For heirs appointed in a will, if they might not want to or for some reason might not be able to accept the inheritance, the testator may appoint a replacement who shall be called a substitute.

A testator may appoint a substitute at his or her discretion either for only one of the cases provided for in this Section, or for both; nevertheless, if there should be doubt, it must be assumed that he or she had intended both cases, even though he or she may have mentioned only one.

478. Substitutes may be appointed not only for each heir separately, but also several substitutes for one heir, as well as one for several; similarly, also co-heirs may be appointed as substitutes jointly for each other.

479. A testator may also specify several degrees of substitution in the will, i.e., specify who shall inherit after a substitute should he or she or it also not want to or be able to accept the inheritance.

480. A substitute shall receive, unless otherwise specified in the will, the same share of the estate that the replaced heir would have received.

481. If co-heirs have been appointed as substitutes jointly for each other, then in dividing a failed share among themselves the basis, in case of doubt, must be the share specified for each.

A co-heir as a substitute may utilise his or her right only after receiving his or her own share of the estate.

482. For a substitute to take his or her substitute share, he or she or it must survive not only the testator, but also the circumstances which led to the failure of the direct heir.

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483. A substitute appointed for several heirs may utilise his or her right only after all such heirs have failed.

484. A substitution shall end when a direct heir receives his or her inheritance, as well as when a substitute dies before the occurrence of the circumstances for which his or her right was established, and generally upon losing the capacity to inherit.

485. The second and subsequent substitutes shall not lose their right if the previous substitute dies before the direct heir.

SUB-CHAPTER 8
Appointment of a Secondary Heir

486. An estate-leaver may, in a will or an inheritance contract, impose a duty on the appointed heir as the primary heir to transfer the inheritance or a part of it to another person as a secondary heir.

Such a duty may not be imposed on a secondary heir.

The provisions of this shall also be applied to legatees, as appropriate.

487. The moment of death of the primary heir shall be deemed to be the time at which an inheritance must be transferred to a secondary heir, if the will or inheritance contract does not specify otherwise.

If another moment has been specified and if it has not yet occurred when the primary heir dies, then the estate shall devolve to the heirs of the primary heir who shall have the duty to transfer the estate to the secondary heir at the appropriate moment.

If for some reason this moment can no longer occur, then the estate shall devolve to the heirs of the primary heir irrevocably.

488. If it is apparent to a notary, from a will or an inheritance contract submitted to him or her, that a secondary heir for the estate has been named, he or she shall notify a court regarding this, which shall establish a trusteeship to compile an inventory of the estate (Section 665). If such an estate also contains immovable property, then the duty of the primary heir to transfer it to a secondary heir must be registered in the appropriate Land Register, for which the trustee shall take responsibility.
[12 December 2002]

489. The primary heir shall receive the inheritance in the same way as any other heir. The primary heir shall become the owner of the estate with the duty to transfer it to a secondary heir. Within these limits he or she may bring actions, be responsible for and enter into contracts regarding the estate, as well as pay the creditors of the estate. The primary heir shall be the beneficiary of income from the estate.

490. The primary heir may alienate the estate or encumber it with property rights only to the extent permitted in the instructions in contemplation of death left by the estate-leaver or in writing by the secondary heir, or to the extent needed for payment of compulsory debts on the estate, or to transfer a legacy or a preferential share of the estate. In addition, the primary heir may alienate perishable property.

The secondary heir may contest every other alienation or encumbrance as null and void and obtain the return of the alienated property to the estate or the discharge of an

encumbrance if the opposing party or corresponding successor to the rights, who is in possession of the property or who is the beneficiary of the encumbrance, knew that the alienated or encumbered property is part of the estate to be transferred to the secondary heir.

491. All that the primary heir has acquired with the money and property of the estate shall be substituted in place of the primary constituent parts of the estate and must therefore be transferred to the secondary heir if, in contesting the alienation according to the previous Section (490), the secondary heir has not already received back the alienated item of property in the estate.

492. The primary heir must provide for the maintenance and safekeeping of the estate, but he or she need not transfer that which has been destroyed as a result of an accident *or force majeure.*

The primary heir shall be liable for damage to the property only if he or she have acted with malicious intent or gross negligence.

493. A secondary heir shall acquire the bequeathed estate if he or she survives to the prescribed moment for distribution of the estate.

If a secondary heir does not survive to such a moment and if the estate-leaver has not specified otherwise, then the estate to be distributed shall devolve to the heir of the secondary heir. If on the other hand the secondary heir is not yet born or at least conceived at the aforementioned moment and the estate-leaver has not specified otherwise, then the estate to be transferred remains with the heir of the primary heir.

If the primary heir does not survive the estate-leaver or is not worthy to inherit or refuses the inheritance, then it shall devolve to the secondary heir.

If a legal person is appointed as secondary heir, then the provisions of Section 387 must be observed, where appropriate.

SUB-CHAPTER 9
Bequests for Generally Useful and Charitable Purposes

494. An estate-leaver may bequeath all his or her property or a part of it or specific objects for generally useful and charitable purposes. The heir or legatee of such property may also be a to-be-established legal person specified by the estate-leaver.

495. If the executor of a will, who is also an heir, is charged with the establishment of such a legal person (Section 494), then the executor of the will must take all the necessary steps to carry out the task, and he or she shall have the right to bring an action against the heir regarding the transfer of the relevant property.

496. If the executor of a will does nothing or has not even been appointed and the heir also does not take action to establish such a legal person, then the court concerned, at the recommendation of the prosecutor or an institution concerned, shall establish a trusteeship and shall inform the Orphan's court about the appointment of a trustee with the rights and duties of an executor of a will.

497. If there is no direct heir, then the executor of a will designated by a testator, or a trustee appointed by the Orphan's court (Section 496), shall take over the direct administration of the bequeathed property and shall take the necessary steps to establish the legal person (Section

494).

498. In regard to the administration of bequeathed property, such legal persons (Section 494) shall have the rights of a minor and, in regard to supervision, they shall be subject to the Orphan's court.

499. If the purpose for which the property has been bequeathed for some reason terminates or it is no longer possible to use the property for the purpose stated by the estate-leaver and the estate-leaver has not left any instructions for such a case, then the Orphan's court shall develop a proposal regarding the fate of the bequeathed property and shall submit it through the Minister for Justice for a decision by the Cabinet.

This provision shall also apply if the bequeathed property is not used for the stated purpose, and furthermore in this case the Orphan's court must in its proposal take into account the instructions of the estate-leaver.

SUB-CHAPTER 10
Legacies

I. General Provisions

500. If someone has been bequeathed not the whole estate, nor a share in relation to the whole of the estate, but only a separate inheritance object, then the bequest is called a legacy, but the person to whom it has been bequeathed, a legatee.

501. A legacy may be bequeathed in a will either directly, or by imposing its execution upon the heir or another legatee.

502. The object of a legacy may be everything that according to its nature or pursuant to law has not been taken out of circulation, regardless of whether it is separate tangible or intangible property or an aggregation of property. The object of a legacy may be also a right to the personal actions of the executor of the legacy.

503. Bequeathal of a legacy shall not infringe on the rights of forced heirs.

II. Participants in a Legacy

504. A legatee may have imposed upon him or her a duty to transfer something to a third person, but only not exceeding the value of the legacy received by the legatee himself or herself or itself; otherwise the legatee has the right not to transfer and not to execute that which exceeds the value of the legacy.

If a legatee has been charged with transferring the entire legacy to a third person, then the income and interest that he or she has received from the legacy shall also be transferred.

505. If the will does not name the executor of a legacy, the legacy shall be transferred from the estate before the distribution of the shares of the heirs.

506. When the several heirs, who are named, are charged with the execution of a legacy, then the latter shall perform this duty, if the testator has not specified otherwise, proportional to their shares of the estate.

507. The executors of a legacy shall not be liable solidarily even if the legacy charges them jointly, excepting only in those cases when it arises from the form of the charge or from the characteristics of the bequeathed object.

508. If the named executors of the legacy later fail, then this duty devolves to those who take their place, be they either their co-heirs or substitutes, assuming, however, that each is capable of executing the legacy and that the testator has not taken into account the personal characteristics of those whom he or she had charged with executing it.

509. A legacy may be received by anyone who has the capacity to inherit. Maintenance may be bequeathed also to persons who do not have the capacity to inherit.

510. If one and the same object has been bequeathed as a legacy to more than one person who are named jointly or each individually, then they shall divide it in equal shares.

511. If a legacy is bequeathed to more than one person in the alternative without directly providing for the right of the executor of it to choose among such persons, then the bequeathed object shall be divided among them all in equal shares.

512. If a person is bequeathed an entire object as a legacy but others are bequeathed shares in it, then the former shall receive only that which remains after the distribution of the shares bequeathed to the others.

513. If a testator bequeaths something as a legacy to his child whose birth is expected after the death of the testator, but the widow gives birth to more than one child, then the legacy shall be divided among them in equal shares, unless that would clearly conflict with the intent of the testator.

514. A substitute may be appointed for a legatee, the same as for an heir (Section 477).

515. A legacy may also be bequeathed in favour of an heir, and such legacy, if it is bequeathed from the estate to one of several co-heirs in addition to the share of the estate due him or her, is called a pre-legacy.

516. If a will does not name an executor of a pre-legacy, then the pre-legacy shall be transferred to the heir from the estate before the distribution of the shares of the heirs.

517. A legacy that is bequeathed to several persons, one of which is concurrently an heir, shall be divided among them in equal shares.

518. A pre-legacy that has been bequeathed jointly to several heirs shall be divided among them proportional to their share of the estate.

519. The right to a pre-legacy bequeathed to an heir shall devolve to his or her substitute only if it is directly specified in the will.

520. If an heir is appointed with a certain condition, then, if it not specified otherwise in the will, this condition shall apply also to the pre-legacy bequeathed to him or her.

III. The Legal Consequences of a Legacy

521. If receipt of a legacy is not restricted by any conditions, then it shall devolve to the legatee from the time of death of the estate-leaver.

If legatees die before the estate-leaver, then their heirs shall not have a right to the legacy bequeathed to them, unless they are named in the will as substitutes specifically for such a case.

522. A legacy, the object of which pursuant to law may not be transferred, shall devolve to the legatee only at the tune the heir has accepted the inheritance.

A conditional legacy shall devolve to the legatee only after the condition has been satisfied or has been legally deemed to have been satisfied, unless it has already been satisfied before the death of the testator.

A contingent legacy shall devolve to the legatee as an unconditional legacy (Section 521, Paragraph one), unless an unspecified term had been imposed, which has the effect of a condition.

523. If a conditionally named heir has been charged with the execution of a legacy with that same condition, then this legacy shall be deemed to be an unconditional legacy. The same shall be applicable also to a legacy that a substitute has been charged to execute.

524. A legacy that has been granted on such a basis (Sections 521-523), if the execution of the legacy has been charged to the heirs, may be claimed by the legatee or his or her heirs immediately after the time when the heir has received the inheritance devolving upon him or her; but if the legacy has been bequeathed subject to a certain condition or a term, it may be claimed only after this condition has been satisfied or the term has elapsed.

525. If the executor of the legacy has been granted his or her own discretion as to the time of execution of the legacy, then, the legatee shall have the right to request its execution only after the death of the executor, from the heirs of the executor.

526. If an heir is not charged with execution of a legacy, but it is bequeathed directly to the legatee, or if the heir charged with execution of the legacy fails as heir and the legacy, additionally, has not been restricted by either any conditions or terms, then the legatee may request it immediately after the will comes into legal effect.

527. The executor of a legacy shall take utmost care and shall be liable to the legatee for any negligence on his or her part as a result of which the object of the legacy should suffer damage; but if the executor is charged with the duty of transferring to someone else all that has been bequeathed to the legatee, then the executor shall be liable to the latter only for those damages which the executor has caused as a result of bad faith or gross negligence.

528. When damage has occurred without any negligence or delay by the heir, the legatee may only request that the heir cede to him or her the right to bring an action against the party at fault, or give an assurance that the heir will transfer the bequeathed object, if it should come into hands of the heir.

529. An executor of legacies for the generally useful and charitable purposes shall execute the legacies immediately after the time the will has come into legal effect and he or she have accepted the inheritance; otherwise the executor shall be liable for all consequences of the

delay.

IV. Receipt and Renunciation of a Legacy

530. A legatee shall acquire rights to a legacy from the moment it has devolved to him or her (Section 521, Paragraph one), notwithstanding that he or she may not know of it. Nevertheless, the bequeathed object does not thereby and therewith become a part of the property of the legatee, but only the possibility of it passing to his or her heirs is established.

A legatee may, at his or her own discretion, either accept or renounce a legacy that has devolved to him or her by this process.

531. In accepting a legacy, the legatee assumes all the encumbrances and charges associated with the legacy, as well as undertakes to reimburse the executor of it for all expenditures made for or due to the bequeathed object and, finally, to perform the conditions imposed on him or her by the testator.

532. A legatee may not accept one part of a legacy and renounce another, but of their heirs one may accept the legacy and another renounce it.

If a legatee has been bequeathed several legacies, then he or she may accept some and renounce others.

An aggregation of property that has been bequeathed as a single whole shall be considered to be a single legacy; but if several items of property, notwithstanding that they belong to an aggregation, are named separately, then each of them is a separate legacy.

533. If a legatee dies without stating whether he or she wants to accept or renounce a legacy, the right to accept or refuse it shall devolve to his or her heirs.

V. Execution of a Legacy

534. A legatee may bring an action *in personam* against an heir concerning transfer of a legacy bequeathed to the legatee. If the bequeathed property was the property of the testator but is in the possession of another person, then the legatee may bring an ownership action against each such possessor to the extent that such an action could have been brought by the testator himself or herself.

535. A legatee does not have the right to force an heir to accept an inheritance and in connection therewith perform the duties imposed for the benefit of the legatee.

536. If an heir is not charged with the execution of a legacy but the legacy is bequeathed directly to a legatee, or if an heir who is charged with execution of a legacy fails, the legatee may request that the executor of the will or the trustee of the entirety of the property of an estate transfer the legacy from the estate.

537. The person who is charged with the duty of executing a legacy must transfer it, complete with all its appurtenances, pursuant to the instructions of the testator.

538. If separate, specifically described items of property are bequeathed, as their appurtenances shall be considered all that with which is enlarged the very essence of the property; but if claims are bequeathed, as their appurtenances shall be considered all ancillary claims that were due at the moment of the death of the estate-leaver, on the basis of those

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obligations on which the claims were founded.

539. The fruits of an item of bequeathed property shall belong to the legatee from the time that he or she acquires such a right to the property, which give him or her the opportunity to claim it through a court.

540. If a legacy is bequeathed subject to a condition or a term then the fruits until the condition sets in or the term elapses shall belong to the executor of the legacy, unless it is manifest that the clear intent of the testator is that he or she to whom the legacy has been bequeathed shall obtain the property with all its augmentations that have accrued since the moment of the death of the testator.

541. If the executor of a legacy has not fulfilled his or her obligations properly, then that, which the executor of a legacy must give to the legatee pursuant to general provisions regarding compensation for losses, shall also be considered as an appurtenance (Section 537).

542. If the bequeathed property is actually in the estate, the executor of the legacy may not force the legatee to accept the value of the property in lieu of the property itself.

543. If the correct execution of a legacy has unjustly encumbered its executor or if, despite his or her best intentions, it is not possible to transfer the bequeathed property itself, the executor must pay out the value of the property. However, if the execution has become totally impossible, the executor shall be liable only if he or she has allowed a delay or have been negligent (Section 527 and Section 547, Paragraph three).

544. If the executor of the legacy has been only temporarily delayed in executing the legacy, then the legatee may require that he or she provide security for its execution.

545. If the amount of a legacy bequeathed for the general good or charitable purposes has not been specified in the will, it shall be set by a court in its own discretion, commensurate with the need, on the one hand, but commensurate, on the other hand, with the size of the estate.

546. If there are no more precise instructions in the will as to the place of execution, then the items of property specifically described, as well as property comprising a whole, shall be transferred there, where they are located; but if the executor has, in bad faith removed them from the location where they were at the death of the estate-leaver, then they shall be transferred at the place where the legatee requests them.

Fungible property (Section 844) may be requested and transferred anywhere where that may be done without encumbrance and inconvenience to the other party, unless it has been specified that it must be taken from a specific parcel of land.

547. The time of execution of a legacy shall be determined pursuant to Sections 524-526 and 529.

If money has been bequeathed or something else is bequeathed which the executor of the legacy is not able to deliver immediately without fault on his or her part, then the executor has the right to request a just extension of the term.

If the executor of a legacy delays execution of the legacy, he or she must reimburse the legatee for losses caused to him or her thereby, and in general shall be liable for the consequences of his or her delay.

VI. Specific Kinds of Legacies

548. The legatee shall receive ownership rights to specifically described bequeathed items of property, which belong to the property of the estate-leaver at the moment the inheritance is accepted.

Such property shall be received by the legatee in the same form as it was with the estate-leaver himself or herself, together with all of the rights and augmentations belonging to it, but also with all charges which lie thereon.

549. The executor of the legacy shall not be liable to the legatee for any deficiencies in the characteristics of the testator's own property, as well as for any replevin in relation to the property (Section 559) and servitudes or other charges which lie thereon.

550. If the specifically described bequeathed property is no longer in the estate at the moment of death of the testator, then the legatee does not have the right to request this property.

551. If some of several items of bequeathed property have been destroyed, then all of those remaining shall be transferred to the legatee in their entirety.

If an object of the legacy that has been destroyed is renewed, the rights of the legatee to it are also renewed.

552. If a testator bequeaths an item of movable property to someone without specifically describing it but only according to its class, then such a legacy shall be valid regardless of whether such items of property are or are not in the estate.

553. A legacy bequeathing an item of property without a specific description shall give the legatee or his or her heirs the right to choose, unless the testator has expressly specified the contrary.

554. If such items of property (Section 553) are in the estate, the heir must show them to the legatee, but the latter shall on his or her part restrict his or her choice only to those.

555. If a testator has granted the right to choose to a third person but that person does not want to or is unable to choose or does not choose within one year, the legatee shall choose in lieu of that person.

556. If the testator has granted the right to choose to the executor of the legacy, then the executor shall not have the right to deliver the worst item of property, and if he or she does not make his or her choice pursuant to a request of the legatee within the time specified by the court, then the right to choose shall devolve to the legatee.

557. If a legatee has been bequeathed several items of property of the same class without specifying the quantity, then he or she shall not have the right to request more than three of them.

558. If a choice has been made, then all risk regarding the chosen item of property shall be borne by the legatee. But if one or another item of property of the same class has been already destroyed before the choice through no fault of the heir, then the legatee shall choose from among the remainder or shall receive the last remaining item of property.

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559. If the item of property chosen is requested by some third person and it is adjudged to that person, the legatee may choose anew if other items of property of the same class are still in the estate.

560. Once a choice is made it may not be any longer changed, except in the case set out in Section 559.

561. If a testator has intended one specific item of property but has expressed himself or herself so vaguely, that it is impossible to be certain which one was actually intended, then the right to choose shall not belong to the legatee, but to the executor of the legacy.

562. If the object of a legacy is an inheritance that has devolved to the testator, then the legatee shall receive all that which still remains of it at the death of the testator.

563. If fungible property has been bequeathed, such as cash, grain crops, and the like, without specifying the quantity, then the legatee has the right to all the property of the respective class found in the property of the estate-leaver.

564. If a specified quantity of fungible property has been bequeathed, then the executor of the legacy shall deliver exactly this quantity, even if such is not in the property of the testator, except, however, in the case, when the will states that the specified quantity shall be taken from a parcel of land specifically indicated for this purpose; then the legatee has a right only to that which is located there.

565. The quality of the items of property to be provided to the legatee, if the testator has not specifically indicated it, shall be determined at the discretion of the executor of the legacy.

566. If the executor of the legacy has been charged with delivering to the legatee a specified quantity of fungible property within certain terms, such as each year, each month, etc., then such a legacy shall be deemed to be a grouping of several legacies, of which the first shall be an unconditional legacy, but the others shall be conditioned upon the legatee still being alive when the term of the devise sets in.

A legacy of a certain amount, the payment of which is divided into terms only for the convenience of the executor of the legacy, shall always be deemed to be an unconditional legacy.

567. The right to such legacy (Section 566) shall come into effect not at one time, but at several times, namely, with each new term.

In regard to each individual term, as well as each individual claim, there shall also run an individual prescriptive period.

568. The rights to such legacy (Section 566), if it is not specified otherwise in the will, shall terminate only upon the death of the legatee, but for legal persons they shall continue as long as the legal person exists.

569. If someone has been bequeathed maintenance but it is not further described, then the legatee has the right to food, clothing and a dwelling, but he or she may not request reimbursement of his or her training and education expenditures.

If the quantity of maintenance is not specified in the will, then it shall be set by a court in its own discretion, commensurate with the property of the bequeather and the living

conditions of the legatee.

Maintenance bequeathed to minors shall be provided until they attain the age of 18 years.

[7 July 1992]

570. A generally stated revocation of an earlier established legacy, in case of doubt, shall not apply to a legacy for maintenance.

571. The provisions of Section 566 and of the Sections following regarding terms for legacies shall also apply to legacies for maintenance.

572. The provision of the maintenance bequeathed shall terminate upon the death of the maintained person, even though the sum specified for this purpose may not be fully expended.

573. When income from immovable property or from all of the property has been bequeathed, the executor of such legacy shall retain possession and administration of the principal properties, if the testator has not given other instructions regarding such, and the executor must only deliver to the legatee the income from it pursuant to a calculated average and must provide appropriate security for it.

574. If someone has been bequeathed a usufruct but someone else the ownership rights to one and the same item of property, then the ownership rights shall devolve to the latter from the moment of the death of the testator, but it shall be restricted until the moment the usufruct has ended.

575. If the legacy of a usufruct or a dwelling right is restricted to specified years or with other time periods, or also it is bequeathed to the legatee to use such right only every other year, then the right to such legacy shall take effect in the same way as for periodical contributions (Section 566 and 567), not on one occasion, but with each new term.

576. A testator may not only bequeath already existing obligation rights, but also by a legacy establish new ones.

577. A legacy, by means of which its executor is charged with entering into an obligation with the legatee, shall be valid if the legatee may gain some kind of benefit from it

578. If a testator has bequeathed someone his or her claim, then the legatee may pursue it, along with related ancillary claims, directly against the debtor.

If a testator recovers his or her bequeathed claim while still alive or if the claim is otherwise terminated, then the legacy also terminates therewith. But if the object of a legacy is a specific amount which is only to be recovered from the debtor specifically indicated, then the fact in and of itself that it was received by the testator while still alive shall not revoke the legacy. Generally the intent of the testator must be observed and, in case of doubt, the legacy shall be deemed to be valid.

Novation of a bequeathed claim shall not invalidate a legacy.

579. A testator may release his or her debtor from the debt by means of a legacy.

If there is no debt, then a legacy in regard thereto is also not in effect, even if the amount of the debt has been stated.

VII. Reduction of Legacies

580. If the estate does not suffice for execution of all the legacies, then all the legacies shall be reduced proportionately.

581. If an estate is overly encumbered with legacies, then the forced heirs may take from the legatees a proportional deduction, in such amount that they retain their preferential share as provided for by law.

582. If the object of such legacy, as takes away or reduces the preferential share of a forced heir, is maintenance or other periodic payment, or also some kind of usufruct, then the value of such legacy shall be calculated by capitalising the amount paid over a one-year period with the interest rates set by law (Section 1765), but if such legacy is bequeathed to a legal person, then this sum shall be calculated by capitalising the annual payments with a four per cent interest rate.

583. Legatees do not have to participate in payment of the debts of the estate-leaver. However, if the legacies exceed the value of the estate, and, furthermore, there is no direct heir, then a proportional deduction shall be taken from the legatees to pay the aforementioned debts.

SUB-CHAPTER 11
Conditions and other Restrictions of Last Will Instructions

I. Conditional Last Will Instructions

584. Heirs may be appointed, as well as legacies bequeathed either with suspensive or with resolutory conditions.

Substitution may also be established with conditions; but, if the first heir is appointed with conditions and conditions regarding the substitute are not specifically repeated, then the latter shall be deemed appointed without conditions.

585. Conditions may be not only directly stated in a will, but they may also be construed from other provisions in the will.

586. If a conditionally appointed heir is additionally also bequeathed a legacy, then the condition also applies to the legacy. On the other hand, a condition by which a legacy is bequeathed is not applicable to the appointment of an heir.

587. Conditions that are physically or legally impossible, as well as wrong, immoral and otherwise not permitted - the latter nevertheless only if they are stated affirmatively - need not be complied with, but the instruction itself shall be valid.

588. Last will instructions may not add such conditions that restrict the personal rights of the recipients endowed. On the other hand, those who are appointed heirs or who are bequeathed a legacy may be bound with the following conditions:

1) to enter into marriage with a particular person, if that is not contrary to law and is in accordance with the requirements of propriety and personal dignity; or

2) to not enter into marriage with a particular person, only if additionally, the intention

is not to prevent someone, to whom something has been bequeathed by means of this condition, from entering into marriage at all or at least to make it more difficult for him or her.

589. All such appointments of heirs or legacy provisions, which are dependent on a condition that the recipient give his or her last will instructions in favour of the testator or another person, are not permitted and therefore are void.

590. A legacy, which the executor of a legacy must transfer in the event that he or she fails to carry out a certain binding direction of the testator, shall be valid.

591. If is possible to fulfil some condition only in part, then such part must be fulfilled; but, if it is not possible to fulfil the condition in part, then the entire condition shall be deemed as unfulfilled and therefore does not need to be observed.

A condition, which is only temporarily not possible, shall be fulfilled as long as this temporary obstacle may at some time be averted; but if the impossibility already existed at the time the will was made, the condition need not be complied with even though it might become possible to fulfil it later.

592. If among alternative imposed conditions even one is not possible or not permitted, then none of them need be observed and the instructions shall be deemed to be without conditions.

593. That, which is bequeathed subject to a certain condition, may not be claimed before this condition is fulfilled.

As an exception, an inheritance may be transferred conditionally to an appointed heir even before the coming into effect of the condition, when the heir provides adequate security to ensure that the inheritance is transferred to the person to whom it would devolve, if the condition did not come into effect.

The executor of a bequeathed conditional legacy shall grant security to a legatee to ensure that, following the coming into effect of the condition, the legacy shall be delivered. But if the condition is such, that whether it has been fulfilled or not can be determined only when the legatee dies, the legatee may receive the legacy only if he or she provides security, so that in case the condition is not fulfilled, this legacy and the fruits derived from it shall be returned to its giver or to the person to whom the legacy would devolve in such case.

594. With the coming into effect of a condition, the instruction shall be deemed as one which was, as if from the very beginning, unconditional.

If a condition has not come into effect, then the applicable instruction shall be considered to be non-existent, but the conditional bequest itself, to be cancelled.

In case of doubt, a condition shall always be considered to have taken effect.

If a testator himself or herself has made the execution of a condition impossible, then the entire instruction together with the rights established by it is void.

If the executor of a legacy, or generally one who has an interest in a condition not being fulfilled, hinders its coming into effect, then the condition shall be considered to be fulfilled.

595. If an arbitrary condition, i.e., one whose execution is dependent solely on the intent of a person who is a recipient under the will, can not come into effect due to an unintentional obstacle, then the condition shall be considered to be fulfilled, only if the execution, which was still possible prior to the aforementioned obstacle, did not take place due to delay by the

aforementioned recipient.

A mixed condition, i.e., one the execution of which depends not only on the intent of the recipient under the will, but also on an event or on the intent of a third person, shall be considered to be fulfilled, provided that the recipient even then when fulfilment was still possible, had a serious intention to fulfil the task; but, if an unintentional obstacle occurred prior thereto, then the condition shall not be considered as having been fulfilled.

596. A condition, the fulfilment of which is charged to several persons, shall also be fulfilled by all of them; but if some of them do not fulfil it, the others who have fulfilled it shall receive their own shares of the rights bequeathed to all of them.

597. If a condition is not fulfilled within the time specified and in the manner prescribed by the testator, then the rights dependent on the condition shall not apply, unless as an exception the condition is considered to have been fulfilled.

If a testator has not specified a term for the fulfilment of a condition, then the tuning of an unintentional condition, independent of the intent of the person who is endowed by the will, coming into effect, shall have no significance and the condition shall be considered to have been fulfilled even if it is fulfilled while the testator is still alive.

A condition that, unknown to the testator, has already been fulfilled at the time the will was being made, shall be considered to be fulfilled.

598. If arbitrary conditions have to be fulfilled after the death of the testator and he or she has not specified any term therefor, then such conditions may be fulfilled at any tune, while it is still possible, that is, during the entire lifetime of the recipient; but upon the death of the recipient, the conditional right shall cease. Nevertheless, if the recipient delays unduly, the court may, at the request of persons interested in fulfilment, set the recipient a deadline for fulfilment suitable under the circumstances and, if he or she continue to be evasive, establish a trusteeship for the inheritance, in order to satisfy the claims of interested persons from it

II. Designated Terms in Last Will Instructions

599. Designated terms differ from conditions in that the former defers only the possibility of the use of a right, but the latter, the validity of the right itself.

A term that in some way is stated vaguely, such that it cannot be known with certainty whether it will come into effect at all and when it will come into effect, shall be treated as a condition, unless it evidently applies only to the time of fulfilment.

If someone is bequeathed a legacy on his or her day of death, then it may be claimed only after the death of the legatee by his or her heirs.

III. Other Restrictions on Last Will Instructions

600. Last will instructions may be restricted not only by conditions and terms, but also in other ways, and namely by binding directions, by restrictions on use, as well as by imposing a duty to return to another person that which has been received, or in its stead to perform some action.

601. If a legacy is bound by such restrictions (Section 600), then the legatee shall provide to the executor of the legacy security to ensure compliance with them.

602. If a legatee does not observe the ancillary provisions of the testator, then the executor of

the legacy may request the return of that which was transferred.

603. A third person, for whose benefit a binding direction has been specified, shall have an independent right of action against the legatee.

SUB-CHAPTER 12
Reciprocal Wills

604. A will, whereby two or more persons, in the form of one joint document, reciprocally appoint each other as heir, is termed reciprocal. But, if in such a will the appointment of one person as heir has occurred with the condition that the appointment of the other person must exist and must be valid, such that one appointment may be or not be valid only jointly with the other, then the will is termed mutual.

605. A reciprocal will shall be deemed to be also mutual only if the testators have expressly stated their intent to make such a will, or if this is evident from the circumstances of the matter.

Similarly, a reciprocal will shall be deemed to be mutual if is specified in it to whom the estate shall devolve after the death of the last surviving co-heir; in case of doubt, the reciprocal will of spouses shall also be deemed to be mutual.

606. A reciprocal will, except in cases where from the content thereof the contrary is evident, shall not be deemed to be an inheritance contract, and therefore each testator may revoke it unilaterally.

607. If one testator revokes a non-mutual reciprocal will, or if his or her instructions lose validity for some other reason, then that shall not affect the validity of the instructions of the other testators.

608. In a mutual will the revocation by one testator shall wholly revoke the instructions of the other, except only in the case when the latter has obtained knowledge of the revocation by the former and nevertheless has, intentionally, left his or her instructions unaltered.

609. If one of the parties to a mutual will has died, the survivor has the right to opt out of testamentary inheritance prior to accepting the inheritance; in such case the estate shall devolve to the heirs by intestacy of the deceased, and therewith the survivor regains the right to freely determine the disposition of his or her property also in the case of death.

610. If the survivor is bequeathed in a will the property of the deceased and he or she accepts it, then his or her will made with the deceased as beneficiary shall be considered to be extinguished as a result of the death of the latter and the survivor acquires the right to freely determine the disposition of all of the property, both his or her own and also that which was received pursuant to the will.

611. To resolve the issue as to who shall be acknowledged as the next of kin of each of the testators, to whom the estate shall devolve after the death of the last survivor, the basis shall be, if there is nothing specified in the will, the moment of death of the last survivor.

612. If in a reciprocal will the testators have jointly bequeathed legacies in such sequence that

they accrue to the entire aggregate property of the estate, then their term shall begin to run only after the death of the last survivor, unless they evidently contradict the intent of the testator. However, if the legacies are bequeathed by each testator separately from his or her own property, then each such instruction shall be deemed to be independent Therefore, legacies of the survivor become void of their own accord, but the survivor must fulfil those established by the deceased, and, if the will was mutual, he or she may not be released from this duty by refusing the inheritance.

SUB-CHAPTER 13
Execution of Last Will Instructions

I. Evidence of a Will

613. A will registered in the register of documents of a notary public or a consul, or in the register of wills at an Orphan's court, or a document prepared pursuant to the procedures of Section 439, Paragraph 4 regarding the acceptance of a will for safekeeping, shall be deemed as the best evidence of the existence and authenticity of a last will.
[22 June 2006]

614. The authenticity of a written private will shall be presumed as proved if its still living witnesses acknowledge their signatures, but if there are no witnesses, then the authenticity may be proved by other means.

The making of an oral will (Section 450) and its contents must be attested to under oath by two witnesses.

615. Not only heirs but also any person with an interest in the estate, such as legatees and their heirs, shall have the right to bring an action against everyone who is in possession of a will or who has with malicious intent removed it, to either surrender the will or to pay the value of the estate or legacy.

II. Execution of Wills

616. A will which has come into legal effect shall be executed by the executor of the will, who has been appointed for this purpose either by the will itself or by another special testamentary instrument, but if an executor of the will has not been appointed, then by the heir appointed by the will, and finally, if there is also no direct testamentary heir, then by a trustee of the estate appointed by the Orphan's court based on a court decision.

Note: A person charged by the heirs themselves to execute a will shall be deemed not to be the executor of the will, but to be their authorised representative

617. Any person with the capacity to act may be appointed as executor of a will.

618. Nobody is bound to undertake the duty of an executor of a will, which has been entrusted to him or her by the testator; but if someone has already undertaken it, he or she no longer has the right to withdraw therefrom without good cause. If the person appointed as executor of a will has accepted a legacy bequeathed by the testator, then he or she also may no longer withdraw from the duties of executor of the will.

619. An executor of a will, within the limits of his or her duties, shall be protected and supported by the Orphan's court, but the executor does not require confirmation by this court and is not subject to its supervision, except in cases which pertain to the public good or to the interests of institutions or persons that require special protection, such as minors and those who have been awarded maintenance.

620. The legal status of the executor of a will and the limits of his or her rights and duties are defined by the intent of the testator expressed in the will. But if the latter has not specified anything further, then the executor of the will need only ensure that the last will of the testator is observed and executed, as well as provide, as far as necessary for such purpose, regarding the settlement of the estate and its distribution among the heirs and legatees.

621. The will, to the executor, shall be instructions from which he or she may not, under any circumstances, deviate; but if circumstances require it, then the executor must first hear out interested persons and, when there are differences of opinion between them and the executor of the will, the matter, in accordance with the circumstances, must be decided by the Orphan's court.

622. The executor of a will has neither the right nor the duty to manage the estate in the absence of the testator specifically requiring such be done. But, while an heir appointed by the testator has not yet accepted the inheritance or, in the absence of such an heir, while a trusteeship has not been established, the executor of the will shall substitute for the heir, i.e., take possession of the estate, prepare an inventory, pay the debts of the estate, collect outstanding claims, bring inheritance court proceedings, etc.

623. The executor of a will may alienate from the property left only that which the testator has specifically permitted, or also, that which is absolutely necessary to maintain the estate and to execute the will.

624. The executor of a will shall require that the heirs state whether they accept the inheritance. If they have accepted the inheritance, the executor shall transfer the estate into their possession and may request or retain from it only those objects and moneys which are necessary to satisfy legatees and to execute other specific instructions of the testator.

625. The executor of a will may transfer his or her duties to someone else only if he or she is specifically permitted in the will to do so. Nevertheless, the right of the executor to act, in case of necessity, through an authorised representative is not thereby revoked.

626. An executor of a will must execute the duties which have been entrusted to him or her as quickly as possible and with such care as with which he or she would act in his or her own matters. If appropriate remuneration has been specified for the efforts of the executor, then he or she shall be liable, even for ordinary negligence, to the heirs and other persons who have an interest in the estate.

627. If there are several executors of a will and the testator has not divided the duties among them, then they shall act jointly to the extent possible. Nevertheless, in cases of urgency, they may also act independently. If they divide the duties among themselves by voluntary agreement, then they shall, nevertheless, be subject to solidary liability.

If the testator has imposed the discharge of some separate instruction to a particular executor of the will, the latter shall act only within the scope of the duty imposed upon him or

her.

628. Expenditures associated with execution of a will shall be reimbursed to its executor from the estate; but the executor may not request remuneration for his or her efforts if nothing is specified in the will concerning such.

629. When the executor of a will has completed the duties imposed upon him or her, he or she shall provide to the heirs and other interested persons an accounting regarding the tune of his or her administration to the extent that the estate has been under his or her management (Sections 619-623).

630. If the executor of an estate acts slowly or contrary to the interests of the heirs, legatees or other persons interested in the matter, they may not only submit complaints regarding him or her in the Orphan's court, but also request his or her dismissal.

631. If the executor of a will appointed by a will does not want to accept this duty (Section 618), or if he or she is dismissed therefrom as a result of a request from interested persons (Section 630), or if he or she dies, and the testator has not provided for such case, then the Orphan's court, on the basis of a decision of the court, shall appoint a trustee to execute the will.

III. Interpretation of Last Will Instructions

632. Interpretation of last will instructions shall be pursuant to the general provisions for interpreting legal transactions, and additionally the following special rules of Sections 633-635 shall be observed.

633. If the will contains unclear, ambiguous or awkwardly used expressions, then they shall be interpreted in accordance with the probable intent of the testator; in addition, the relations of the testator with the heir shall be especially observed, as well as their usual manner of thought and speech. Expressions that can not be understood shall be deemed to be void.
[12 December 2002]

634. All instructions which are not contrary to law and common sense shall be interpreted in such a way that the will remains, insofar as possible, valid.

635. In case of doubt, preference shall be given to that interpretation which is more advantageous to the descendants of the testator, but thereafter, to that interpretation which is more advantageous to the heirs and legatees. If the interests of the legatee and the executor of the legacy conflict, then the legatee shall be given preference over the executor of the legacy.

SUB-CHAPTER 14
Contesting a Will

636. Any will that does not conform to some provision of law may be contested by interested persons (Section 637).

637. A will may be contested only by those who have been appointed heirs in some other last will instruction or who, at the moment of the death of the testator, were the nearest heirs in

intestacy of the testator.

Those instructions which have not been contested by the persons mentioned, or to which they have consented, or which they have not timely contested, or also to which they have lost their rights in some other way, may no longer be contested by more remote kin.

638. If a dispute concerning a will is not without grounds, then a court, upon petition by the plaintiff, may impose a duty on the appointed heir of the will, if he or she accepts or has already accepted the inheritance, to provide adequate security for the proper administration and possible distribution of the estate. Having regard to the circumstances, the court may establish a trusteeship for the estate. But if all required external formalities have been observed in the will, then the appointed heir of the will may request to be placed in possession without delay for such time as the opposing party has not proven the priority of his or her rights.

CHAPTER 4
Contractual Inheritance

SUB-CHAPTER 1
Contractual Inheritance Forms and Inheritance Contract

639. Contractual inheritance shall be founded by contact pursuant to which one party grants the rights to his or her future inheritance or its part to another party, or several parties grant such rights to each other. Such a contact is termed an inheritance contact

In an inheritance contract one party may also grant a legacy to another party or to a third person.

Exclusion from an inheritance is not permitted in an inheritance contract.

640. An inheritance contact establishes not only a personal obligation, but the inheritance right itself. On the other hand, a contract which contains only a promise to appoint someone as his or her heir in the future shall not have such effect, notwithstanding that both parties have agreed on the principal provisions of a future inheritance contact

641. An inheritance contact may be entered into only by a person, who has not only the right to enter into contracts in general, but also the capacity to make wills (Section 420) and to inherit pursuant to a will. In accordance with this it shall be required that an heir who is appointed pursuant to contact have the capacity to inherit in general, but with respect to the estate-leaver, that he or she have the right to determine the disposition of his or her own property in case of death. If an heir appointed in a contact is a minor, then, for the transaction to have legal effect, the consent of a guardian or the Orphan's court is necessary; but if the estate-leaver is a minor, then the inheritance contact which has been entered into shall be binding only then, if it concerns his or her independent property (Section 195).

642. In inheritance contracts the provisions concerning preferential shares shall be complied with, unless those who are concerned themselves directly or as parties to the contract have relinquished their rights. If this has not been complied with, then forced heirs may contest the contract while the estate-leaver is alive as well as after his or her death.

643. An inheritance contract must be certified pursuant to notarial procedures. However, if the contract concerns immovable property, then, for it to be valid as against third persons, it must

be registered in the Land Register.
[12 December 2002]

644. Inheritance contracts must also incorporate all those provisions that the law requires in general for a contract to be valid.

645. Conditions attached to an inheritance contract, insofar as they apply to the parties themselves, shall be determined in accordance with the same provisions as conditions in contracts generally; conditions regarding other recipients in a contract shall be subject to the provisions concerning conditions in wills.

SUB-CHAPTER 2
Consequences of an Inheritance Contract

646. An inheritance contract establishes only a future invitation to inherit and therefore, while the estate-leaver is still alive, grants to a contractual heir only the right to wait for his or her future inheritance, but not an immediately effective right to the present property of the estate-leaver.

647. The appointment of a contractual heir may not be revoked unilaterally, neither directly nor with a new instruction in contemplation of death, which contradicts the earlier, provided that the estate-leaver has not reserved the right, in the event of death, to still act differently with specific items of property or part of the estate. However, if the estate-leaver has not reserved such a right and the contractual heir is appointed as sole heir, then all of the property left shall devolve to the contractual heir totally. If, on the other hand, the heir has been specifically granted a certain share, then he or she also shall receive only that, but all of the remainder shall devolve to the heirs by intestacy.

648. An inheritance contract does not restrict the right of an estate-leaver, even though such may not have been separately contracted for, provided that he or she himself or herself has not directly relinquished such rights to act during his or her lifetime with his or her movable property and even, in reasonable quantities, to make a gift of it If an estate-leaver alienates something with the manifest intent of taking away from the heir appointed by contract a right granted by the contract, then this heir may, while the estate-leaver is still alive, contest such alienation, and, if the estate-leaver with careless expenditures reduces his or her property to the point where pursuant to law a trusteeship should be established due to his or her dissolute or spendthrift lifestyle, the heir may request that such be established.

649. If the subject matter of an inheritance contract is immovable property and this contract is entered in the Land Register while the estate-leaver is alive, then he or she may alienate this immovable property, mortgage it or encumber it with property rights only with the consent of the contractual heir.

650. While an estate-leaver is still alive, the contractual heir may not unilaterally repudiate the contract regardless of whether or not he or she have accepted any duties.

651. Upon the death of an estate-leaver, the right to inherit, and with it the right to accept the inheritance, devolves to the contractual heir. The contractual heir may renounce the inheritance only then, if such a right has been provided for him or her in the contract.

652. If a contractual heir dies before the estate-leaver, the inheritance right granted to the former is terminated.

653. Legacies established by an inheritance contract shall be executed by the contractual heir in the same way as by testamentary heirs, and in general a legatee has a similar relationship with contractual and with testamentary heirs.

654. Inheritance contracts may also be entered into in favour of a third person without the participation of that person therein, in which case such contracts establish an independent right for him or her; in addition, the parties may nevertheless mutually agree to change the contract entered into or also revoke it entirely. But as soon as the aforementioned third person himself or herself becomes a party to the contract or if one of the original parties dies or becomes incurably mentally ill, the rights of the third person established by such contract are no longer revocable.

CHAPTER 5
Opening of Succession, Protection of Estates, and Inheritance Actions

SUB-CHAPTER 1
Opening of Succession

655. Succession opens upon the death of an estate-leaver or upon him or her being declared presumed dead by a court decision (Section 377).

The burden of proof of the death of an estate-leaver is on the claimant of the inheritance.

656. If two or more persons have died unnatural deaths, and in addition, it is not known which of them died earlier, then it shall be deemed that they all died simultaneously.

If the deceased were in mutual ascendant and descendant relationships, then in case of doubt it shall be deemed that the descendants, if they were minors, died earlier than the ascendants, but if they were of age of majority, later than them.

SUB-CHAPTER 2
Protection and Trusteeship of an Estate

657. When a notary, having jurisdiction, receives news of the death of a person, he or she shall take measures to protect, if the circumstances so require, the estate, which has been left (Sections 658 and 659).
[12 December 2002]

658. If the heirs of a deceased, intestate as well as testamentary or contractual, are known and in addition are of age of majority and are accessible, then a notary shall not take any protective measures, unless these heirs or any one of them themselves have specifically requested therefor.
[12 December 2002]

659. A notary shall on his or her own initiative or on the basis of a request from an heir,

trustee for the estate, executor of an estate, creditor of an estate-leaver or other interested person take measures to protect an estate in the following cases:

1) when the heirs, either in general or some of them, are not known;

2) when, although they are known, they are not all accessible and also do not have an authorised representative or another person representing them pursuant to law;

3) when the heirs, although they are known and are accessible, do not want to or are not able to accept the inheritance;

4) when there is among them even one minor or a person who for whatever other reason is unable to personally protect his or her rights, and in addition a guardian or trustee has also not been appointed for him or her; and

5) when it is reliably known that the estate is overly encumbered with debts and that the interests of creditors are threatened, as well as when there is reason to fear that the estate could be squandered.

Note. When following the death of a father or mother minor children are left and when that parent who survived the other is accessible, then the minority of the children, in the absence of other reasons shall not, of itself, be grounds for protection of the estate.
[12 December 2002]

660. A court, pursuant to a petition from an heir or in the cases set out in Section 659, having received an appropriate notification, shall establish a trusteeship for the estate and shall notify an Orphan's court of it for execution. If the heirs are minors and they have no parents, then the Orphan's court shall appoint guardians for them who shall also have imposed on them the duties of trustee for the estate.
[12 December 2002]

661. Trustees shall be nominated by persons having an interest in the inheritance matter and, if they have the necessary qualities, shall be confirmed by an Orphan's court. However, if the persons interested in the matter do not recommend anyone for trustee, then the Orphan's court shall itself appoint trustees.

662. Trustees for an estate shall administer it pursuant to the same provisions that apply to trustees for those of age of majority (Section 356), if in specific cases it is not provided otherwise.

663. Trustees, during their period of administration, shall provide an annual accounting to the Orphan's court, but when the estate has been distributed to the heirs or the trusteeship is terminated for other reasons, a final accounting shall be provided. In addition, the Orphan's court may impose upon the trustee the duty to provide an accounting at any time.

664. Administration expenditures shall be paid from the estate. Remuneration to trustees for their efforts shall be determined in accordance with Section **307.** A trustee shall not receive remuneration for preparing an inventory of the estate.

665. A trustee, upon assuming his or her duties, shall immediately prepare an inventory of the estate and shall request a notary to notify the heirs.

In preparing an inventory a trustee shall act pursuant to the requirements of the Civil Procedure Law.

The trustee may also request a bailiff or an Orphan's court, observing the Law On Orphan's Courts to prepare the inventory of an estate.
[7 July 1992; 12 December 2002; 22 June 2006]

666. When a court decision or judgment has come into effect or a notary has issued an inheritance certificate regarding the rights of inheritance claimants, the trusteeship is terminated, and therewith the right of the trustee to act on behalf of the entirety of the estate is terminated.

The trustee shall transfer the estate, together with the final accounting (Section 663), to the recognised heirs, obtaining their signatures therefor, and shall submit it to the Orphan's court which, after having received the signatures therefor, shall release the trustee from his or her duties.
[12 December 2002]

SUB-CHAPTER 3
Inheritance Actions

667. An inheritance action, pursuant to which inheritance rights are protected, may be brought by any heir irrespective of whether he or she is invited pursuant to law, a will or a contract and whether he or she claims the whole estate or only a part of it.

668. An inheritance action may be brought against: anyone who contests the right of inheritance of a claimant, irrespective of whether the contesting party has possession of the entire estate or a part thereof, and irrespective of whether or not he or she regards himself or herself as an heir and presents himself or herself as such; further against the party that was formerly in possession of the contested estate but subsequently relinquished possession in bad faith; finally, also against a debtor of the estate who refuses to pay on the basis of his or her own rights to the estate.

669. An ownership action shall be brought against the party in possession of separate items of property, which comprise the estate and, while not contesting the right of inheritance of the plaintiff to them, withholds them for some other reason.

670. The purpose of an inheritance action is to acknowledge the plaintiff as either the sole heir or a co-heir, and in accordance with this to deliver to him or her, together with all augmentations, either all of the estate which has been left, or his or her due share, or also those objects in the estate which are in the possession of the defendant.

671. This action may be brought not only against any third person, but also against co-heirs who are in possession of the estate and do not acknowledge the right of the plaintiff; but if a co-heir is in possession of only his or her share while the remainder is in possession of a third person, an action may be brought only against the latter.

672. In an inheritance action there may also be requested such objects, which did not actually belong to the property of the estate-leaver, but for which he or she was liable and, therefore, now the heirs are liable, for example, items of property pledged to the estate-leaver or given for storage, and the like.

673. In an inheritance action there may also be also requested payment which has been received for alienated objects in the estate, as well as for items of property that have been

acquired for the estate if such acquisition was necessary.

674. If a defendant has been in possession of the estate in bad faith, then he or she shall bear the risk for separate objects; whereas one who was in possession in good faith shall be liable only from the moment that an action has been brought against him or her and only for such loss which has occurred as a result of his or her fault; but in respect of the previous period he or she shall not be liable even then if he or she is manifestly at fault regarding negligence.

675. If a possessor has in good faith alienated an object of the estate before a action is brought, he or she shall return to the heir not only the actual payment received but also the interest earned from the latter, to the extent that he or she has not spent the payment or the interest. On the other hand, a possessor acting in bad faith either shall return the alienated item of property itself or shall reimburse all the losses suffered by the plaintiff.

676. If money of the estate has been given to another person, a possessor acting in good faith shall cede only the claim and shall return any interest earned, but a possessor acting in bad faith shall be liable also for the risk in regard to the capital itself.

677. If a possessor of the estate has received some special benefit in relation to or from the estate, then he or she shall return such to the heir irrespective of whether he or she was in possession of the estate in good faith or in bad faith.

678. A possessor acting in bad faith shall return all fruits received, including also those which he or she could have received; on the other hand, one acting in good faith, of those fruits which he or she received before the action was brought against him or her and he or she was notified, shall return only those which still exist, but shall reimburse for the remainder only in the amount by which the possessor has enriched himself or herself from them. A possessor acting in good faith shall return all fruits received after the action was brought, being liable also for those which he or she could have received, unless he or she has lost them due to an accidental circumstance.

679. In no case shall a possessor be required to pay interest on the fruits returned.

680. In distributing an inheritance, the possessor has the right to deduct from it any appropriate expenditures made in accordance with the circumstances in relation to the illness and the funeral of the estate-leaver, as well as all that has been paid to his or her creditors and legatees. If legacies have been paid that did not have to be executed, a possessor acting in good faith need only cede to the heir the right of action against the recipient of the legacy, but one acting in bad faith in such a case shall also be fully liable for all risk.

681. A possessor acting in good faith may deduct in full all of his or her own claims against the estate-leaver, but one acting in bad faith, only those which are urgently required to be executed for the plaintiff's own interests.

682. All charges and obligations, which the possessor had to execute in relation to the estate and objects that belong to it, shall be assumed by the plaintiff.

683. Expenditures in relation to the obtaining of fruits and their safekeeping shall be reimbursed by the plaintiff only in such amount that they are relevant to the fruits that must be returned or reimbursed; but a possessor in good faith shall also receive reimbursement from

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the plaintiff for expenditures incurred needlessly in obtaining and safekeeping the fruits.

684. Expenditures incurred with respect to the estate itself shall be reimbursed according to general provisions (Section 865-868), subject only to the exception that a possessor acting in bad faith also must be reimbursed for his or her useful expenditures, as long as the object, the value of which is thereby increased, still actually exists.

685. The right to bring an inheritance action is prescribed after five years have elapsed from the day when the right to bring the action arose (Section 1896).

686. For all the persons, who through no fault of their own did not have knowledge of their right to bring an inheritance action, the prescription referred to in the previous Section (685) shall be calculated from the day he or she gained knowledge of his or her right to bring an action.

CHAPTER 6
Accepting and Taking an Inheritance

SUB-CHAPTER 1
Accepting an Inheritance

687. In order to take an inheritance, both intestate as well as testamentary and contractual heirs must survive until the opening of succession (Section 655) and simultaneously the invitation to inherit (Section 389, Paragraph one), but an heir appointed with a certain condition must survive until the occurrence of such condition.

688. An invitation to inherit establishes only the possibility of becoming an heir. To take an inheritance, an invitee must express his or her willingness to accept the inheritance that has devolved to him or her.

689. No one is compelled to accept an inheritance that has devolved to them, but rather each may accept or renounce it according to one's preference. Only a contractual heir may not renounce an inheritance, if he or she has not specifically included such a right for himself or herself.

690. Anyone may express their intent to accept an inheritance either personally or also through a legal representative. Such legal representative is necessary when the person invited to inherit does not have capacity to act. The intent of minors shall be expressed on their behalf by parents or guardians, on behalf of the mentally ill, by trustees, and on behalf of legal persons, by their legal representatives. Persons, for whom a trusteeship has been established because of their dissolute or spendthrift lifestyle, need the consent of the trustee to accept an inheritance.

691. The intent to accept an inheritance may be expressed either explicitly, orally or in writing, or also implicitly but with such actions that in the relevant circumstances can only be interpreted in such a way that a certain person acknowledges himself or herself as heir.

692. Acceptance of an inheritance may not be concluded only from the fact that a person has acknowledged the last will of a testator and takes such actions which pertain to the funeral of

the estate-leaver or the purpose of which is only to preserve, maintain and ascertain the inheritance.

Similarly, acceptance of an inheritance may not be concluded only from the fact that at the opening of succession the estate remains in the actual possession of the persons invited to inherit who, until the death of the estate-leaver, lived together with him or her in a joint household.

693. If an estate-leaver has specified a deadline for accepting the inheritance, the appointed heir shall observe it.

If such a deadline has not been specified but the heirs have been invited, then those invited to inherit must express their intent to accept the inheritance by the deadline specified in the invitation.

If there has not been an invitation, then the heir shall within a period of one year express his or her intent to accept the inheritance, calculating the term from the day the succession was opened, if the estate is in the actual possession of the heir (Section 692, Paragraph two,), but otherwise, from the time when information was received that the succession has been opened.

694. If at the time of opening of succession the inheritance is in the actual possession of the invited person (Section 692, Paragraph two) or if he or she obtains such possession later, and if by the expiration of the time period indicated above (Section 693) he or she fails to provide a specific response regarding acceptance of the inheritance, then it shall be deemed that he or she has accepted it However, if the person invited to inherit, not having actual possession of the estate, allows the specified time period to pass without specifically expressing his or her intent, then it shall be deemed that he or she has renounced the inheritance.

695. If a person who has been invited to inherit dies before the time period specified for stating his or her intent (Section 693) without having expressed his or her intent regarding accepting the inheritance, then the same time period shall remain in effect for his or her heirs to express themselves not only regarding that which was left by the deceased heir but also regarding the inheritance devolved to the deceased but not yet accepted.

696. A person who has been invited to inherit has the right to ascertain the contents of the inheritance prior to stating his or her intent to accept it.

697. If the creditors or legatees of an estate-leaver demand that a person invited to inherit state his or her intent regarding acceptance of the inheritance, then the invited person must express it within the time period specified by a notary; if he or she does not renounce the inheritance before expiration of the time period, he or she shall be deemed to have accepted it.
[12 December 2002]

698. Similarly, a notary shall also set a time period for a person invited to inherit when that person who is next in line in regard to the right to the inheritance, for example a substitute or a secondary heir, requests that he or she express his or her intent. However, if in such case the person invited to inherit does not express his or her intent by the expiration of the time period, he or she shall be deemed to have renounced the inheritance.
[12 December 2002]

699. An expression of the intent to accept an inheritance must conform to all the provisions in effect regarding expressions of intent: it must be expressed definitely and without conditions

and must concern the whole of the devolved inheritance, but not only some part of it. If these provisions are not observed, the expression of intent shall be deemed to have not occurred.

700. Acceptance of an inheritance shall be in effect only if the person accepting had known that he or she had been invited to inherit and on what basis, whether pursuant to law, a will or a contract, and whether he or she has been appointed as heir with certain conditions or without such.

SUB-CHAPTER 2
Consequences of Taking an Inheritance

701. With the acceptance and taking of an inheritance, all the rights and obligations of the estate-leaver, insofar as they are not extinguished with the death of the estate-leaver, shall devolve to the heir.

Note: The rights of aliens to inherit immovable property have been provided for in other laws. *[7 July 1992]*

702. An heir shall acquire the same substantive rights to separate tangible property which belong to the estate as the estate-leaver had. Similarly, he or she shall acquire the property rights in regard to the property of other persons which belonged to the estate-leaver, except personal servitudes.

Upon the taking of an inheritance, the property rights that the heir had to the property of the estate-leaver are terminated, as well as vice versa, the rights of the latter to the property of the heir.

703. As with property rights (Section 702, Paragraph one), so also all the claims of the estate-leaver, which have not passed only to him or her personally, shall devolve to the heir.

All claims of the estate-leaver against the heir and, vice versa, the claims of the heir against the estate-leaver, are terminated with the taking of the inheritance.

704. Rights that had been granted only to the estate-leaver personally shall not devolve to the heirs.

705. With the taking of the inheritance, together with the rights of the estate-leaver (Section 702 and subsequent sections), also all his or her obligations, other than exclusively personal ones, shall devolve to the heir.

706. An heir shall fulfil all the tasks imposed upon him or her in the will, as well as all duties he or she has accepted pursuant to an inheritance contract.

707. Creditors of the estate-leaver shall apply with their claims to the heir who, if the estate does not suffice, shall pay the debts from his or her own property; but otherwise when paying such debts the provisions of the estate-leaver shall be observed.

708. An heir may avoid the duties imposed by Section 707, to be liable with his or her own property for the debts of the estate-leaver, if he or she makes use of the inventory right, i.e., makes an inventory of the whole inheritance within the time specified by law.

Guardians, trustees and other legal representatives of an heir shall always accept the

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inheritance due to the heir only with inventory rights.

709. An heir who intends to make use of the inventory right must apply to a notary, not later than two months from receipt of notice regarding the opening of succession, with a petition to charge a bailiff with the preparation of an inventory pursuant to the provisions of the Civil Procedure Law, or in cases indicated by law - the Orphan's court.

If the inheritance is large and complex and a longer time period is needed to prepare the inventory, a notary, pursuant to a petition from the heir, may extend the time period, but not longer than by one year.
[7 July 1992; 12 December 2002; 22 June 2006]

710. While the heir is preparing an inventory, creditors and legatees may not raise their claims against the heir, and the running of the prescriptive period with respect to their claims for the whole of the specified time period for invitation is interrupted.

711. An heir who has taken an inheritance with the right of inventory shall be liable for the debts of the estate-leaver and other claims against him or her only in the amount of such estate, and in addition he or she shall have the right to deduct from it the amounts necessary for the burial of the estate-leaver, for preparing the inventory, and for other court costs. Claims of the heir shall not terminate, but they shall be settled from the inheritance according to their priority.

712. If the heir is insolvent, creditors of the estate-leaver as well as legatees may request that the estate be segregated from the heir's own property, and that they be satisfied from the estate, before the creditors of the heir.

Such a segregation may be demanded also from the descendants of the heir, as well as from those who as creditors have received from the heir possession of items of property that belong to the inheritance.

713. In the case of such segregation (Section 712), the first to be satisfied from the estate shall be creditors of the estate-leaver, then legatees, and only thereafter may the remainder that is left be rejoined with the property of the heir.

If the segregated inheritance (Section 712) is insufficient to satisfy the creditors and legatees, then after such segregation they shall no longer have the right to bring claims against the heir and his or her property.

714. The right to require segregation may not be exercised:

1) if five years have elapsed from the day the inheritance was accepted;

2) if the creditors with a special transaction have acknowledged the heir as their debtor;

3) in relation to those items of property which the heir has already alienated in good faith; or

4) if such a merging of both properties has occurred that it is not possible to segregate one from the other.

CHAPTER 7
Mutual Relationships Between Co-heirs and Division of the Inheritance

SUB-CHAPTER 1
Mutual Relationships of Co-heirs

715. If an inheritance has devolved to several persons jointly, then they may either keep possession of it undivided, or request that it be divided.

716. As long as the co-heirs keep possession of the inheritance undivided, they shall receive fruits and other income of the estate in proportion to the share of each, and shall in the same proportion bear the charges upon it, as well as potential losses, insofar as the latter have not arisen due to the fault of one of the co-heirs (Section 723). If the estate-leaver has not specified the manner of administering and using the undivided estate, then it shall be determined by a majority of the co-heirs in accordance with the size of each share.

717. All co-heirs shall be liable for debts of the estate in proportion to their shares. Even if the estate-leaver has charged only one of them with payment of the debts, or if they agree among themselves otherwise regarding this payment, such action shall be binding only on the heirs themselves and shall not take away the right of a creditor of the estate-leaver to collect the debt from each co-heir in proportion to their share of the inheritance.

718. Debtors of the estate-leaver shall be similarly liable to each co-heir in proportion to their share of the inheritance; but if the debtor has paid the debt to the heir to whom the estate-leaver had directly bequeathed such claim, then they are thereby relieved of any claims of the co-heirs.

719. Actions regarding an estate need the consent of all co-heirs and only a majority vote is insufficient. Therefore none of the heirs alone has the right to sell or pledge the shares of their co-heirs, nor encumber the estate with debts in excess of the value of his or her own share, nor generally to act with the undivided entirety of the estate such as to narrow the rights of the other participants. Such actions shall not have effect; nevertheless, the person who has acquired the alienated movable property in good faith shall not lose the right to it.

720. If a co-heir alienates his or her share of immovable property to a person who is not a joint owner, then the other joint owners shall have the rights provided for in Section 1073**.**

721. Expenditures with respect to the estate by one co-heir, to the extent that they were necessary for its maintenance or brought real benefit to it, shall be borne by all the co-heirs in proportion to the share of each. If any one of them delays reimbursement of these expenditures for his or her share, he or she shall pay the lawful late-payment interest.

722. If any one co-heir pays the debts of the estate-leaver or executes legacies bequeathed by the estate-leaver, he or she is entitled to claim reimbursement from his or her co-heirs in proportion to his or her shares.

723. An heir who has possession of the estate or its constituent parts shall take care of such as if it were his or her own property. However, if he or she uses something from the inheritance for his or her own needs, then he or she shall account for it to the co-heirs.

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SUB-CHAPTER 2
Division of the Estate

I. Persons who may require division of an estate

724. No one shall be obliged to remain in joint possession of an estate, and each co-heir may require its division.

Division may also be done even if one or more co-heirs are not of age of majority or are under trusteeship; in such cases their rights shall be protected by their guardians or trustees.

Guardians or trustees may require division only with the permission of the Orphan's court.

Note: Co-heirs may not demand a surviving spouse from a childless marriage to divide the estate until three months have elapsed from the death of the estate-leaver.

725. If the rights of a child not yet born must be observed in the division of an estate, the division shall be postponed until the birth of the child.

726. If an estate must be divided as a result of claims by one or more co-heirs, those who wish to participate in an undivided estate may keep their shares in the joint estate.

727. An agreement to never divide an estate shall not be valid. Co-heirs may agree to keep the estate undivided for a certain time, but even then division of the estate before the expiration of the agreed time may be requested if a court considers the reasons for division to be important.

728. An estate-leaver may prohibit the division of the residual property for a specified time, but he or she may not forbid division in perpetuity.

If a will prohibits division of a property without specifying a tune, then division may be done not earlier than five years from the date of the death of the estate-leaver, but if the estate-leaver is survived by minor children and they have not attained age of majority at the expiration of this tune period, then not earlier than before they have all reached age of majority.

II. Property to be Divided

729. Before beginning division of an estate, the entirety of the property to be divided shall be determined:

1) by adding to it all that has been received by individual heirs previously;

2) by adding to it all fruits and other augmentations that have accrued to the undivided entirety of property since the death of the estate-leaver; and

3) by segregating the property of other persons and property bequeathed to legatees, and deducting debts against the estate, expenditures made with respect to the entirety of property of the estate and sums bequeathed to legatees, the delivery of which have not been imposed personally on an heir but in general on the entirety of property.

730. Objects that the estate-leaver himself or herself has already distributed shall be segregated from the entirety of property to be divided, if such was the intent of the estate-leaver.

III. Order of Division

1. General Provisions

731. An estate may be divided voluntarily (informally, at a notary or an Orphan's court) or, if the co-heirs are unable to agree, through a court proceeding. If among the co-heirs are persons under guardianship or trusteeship, then the informal division act shall be confirmed by an Orphan's court, in addition, if the share of a person under guardianship or trusteeship exceeds ten thousand lats, the decision of the Orphan's court shall be submitted to a court for confirmation.
[12 December 2002; 22 June 2006]

732. Division shall be done firstly according to the instructions given by the estate-leaver; but when he or she has divided some separate objects of his or her estate into specific shares among heirs, then the remainder - if specific inheritance shares of it have not been bequeathed to the heirs - shall be divided among them not in proportion to the shares referred to, but in equal shares according to the number of persons or the number of stirps (Section 411).
[12 December 2002]

733. When dividing an inheritance through court proceedings, the court shall act generally pursuant to the provisions of Section 1075 regarding division of joint property, also observing the special provisions of Section 734 and subsequent sections.

734. Cash and other fungible property, as well as claims for money or fungible property, shall be divided in proportion to inheritance share of each heir.

735. Non-fungible items of movable property, which cannot be physically divided - if the heirs do not agree otherwise - shall either be sold at auction, dividing the money so received, or shall be given by lot to individual heirs for the amount assessed, or also sold at an auction among the heirs themselves, who shall then divide the income in proportion to their share of the inheritance.

Immovable property, if it cannot be divided physically, shall also be divided in this manner.

736. A prohibition by will or by inheritance contract against alienation of movable or immovable property shall not prevent division pursuant to the procedures set out in the previous Section (735); but in selling property at auction, only the heirs themselves may participate.

737. Moveable or immovable property shall be valued prior to division. To determine the actual value of the immovable property that is to be divided, the heirs may sell it at auction and themselves participate in the bidding; in this case the heirs or one of them may use the right of pre-emption only if it has been specifically declared prior to the auction.

738. If immovable property has been put on auction only to determine its real value, and if the heirs have reserved the right to either transfer it to the highest bidder or to keep it themselves, then notification must be expressly provided of a reservation together with other conditions of the auction. But if minors or heirs under trusteeship are interested in the auction, then the transfer of immovable property to the highest bidder shall be permitted only with the approval

of an Orphan's court, and furthermore, if the share of the person under guardianship or trusteeship exceeds ten thousand lats, the decision of the Orphan's court shall be submitted to a court.
[12 December 2002; 22 June 2006]

739. If one co-heir retains for himself or herself, for the assessed amount, the immovable property that is to be divided, he or she shall reimburse the others, in proportion to his or her shares, with the appropriate sum of money, which following agreement shall be either paid in cash or secured with pledge rights on the immovable property itself.

740. When physically dividing immovable property which is part of an estate, regulations, that prohibit the division of immovable property either into overly small parcels or a division altogether, shall be observed.

2. Division of Land of an Agricultural Nature which is Outside the Administrative Boundaries of Cities

741. If land of an agricultural nature that is to be divided does not suffice in order to physically distribute to each heir his or her share (Section 740) and the co-heirs do not agree, then a father or mother in sharing with his or her children who are of age of majority, as well as a stepfather or stepmother in sharing with his or her stepchildren, may not claim his or her physical shares. Similarly, co-heirs who do not farm, as well as such co-heirs who already own or whose spouse already owns land of an agricultural nature the area of which exceeds the minimum extent specified by law, may not request their physical share if there is not enough for all.

742. In equal circumstances, priority to receive a physical share shall go to that co-heir for whom it is easier to pay out to the other co-heirs the reimbursement due to them, or to the one who is given priority by all the heirs who do not receive their physical shares.

743. Of the co-heirs who receive their physical shares, priority to receive that part of the farm which contains the homestead shall go to that person who has worked on the farm the longest (children after completing obligatory schooling), or who has most supported the farm with his or her monetary means. Time spent in obligatory military service and fighting in a war shall be considered equivalent to time spent working on the farm prior to military service. In equal circumstances priority shall be given to kin.
[12 December 2002]

744. Heirs who physically receive their share shall have priority also to physically retain the inventory (Section 861), with accounts to be settled with the co-heirs in accordance with the ordinary value (Section 871) of the inventory.

745. With respect to separable trading and manufacturing undertakings, priority shall go to that heir who desires and is capable of managing such an undertaking, or to the one who is given priority by all the heirs who will not receive their physical shares.

746. If the previous Sections (741-745) do not provide sufficient instruction regarding who shall be granted a physical share or given the homestead, the order of division, if the heirs do not reach agreement by other means, shall be determined by a court in its discretion.

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747. The physical shares to be received shall be valued, and the buildings necessary for the farm are not to be valued separately but together with the land. Accounts with co-heirs must be settled for two thirds of the value so determined. Such a lowering of value shall not apply to the land and buildings of existing trading or manufacturing undertakings, nor to such buildings as are not involved with the direct needs of farming; similarly, such a lowering of value shall not be applied by co-heirs in their mutual accounting in regard to the debts of the estate-leaver.

748. Co-heirs who have received their physical shares shall make payment to the others in proportion to their shares and the value that has been determined on the basis of the previous Section (747).

749. If an heir who has received his or her physical share must obtain for payments cash equivalent to more than 50% of the value of the property to be received and he or she is unable to obtain the payment shortfall from a long-term credit institution, or if he or she has received land without buildings, a court may permit payment by instalments; depending on the size of the sum to be paid, the income from the farm and the circumstances of the recipient of the payment, the court may set a time period for payment of up to ten years. Such relief may not be granted if the payer is unable to provide adequate security to the recipient of the payment.

750. If an heir who has received his or her physical share alienates his or her farm or a part of it prior to the elapse often years, then the co-heirs may demand that they be paid the difference between the assessment on the basis of which payment was made (Sections 747 and 748), and the market value at the time of division.

751. In the case of alienation provided for in the previous Section (750), the co-heirs who did not receive their physical share shall have the right of first refusal or the right of pre-emption (Section 1073). If several co-heirs apply to exercise the right of first refusal or the right of pre-emption, then they shall acquire the aforementioned farm as property in common in equal shares.

3. Documents

752. Family documents, as well as documents that relate to the whole of the estate, shall not be distributed and, if the heirs have not agreed otherwise, they shall be given for safekeeping to the heir who receives the largest share of the estate, but if the shares are equal, to the oldest co-heir participating in the division.

An heir who has received possession of the documents shall allow co-heirs to examine and copy them, when they so request.

Documents which relate to a specific immovable property shall be given to the heir who receives that immovable property.

If the immovable property is divided and the heirs do not agree otherwise, then the documents relating to this property shall be given to the heir who receives ownership of the share with the earlier Mortgage Register number.

4. Consequences of Division

753. If in dividing an estate the co-heirs give to each other something from it, then the legal relationship established thereby shall be considered in accordance with the provisions

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regarding the purchase.

Each co-heir shall be liable to the others for the objects devolved to him or her in the division.

754. If the estate-leaver himself or herself has specified the items of property which each co-heir shall receive as his or her share and has indicated the value of these items of property, then a division on this basis may not be contested in any way, except only in the case when the preferential share rights of an heir are infringed thereby.

Co-heirs may not contest for any reason a division of an estate performed on the basis of a judgment of a court or an arbitral tribunal, which has come into effect.

755. An informal division may be contested when bad faith, duress or fraud has been discovered, in regard to the division or when one co-heir has incurred losses of more than one half, or if a mistake has occurred. The injured party shall have the right to request either compensation or a new division.

756. If it is found that an object that belongs to an estate has been omitted from the division and has not been divided, then the earlier division shall nevertheless remain in effect and the object that was omitted shall additionally be divided among the heirs.

SUB-CHAPTER 3
Additions to That which was Received Previously

757. A surviving spouse and all descendants, who on whatever basis wish to inherit from the deceased spouse or the common ancestor, shall add to the entirety of property of the estate prior to its division all that he or she has received from the estate-leaver while the estate-leaver was alive or also shall include it in his or her shares of the estate.

758. The duty to add is not affected by whether the descendants who inherit jointly are in the same or in a different degree of kinship with respect to the common ancestor.

759. Those who represent the financial rights of such person, who must perform the addition referred to, shall add to the entirety of property of the estate all that would have had to be added by the aforementioned person, unless he or she inherits in his or her own right and has not inherited from the person he or she represents.

760. Addition shall not be made:

1) when the person who would have to do such has renounced his or her participation in the division of the estate while the estate-leaver was still alive, or also who, after the death of the estate-leaver, has declared that he or she is satisfied with what was received previously and does not wish to participate in the inheritance;

2) when the estate-leaver has definitely prohibited such addition; or

3) when the objects to be added have been destroyed through no fault of the person who has to make the addition.

A prohibition against addition, as well as renunciation by the person who should perform the addition, shall not infringe on the rights of the co-heirs to their preferential shares.

761. Descendants must add all that they have previously received not only for the benefit of each other, but also for the benefit of the parent who has survived the other and inherits

jointly with him or her. However, in such case the surviving spouse shall also add the property that the deceased has granted to him or her while the deceased was alive.

762. The usual ascendant or spousal gifts shall be added only in the following cases:

1) when an addition has been directly imposed as a duty at the time of the making of the gift or before or after that; or

2) when the donee has co-heirs who must also add like gifts.

763. If the estate-leaver has not directly stated otherwise, that which the descendants have received from the ascendants for food, housing, clothing, care, upbringing and compulsory education shall not be added.

Similarly, that which the surviving spouse has received from the deceased spouse for food, housing, clothing and care shall not be added.

764. The value of the objects to be added shall be determined according to the condition they were in at the time they were received and according to prices at that time.

765. If the person who should make the addition fails to do so in due time, the co-heirs shall have the right to claim from that person interest and income from the moment the person was invited to make the addition.

CHAPTER 8
Termination and Loss of Inheritance Rights

SUB-CHAPTER 1
Loss of Inheritance Rights pursuant to the Intent of the Heirs Themselves

I. Refusal of an Inheritance Prior to the Invitation to Inherit

766. A contract to renounce the right of inheritance is a contract by which one party renounces the right of inheritance that would have belonged to him or her after the death of the other party.

A contract to renounce the right of inheritance is in effect only if it has been executed in writing.

767. A renunciation contract shall be executed between the future heir and the person whose inheritance he or she shall renounce.

A contract by which one party promises to another to renounce an inheritance from a third person which he or she would be entitled to take, does not constitute renunciation within the meaning herein, but is a contract regarding the estate of the third person.

In order that the renunciation of a person under guardianship or trusteeship be valid, it requires the consent of the trustee or guardian as well as of the Orphan's court.

768. A renunciation contract by an heir extends also to his or her preferential share.

769. A right to inherit by an heir shall be terminated by a renunciation of the inheritance by the heir, and the estate-leaver shall be released from all any restrictions regarding decisions concerning his or her estate, also regarding the preferential share.

770. If an estate-leaver has not provided any instructions in case of his or her death, either in a will or in a contract, then in place of the one who has renounced the inheritance, such who has equal rights to him or her shall take, but if such does not exist, then the next nearest heir by intestacy of the estate-leaver shall take.

771. If the contrary has not been specifically agreed, then all that the heir who has renounced has contracted for himself or herself for his or her refusal shall be acquired not as a share of the estate but as compensation.

772. If an heir who has renounced dies prior to the estate-leaver, then his or her renunciation shall not be binding upon his or her descendants, also even in the case where a contract was specifically entered into to also include him or her, and therefore his or her rights shall remain unaffected; but if he or she accepts the inheritance which devolves to him or her after the heir who has renounced, then in his or her shares shall be included that which the heir has received as compensation for renunciation.

773. A contract to renounce an inheritance may be revoked only by the written agreement of both parties.

774. If an heir has renounced in favour of a third person and he or she has participated directly in the execution of the contract or has become a party to it later, then the renunciation contract may not be revoked without his or her consent.

II. Renunciation of an Inheritance after the Invitation to Inherit

775. Anyone who may freely act with his or her property shall also have the right to renounce an inheritance regardless of whether it has devolved to him or her pursuant to law or pursuant to a will. The rights of a contractual heir in this regard are specified in Section 689.

776. An inheritance may be renounced not only by so stating expressly but also implicitly.

The provisions of Sections 690, 699 and 700 regarding acceptance of an inheritance shall also apply to its renunciation.

777. For a renunciation to have effect, it is necessary that the person who renounces knows the basis pursuant to which he or she has been invited to inherit, as well as the fact that he or she is an heir.

778. If the nearest intestate successor has been appointed heir in a will but does not wish to exercise this appointment, he or she retains the right to inherit pursuant to law.

779. If someone refuses to inherit pursuant to a will for some selfish purpose, then he or she shall, accepting an inheritance pursuant to law, not be released from the restrictions specified by the testator regarding actions taken with respect to the inheritance; in addition, he or she must satisfy the legatees.
[12 December 2002]

780. If the nearest heir by intestacy has been appointed heir in a will without his or her knowledge, then by a renunciation of the inheritance, regardless of the manner of its expression, he or she shall not lose the right to inherit pursuant to the will. However, if he or she, when renouncing the inheritance in general terms, knew that he or she had been

appointed as an heir in the will, then he or she may no longer also inherit pursuant to law.

781. When an invited heir has already accepted an inheritance, he or she may no longer renounce it. Once an invited heir has renounced an inheritance that has devolved to him or her, he or she may no longer accept it later.

782. After an heir has renounced an inheritance that has devolved to him or her, in the heir's place shall come the person who has been invited to inherit pursuant to the intent of the estate-leaver or, if such intent has not been expressed, according to law is invited to inherit as the next nearest kin; furthermore, this new heir shall be given the same term for accepting or renouncing the inheritance as was the first heir, calculating from the day that he or she received knowledge of the renunciation by the first heir.

783. Renunciation of an inheritance does not constitute concomitant refusal of those rights and claims that an heir may have against the estate-leaver and the estate pursuant to some other basis.

SUB-CHAPTER 2
Incomplete Wills and Invalid Wills

I. Revocation of a Will Against the Intent of the Testator

784. A will may in various ways be invalid either from the very beginning or become void later, not only as a whole but also only in some separate parts of it.

785. A will which has remained not completed (Section 458) or in which all the instructions are illegal or incomprehensible, as well as a will with criminal or illegal content, shall be invalid of itself and a notary shall not read it.

The illegality of separate instructions shall invalidate neither the whole will, nor its other instructions; in such case a notary shall make all that is illegal in the will conform to law, or, if that is not possible, delete such from the will.

The provisions of the previous parts of this Section also shall apply when the circumstances mentioned in Section 824, Paragraph one, which make an heir unworthy to inherit, have been established pursuant to a judgment of a court.
[12 December 2002]

786. Interested persons may request that a will be declared void in its entirety or in regard to separate parts thereof in the following cases:

1) when the estate-leaver did not have the capacity to make a will;

2) when the specified form was not observed in the making of the will; or

3) when the making of the will was achieved under duress or fraud, or if a mistake has occurred.

787. The validity of a will shall not be affected by the fact that ten or more years have passed from the time the will was made to the death of the testator.

788. If a forced heir has remained unmentioned in the will or has been excluded from inheriting without legal cause, he or she shall have the right to request that his or her preferential share be distributed or also, if he or she has been bequeathed less than this share,

that it be supplemented. In other respects the will shall remain valid.

789. If an estate-leaver who does not have children has made a will and subsequently either while still alive or after his or her death a descendant is born, then the will shall be deemed revoked in its entirety, unless this case has been specifically provided for in the will itself. But if the testator has already had children previously, then those born after the will was made shall receive only equal shares of the estate with their brothers and sisters, in addition in other respects the will shall remain valid.

790. If a father leaves a specific share of the estate to a descendant who is yet to be born, but, instead of one, two or more children are born, then they shall receive equal shares of the estate.

791. If an heir by intestacy who has had the opportunity to contest the will and has already acknowledged the will either expressly or implicitly, i.e., by fulfilling separate aspects of it or by not submitting his or her claims during the invitation time period, he or she shall be required to fulfil the will completely and shall no longer have the right to contest it later.

II. Revocation of a Will, Changing the Intent of the Testator

792. The provisions regarding the revocation of a will due to a change in the intent of a testator (Sections 793-801) shall also apply to public wills.

793. A testator may revoke a previous will either by making a new one or by simply revoking the previous will.

1. Making a New Will

794. A new will shall of itself revoke a previous one, even without this being expressly stated.

In this respect it does not matter whether the previous will was public or private; a public will may be similarly revoked by a subsequent private one. An oral will (Section 460) may not revoke a written will, either public or private.

If a testator has expressed the intent to make a new will or to change the already existing one, that in itself shall not revoke the previous will if the testator dies without fulfilling his or her intention.
[7 July 1992]

795. If a new will has such defects as a result of which it is invalid (Sections 785 and 786), as well as if a testator himself or herself revokes a later will with the intention of renewing the previous will, then the previous will shall again regain its validity.

If a new will becomes invalid for the reasons mentioned in Section 789, the previous will shall not as a result regain its validity.

796. An earlier will shall not be acknowledged as revoked by a new will, when the new one is undisputedly only a codicil to the earlier one or a change to some part thereof.

797. If a testator specifies in a new will that the previous one also remain in effect, or if he or she leaves two wills that have been made on the same day but differ in their essential content, or finally, if it cannot be clearly determined which of two wills was made earlier and which later, then in all such cases both wills shall remain in effect side by side insofar as it is

possible under the circumstances. However, if such is completely impossible, then both wills shall be void.

798. If a testator was motivated to make a new will by false information concerning the death of the appointed heir, then the earlier will shall remain valid.

2. Revocation of a Will

799. An estate-leaver may revoke his or her will, without making a new one, by any expression of his or her intent that is stated either expressly or implicitly by certain actions.

800. A will shall be revoked absolutely by means of a clear and indisputable statement, which may be expressed in a document registered in the register of documents at a notary public or in an Orphan's court, or also in a foreign state in a consular revocation document, as well as in an informal written document signed by two witnesses.

In the circumstances specified in Section 460, a will may also be revoked orally by the same procedure as specified for the making of a will. In addition, soldiers on active duty may also revoke a will by means of a written notice to their superiors.
[22 June 2006]

801. A will may be revoked implicitly by such action as leaves no doubt about the intention of the testator.

802. If a testator himself or herself, or at his or her instruction a third person, intentionally destroys the entire will by tearing, cutting or burning it, or also by only crossing out all its content, or by other means, then all the instructions contained therein, if it has not been preserved in yet another original, shall become void.

803. If a testator destroys only a few parts of the last will instructions, then all the others shall remain valid.

804. That which a testator has destroyed himself or herself but not intentionally, or also someone else has destroyed without the consent of the testator, shall remain valid as long as it is possible to read it or otherwise prove its content.

SUB-CHAPTER 3
Revocation of a Legacy

I. Revocation of a Legacy on the Basis of the Intent of the Legatee

805. A legatee may always refuse a legacy granted to himself or herself, but if he or she dies without making a statement regarding it, this right shall devolve to his or her heir.

One may refuse not only expressly but also implicitly by an action that does not leave any doubt about the intention of the legatee.

806. If an heir refuses an inheritance which has devolved to him or her, then he or she shall not thereby also have refused a pre-legacy granted to him or her.

807. With the refusal of a legacy, the devolving of the legacy shall also be terminated

(Sections 521 and subsequent sections), provided that the legatee has not accepted on more than one ground and the refusal can apply to only one of them.

808. Refusal of a legacy granted with a condition or term shall not be in effect if such renunciation has occurred prior to the condition having taken effect or of the commencement of the term.

II. Revoking a Legacy on the Basis of the Intent of the Estate-leaver

809. An estate-leaver may revoke a legacy granted by himself or herself by any statement of intent which is expressed either explicitly or implicitly by a certain action that leaves no doubt about the intention of the estate-leaver.

810. Each amendment of a legacy is in itself a revocation of the earlier legacy and the establishment of a new one; therefore in amending a legacy one shall observe all that has to be observed generally in establishing a legacy; otherwise one must acknowledge that the amendment does indeed revoke the earlier one but does not establish a new legacy.

811. If a legacy is amended by naming a new legatee or executor of the legacy or designating a new object of the legacy, then, when there is doubt, it shall be presumed that the condition attached to the legacy is not revoked by the amendment but remains in effect.

III. Revoking a Legacy Because a Will Fails

812. If a will fails, then the legacies established by it shall also fail.

IV. Direct Failure of a Legacy

813. A legacy shall fail if it was invalid from the very beginning, and namely, in the following cases:

1) when an estate-leaver did not have the capacity to grant the legacy or the legatee to accept it;
2) when the bequest can not be the object of a legacy;
3) when the instructions given are incomprehensible; or
4) when the legacy was initiated by duress or fraud or granted due to mistake.

814. Legacies which are invalid (Section 813) shall not again become valid even then when the cause of their being invalid later ceases to exist, unless they were granted with a condition and the cause of their invalidity has not ceased to exist prior to the condition taking effect.

815. If a will has been written not by the testator himself or herself but by some other person, then no instruction made to the benefit of this person, also including a legacy granted to him or her, shall be valid, unless the testator himself or herself has expressly and specially confirmed such an instruction or unless the will was written by his or her sole heir by intestacy.

816. A legacy, which is valid at the beginning, shall later become invalid:

1) if the legatee dies prior to the estate-leaver or prior to a condition being fulfilled;
2) if the object of a legacy has been destroyed or converted into something else; or
3) if the testator, while still alive, has given the bequeathed object as a gift to the

legatee.

817. If the heir appointed in a will executes a legacy that he or she did not have to execute, then he or she shall no longer have the right to ask for its return, unless he or she was motivated to execute the legacy by a mistake of fact.

V. Consequences of Revoking a Legacy

818. If a legatee in some manner fails, then the object of the legacy, to the extent it still exists, shall devolve first of all to his or her substitute, or, pursuant to accession rights (Section 839 and 840), to a co-legatee, if such has been appointed.

If there is neither a substitute nor a co-legatee, then the object of the legacy shall remain with the executor of the legacy, but if such also does not exist, then with the heir; but if there are several heirs, then the legacy shall be divided among them in proportion to their shares of the estate.

He or she, who is charged only with distribution, for example, the executor of a will, shall not be considered as the executor of a legacy and also therefore shall not receive the bequeathed object.

819. He or she, who pursuant to the procedures set out in of Section 818 replaces a failed legatee, shall perform all the duties of the latter, except in the case when the legacy has been in effect from the very beginning.

SUB-CHAPTER 4
Revoking an Inheritance Contract

820. An inheritance contract shall lose its effect for the same reasons as a will.

An inheritance contract may be revoked for the same reasons as any contract in general.

No party, unless it has been specifically included in the contract, may with a unilateral declaration revoke an inheritance contract, even if the reason therefor was the ingratitude of the heir appointed in the contract, or even if after the contract was entered into a descendant was born to one party.

821. Infringement of the rights of forced heirs shall have the same consequences in an inheritance contract as in a will.

822. Reasons that generally give the right to request the renewal of an earlier status may also be a reason for revoking an inheritance contract.

823. If an heir appointed in a will dies prior to the estate-leaver and in addition heirs of the former had not been specifically appointed as his or her substitute, the inheritance contract shall be deemed to be terminated.

SUB-CHAPTER 5
Forfeiture of Inheritances and Legacies by Unworthy Persons

824. Inheritances as well as legacies shall be forfeited, due to his or her unworthiness, by a

person:

1) who has intentionally caused the death of an estate-leaver or the nearest heir ahead of oneself in the succession, or intentionally caused such harm to the health of the estate-leaver as to leave him or her unable to make or revoke a last will instruction;

2) who through violence or fraud has encouraged or prevented the estate-leaver from making, amending or revoking last will instructions;

3) who with malicious intent has removed the last will instructions of the estate-leaver;

4) who has forged the last will instructions of the estate-leaver;

5) who has refused the duty, imposed upon him or her by last will instructions to assume the position of guardian or the duty to raise someone;

6) who does not fulfil the duty, which has been imposed upon him or her, to arrange the burial of the estate-leaver; or

7) who within a year from the date the last will instructions came into effect without good cause does not fulfil the binding directions of the estate-leaver.

A person whom the estate-leaver has forgiven shall not forfeit an inheritance or a legacy.

825. [12 December 2002]

826. Forfeiture of an inheritance on the basis of unworthiness (Sections 824) may take place only on the basis of a court action, except in the case mentioned in Section 785, Paragraph three.

An action may be brought by the person to whom the inheritance will devolve after its forfeiture (Section 827), but in the cases provided for in Section 824, Paragraph one also by the prosecutor.

The aforementioned action may be brought within the terms specified in Sections 685 and 686.
[12 December 2002]

827. When someone has forfeited an inheritance on the basis of unworthiness, then his or her place, if there are no special provisions regarding this, shall be taken by the person who has been invited to inherit jointly with the person who has forfeited or directly behind him or her, irrespective whether it is a substitute or a co-heir, or also the nearest heir by intestacy. Legacies which unworthy persons have forfeited are subject to the provisions of Section 818.

828. He or she who takes the place of the unworthy person shall fulfil all that has been imposed upon the latter, and namely, fulfilling a legacy, assuming the debts of the estate, etc.

829. If an unworthy person has already acquired and received what had been bequeathed to him or her, then he or she shall transfer such with all fruits and augmentations to the one taking his or her place.

If an unworthy person has suffered any losses as a result of accepting the inheritance, he or she may not request a restoration of the earlier status.

SUB-CHAPTER 6
Accession Rights

830. If one of several co-heirs for some reason is unable or unwilling to inherit, then his or her share that has been freed shall devolve pursuant to accession rights to the other co-heirs.

Accession rights shall not be applicable if a failed heir has a substitute, or if he or she has already died after the invitation to inherit and his or her rights have passed to his or her heirs.

831. Accession rights shall apply on the basis of law without any special acquisition or acceptance. One who has such rights may not refuse them.

832. If an heir after acquiring an inheritance has already died, but later any one of the co-heirs fails, then the accession right shall belong to the heirs of the former.

833. The freed share shall devolve to the co-heirs (Section 830) with all the charges to which it is subject, including with the duty to fulfil the legacies imposed upon the failed heir, except in cases when the appointment of this heir has been in effect from the very beginning.

834. In inheriting pursuant to law the freed share of the estate shall devolve to those co-heirs who would have received it if the failed heir had not existed at all, and this share they shall divide in proportion to their shares of the estate.

835. If some of the heirs by intestacy inherit *per capita* but others *per stirpes* (Section 411), then, if any one of the former fails, his or her share shall be divided according to the number of stirpes; but if someone fails of those who inherit *per stirpes*, then his or her share shall devolve, pursuant to accession rights, to the members of the same stirps, and only then if such do not exist shall it devolve to other stirpes.

836. In inheriting pursuant to a will, only those who have been invited to inherit the whole estate without their shares being specified shall have accession rights.

The share that is freed after failure of a testamentary heir shall be divided equally among the other co-heirs.

837. When any one of several contractual heirs fails, then his or her freed share shall devolve not to his or her co-heirs, but rather to the heirs by intestacy of the estate-leaver, unless the contract specifically states otherwise.

838. When contractual heirs inherit jointly with testamentary heirs, then upon the failure of any one of the latter, his or her share, if there are no other testamentary heirs, shall devolve not to contractual heirs, but to heirs by intestacy.

839. With respect to legacies, accession rights exist only when one and the same item of property is bequeathed to several co-legatees without specifying which share of it each should receive.

If in such a case a co-legatee fails before he or she has acquired the right to the legacy granted to him or her, his or her share shall devolve to the other co-legatees.

840. If several legatees have been jointly bequeathed usufructuary rights (Section 1190 and subsequent sections) and if any one of them fails after he or she has already acquired his or her share, then it too shall devolve to their co-legatees.

PART THREE
Property Law

CHAPTER 1
Various Classes of Property

SUB-CHAPTER 1
Property and Aggregations of Property in General

841. Property is tangible or intangible.

Intangible property consists of various personal rights, property rights and rights regarding obligations, insofar as such rights are constituent parts of property.

842. Tangible property is either moveable or immovable, depending on whether it may or may not be moved without external damage from one location to another.

Note: A railway, with all its appurtenances, shall be classified as immovable property, but ships, with all their appurtenances, shall be classified as moveable property.

843. Rights applicable to immovable property may be made applicable by law, as well as by private volition, to such property as according to its nature is moveable, and vice versa.

844. Tangible property is either fungible or non-fungible. Fungible property is that for which normally only the kind is taken into consideration but not form, nor also the separate property itself so that, when delivering or returning it, a person must observe only that it is of a specific kind, quality and the same quantity. Herein belongs all property which is determined numerically, by measurement or by weight.

Pursuant to private volition, a fungible nature may be assigned also to property that is essentially non-fungible, i.e. separate specified things, and vice versa.

845. Tangible property is either consumable or inconsumable, depending on whether it is destroyed by normal use or not.

846. Property rights are applicable to move-able or immovable property, having regard to the class of property to which they pertain.

Personal rights, and rights regarding obligations, even if their object is immovable property, shall always be classified as moveable property.

When intangible property is treated as a constituent part or appurtenance (Section 850) of tangible property, then it assumes the characteristics of the latter and in accordance therewith, shall be considered either moveable or immovable, having regard to the class of tangible property it belongs to.

847. Legally, only such property shall be divisible as may, without destroying its essence, be divided into parts, and, in addition, each of the parts is a self-contained whole. Property which can not be divided in this manner, shall be indivisible.

It may be provided, by law or by private volition, that property, which in essence is divisible, not be divisible.

848. Not only separate property but also aggregations of property may be the subject of rights

or obligations.

849. An aggregation of property is such collation of several items of property, self-contained, of one or more classes, tangible or intangible, for a known purpose, in a unitary composition and with one joint designation as shall be acknowledged in a legal sense as a whole, or a unitary property.

The concept of an aggregation of property, and its essence, shall not be destroyed or altered either by the reduction or augmentation of the separate items of property incorporated in its composition, or any other change in them.

SUB-CHAPTER 2
Principal and Auxiliary Property

I. General Provisions

850. Principal property is that which may be the independent subject-matter of rights. However, property as exists only in conjunction with, belonging to or as otherwise associated with principal property (Section 851), is auxiliary property.

851. In regard to items of auxiliary property, distinction shall be made between:

1) essential parts of the principal property, including augmentations within the narrowest meaning thereof;

2) the fruits of the principal property;

3) appurtenances of the principal property; and

4) expenditures regarding the principal property and charges encumbering it.

852. While auxiliary property has not been separated from the principal property, they both shall be subject to identical provisions regarding rights; accordingly moveable appurtenances of immovable property shall not be considered as moveable property, but shall be subject to the provisions applicable to immovable property.

853. All lawful relations which apply to principal property in themselves also apply to the auxiliary property thereof; therefore, where principal property is alienated, auxiliary property pertaining to it, in case of doubt, shall be recognised as alienated jointly with it, unless otherwise expressly stipulated.

II. Essential Parts of Principal Property

854. The essential parts of a principal property are all those which are found to be inseparably connected and are incorporated in its composition, so that without them the principal property in its essence could not exist or would not be recognised as whole.

III. Fruits

855. Fruits, within the widest meaning of this word, are every benefit which may be obtained through the use of a principal property.

Fruits, within the narrowest meaning, are all that which may be obtained from a property, either as the natural product thereof or as income which it bears in connection with special legal relationships; in the former case, the fruits are called natural, in the latter, civil.

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Included in the latter shall be lease and rental payments and interest on capital.

856. Natural fruits shall be recognised as part of a principal property only so long as they are not separated from it.

IV. Appurtenances

857. Auxiliary property acquires the character of an appurtenance, if its function is to serve the principal property, it is permanently connected with it and pursuant to its natural characteristics it corresponds to this function.

Auxiliary property may not be considered to be an appurtenance contrary to the clearly expressed intention of the owner.

The connection of auxiliary property that determines its belonging to the principal shall not, without fail, be that both properties must be directly, closely, or physically attached; it is sufficient for such belonging that there exists between them any other permanent connection.

An external connection only between two properties or the determination by the owner in accordance with his or her volition that one property is for the other, does not make either of the properties an appurtenance of the other. On the contrary, in every case the co-existence of all the conditions set out in Paragraph one of this Section it necessary.

858. Auxiliary property, after it is separated from the principal property, shall not be the appurtenance of the latter only if together therewith the intention to terminate its function to serve the principal is expressly stated or expressed by indisputable action. The character of the appurtenance does not cease with the temporary separation of the property alone.

859. A property shall be considered to be an appurtenance of a building, where it is intended, not for the purpose of serving only the personal or business objectives of the owner, but to be permanently connected to the building, making it, according to its character, more useful and pleasing.

That which the owner of the building has acquired for the objectives set out in this Section, but which has not yet been used for this objective, is not an appurtenance of the building. This provision also applies to construction materials.

860. Tools and machinery which are necessary for production, as well as products still in process, shall be considered to be appurtenances of an industrial undertaking; but neither delivered raw materials nor already finished products intended for sale are required to be included with appurtenances.

861. So-called inventory, i.e. agricultural tools, seed and livestock, shall not be considered as appurtenances of a parcel of rural land, but the manure, straw and stores of feed for livestock necessary for farming shall be included in appurtenances of a parcel of rural land.

The inventory of a ship shall not include the food stores of the ship.

862. Documents, maps and plans which pertain to the acquisition and possession of immovable property, or the construction of buildings or ships shall be the appurtenances of such property or ship.

Note. In the sale of a ship to aliens, ship documents shall be dealt with according to the Ship Mortgage and Maritime Claims Law.

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V. Encumbrances and Expenditures

863. Any person who enjoys or wishes to enjoy the benefits of a property, shall also bear the duties associated with this property, as well as expenditures incurred by a third party for this property or on its behalf.

864. The owner of a property shall bear all charges encumbering it and other encumbrances thereon.

865. Expenditures made on behalf of a property are either necessary, by which its very existence is maintained or protected from total destruction, collapse or devastation; or useful, which improve the property, namely, increase the income from it; or, finally, enhancement expenditures, which make it only more convenient, pleasing or more attractive.

866. Necessary expenditures shall be reimbursed to every one who has made them, except for a person who has acquired the property by criminal means.

867. Useful expenditures shall be reimbursed to persons who have, in good faith, administered the property of another as if it were their own, provided they have not yet received reimbursement, having received income from this property, which shall be set off in such cases. These expenditures shall be reimbursed only to the extent that they have increased the value of the property. However, if the increase exceeds the amount of the expenditure itself, only these expenditures may be recovered.

If the amount of the reimbursable useful expenditures is not commensurate with the means of persons for whose property they are made, or if the payment of the reimbursement will place too large a burden on such persons, they may not be compelled to reimburse them; but, in such case, the opposing party may remove from the property of the other person all the improvements done to it, to the extent possible without the property being damaged.

Persons who, without acting in good faith, incur necessary expenditures in regard to the property of another person, may not request that these be reimbursed, but may remove their improvements, if that is advantageous to them and if it can be done without the principal property being damaged.

868. Persons who, without being assigned to do it, incur enhancement expenditures in regard to another person's property, may not request that such expenditures be reimbursed, but they may similarly remove their enhancements, if that is advantageous to them and if it can be done without causing injury to the principal property.

869. Expenditures incurred by a third person, not in regard to the property itself, but in regard to the fruits of the property and the production, harvest and storage thereof, shall be borne or be reimbursed by those who have received these fruits, to such extent as they have benefited from them.

SUB-CHAPTER 3
Division of Property on the Basis of its Value

870. Property may be evaluated in accordance with its normal value in general use, or in accordance with its value determined by its special significance to its possessor or his or her

personal inclinations. Accordingly, the value of property may be normal, or special, or based upon personal inclinations.

871. Normal value is determined on the basis of the benefit which the property of itself may give to any possessors thereof, independently of their personal relationship.

872. Special value is determined on the basis of the special benefit which the possessor of the property gains therefrom in connection with their personal relationship.

873. Value based on personal inclinations depends upon the preference that the possessors of a property attribute to it either due to its uniqueness or due to their special relationship with it, independently of the benefit which it of itself provides.

874. If the law, in referring to the value of property, does not further describe such, then it shall always be understood to be normal value (Section 871).

CHAPTER 2
Possession

SUB-CHAPTER 1
General Provisions

875. Possession is actual control conforming with rights. The object of possession may be property in its narrower meaning - i.e. tangibles - or it may be intangible property - i.e., rights.

876. Possession of property is actual control over property conforming to ownership rights.

It exists where tangible property is actually under the total control of a person and, in addition thereto, this person demonstrates an intention to act with the property similarly as would an owner.

Persons under whose control property actually is, but who acknowledge another person as the owner thereof, shall be deemed, even though having the right to hold it under their control, not as the lawful possessor of the property, but only as the holder or actual possessor thereof and the substitute for the owner in possession.

Note. A holder or actual possessor has the right to require that possession which has been interrupted be renewed.

877. Only such rights are capable of being possessed as are capable of being used long term or repeatedly.

In compliance with this provision, any right is capable of being possessed, if it is in fact feasible to use it according to one's own discretion, and to bar other persons therefrom, and if it is actually used for one's own benefit.

SUB-CHAPTER 2
Acquiring Possession

878. One and the same property may not, at one and the same tune, be in the possession of several persons so that each one of them possesses the whole property.

Several persons may so jointly possess one and the same property that each of them, without in fact dividing such property, possesses a undivided share of it.

One person may possess the property itself while another, at the same time, possesses some right to it

Note. Restrictions on the acquisition, possession and use of immovable property shall be set out in a separate law.

879. In order to acquire possession of tangible property it is necessary, firstly, to assume control of it, i.e. to perform such physical action as by which the persons wishing to acquire possession so subject such property to their physical control that they alone may, at their discretion, affect it, but secondly, that there be associated with the assumption of control the intention to retain the property as theirs.

880. Whether the basis of assuming control of, and intention to retain property is or is not legal, does not affect the acquisition of possession.

881. Control of property can be assumed without coming in direct physical contact with it.

882. Assumption of control of immovable property takes place not only in an instance where the acquirer enters thereon, but also where this is just indicated by the transferor, if together therewith there are no natural impediments to entry into such immovable property.

883. Assumption of control of moveable property shall be deemed to have taken place:

1) when a person who wishes to acquire possession of the property, receives it in his or her hands;

2) when it comes to be within the person's traps or nets;

3) when the person places a guard over it;

4) when, at the order of the person, it is transferred to another person - his or her substitute;

5) when it is carried to premises occupied by the acquirer;

6) when the acquirer has been given the keys to premises in which the property is located; or

7) when he or she put a notice on property which is no longer in the possession of another.

884. Animals which are critically wounded, but still hunted, as well as game in fenced forests and fish in ponds are not yet in possession.

885. The possessor of a parcel of land becomes the possessor of property concealed on it only after it has been found.

886. If property is already under the control of a person, then he or she shall acquire possession simply by his or her intention to possess it as his or her own (Section 879).

887. In order to acquire control through a substitute, the latter has to take the property under his or her control with the intention of acquiring possession of it not for himself or herself but for the person whom he or she is substituting for. But, if some one transfers property to the substitute of a known person with the direct intent of it being transferred further to the person being substituted for, then the latter acquires possession even if his or her substitute had the

intention to acquire it for himself or herself or for some other person.

888. In order to acquire possession through a substitute, it is necessary that the person being substituted for actually has such intention and, therefore, he or she do not become possessors if he or she do not know anything about the assuming of control of the property, i.e., he or she have not actually assigned this to be done or have not confirmed at a later date the assumption of control that has already taken place.

889. The provisions of the previous Section (888) do not apply to persons who are incapable of expressing their intent; their substitute may acquire possession on behalf of such person even without their knowledge and intent.

890. A person who possesses property in his or her own name may also commence to possess it according to his or her own discretion as the substitute for another person, albeit the latter has not taken it under his or her control.

891. In order to acquire possession of rights, similarly to acquisition of possession of property, physical control is necessary, manifested in the actual exercise in fact of the rights to be acquired, and the intention to exercise such control as one's right.

892. A right may not be exercised in secret, by force, by fraud or against a person who is incapable of expressing his or her intent.

893. In order to acquire possession it is not required that the acquirer has a genuine right to it.

894. Albeit a person only exercises rights once, that is sufficient for him or her to acquire possession of such rights.

895. Possession of a right may also be acquired through a substitute, if he or she exercise the right on behalf of the acquirer.

Additionally, the provisions of Sections 888 - 890 are also applicable regarding this.

SUB-CHAPTER 3
Continuation and Termination of Possession

896. Each instance of possession acquired regarding a property continues so long as physical control over the property and an intention to retain it as one's own exists. As soon as both or even one of these conditions cease to exist, possession also terminates.

897. As acquisition of possession requires twofold action (Section 879) so also does the termination of possession require such action as is contrary to one or other of the conditions regarding acquisition and continuation of possession.

898. As a result of absence of physical control, possession of moveable property is terminated:

1) when another person assumes control of the property, albeit by force or in secret;
2) when the possessor has lost the property and cannot find it; and
3) when the possessor cannot access it.

899. Possession is terminated regarding domestic animals when they have gone astray and no longer return; wildlife, when they escape to freedom from the hands of the possessor; but tame animals, when they lose the habit of returning home.

900. Possession of immovable property is terminated when the possessor has lost control over it either due to natural force or by being dispossessed by another person.

To be dispossessed from possession, it is not sufficient only that someone assumes control of the immovable property; rather it is required that the previous possessor, upon learning that the taking away of control has occurred, does not take any steps against such, or has tried, without success, to renew his or her control of the property.

901. In order to continue possession it is not necessary to constantly and repeatedly demonstrate an intent to retain a property as *one's* own; but, in order to terminate possession it is necessary to demonstrate a contrary intention with a directly expressed or an implicitly made renunciation.

If the possessor of an immovable property fails to use it, it does not result therefrom that they have renounced possession, so long as his or her intention to renounce it is not yet clearly evident from other circumstances.

Persons who lack capacity in regard to the exercise of their volition may not renounce possession.

902. Possession may not only be acquired, but may also be continued or terminated through a substitute.

903. Possession may also be lost in favour of the possessor's substitute himself or herself; however, possession is not lost only due to the substitute expressing his or her intention, but in addition, his or her physical action is necessary, which is demonstrated in relation to moveable property through the hiding thereof with the intent of appropriating it, but in relation to immovable property through the dispossession of the previous possessor by force.

904. Possession is lost by the substitute of a possessor in all those cases in which the possessor himself or herself would lose it, namely, regarding moveable property, when the substitute of the possessor loses such property or transfers it to another, or when it is taken from the substitute for the purpose of misappropriation.

905. The possessor loses possession over immovable property when his or her substitute is dispossessed by force. But if another person has assumed control of the property only due to the negligence or acts in bad faith of the substitute, then possession by the previous possessor is terminated only when the previous possessor, upon being informed that control has been taken away, does not take appropriate steps to dispossess the person who took away control, or his or her attempt to do so is not successful.

906. Possession through a substitute is not terminated when the substitute of the possessor transfers the property into the hands of another person, or dies, or becomes mentally ill, or abandons the property so that some other person assumes control of it.

907. Possessors who themselves are dispossessed by force, do not lose possession if their substitute retains possession of the property.

908. In order to continue the possession of a right, it is not necessary to constantly express

one's intention to possess it, nor to constantly exercise it. However, such possession is lost if the possessor never exercises the right during the whole of the lawful prescriptive period.

Possession of a right is also lost when a possessor renounces it, irrespective whether expressly or implicitly.

SUB-CHAPTER 4
Forms of Possession

909. Possession of property or of a right is either legal or illegal.

All possession acquired by force or in secret from persons from whom an objection could be expected, is illegal.

Persons merely holding the property of other persons can not convert such holding into legal possession by expressing the intention to possess the property as if it were one's own.

910. Possession is in good faith or it is in bad faith. Possessors in good faith are those who are convinced that no other person has a greater right to possess the property than they, but possessors in bad faith are those who know that they do not have the right to possess the property or that some other person has greater right in this respect than they.

SUB-CHAPTER 5
Rights Arising from Possession

911. From possession arises the right to protect existing possession and to renew possession that has been taken away. These rights are associated with every possession independently of whether it is legal or illegal, in good faith or in bad faith.

I. Protection of Existing Possession

912. Every possession shall be protected by law.

913. Every person may protect his or her possession from any restriction or interference, even by force, provided that it is used without delay and within the limits permitted by law for justified self-defence.

914. Possession is interfered with when some person attempts to appropriate property, or part thereof, or a right, or hinders possessors from using their possession, as also takes place where there are threats that may cause well-founded concern.

915. Where possessors prove that there has been such interference and they have maintained possession, they may claim from a court not only protection for their possession, but also compensation for losses caused them through interference with their possession.

916. A court, whose protection a possessor is seeking, may, in its discretion, require from the defendant a guarantee that such defendant will henceforth no longer interfere with possession.

917. If a defendant proves that the plaintiff has illegally acquired possession from the defendant himself or herself (Section 909, Paragraph two), the complaint of the plaintiff shall

be dismissed. However, an objection by the defendant that the plaintiff has acquired possession unlawfully from a third person is not required to be upheld.

918. Every possession shall be deemed legal and in good faith, so long as it is not proved otherwise.

919. If two persons claim at the same time, that they both possess one and the same property, and both cite some action on which they base their still continuing possession, then the possession of the person who proves that he or she is presently in legal possession (Section 909, Paragraph two) shall be protected. But, if it cannot be satisfactorily established on the basis of the averments of each of the parties as to which party is presently in legal possession, the possession which is longer-subsisting, or founded on a legal basis, shall be preferred.

II. Renewal of Possession Taken Away

920. Possession of property or of a right is taken away when the possessor thereof is dispossessed by force.

921. A court shall, without delay, restore possession of property or of rights taken away by force or by the possessor being dispossessed, as soon as victims prove that they had such possession and were dispossessed therefrom. The possession shall be restored irrespective of the wishes of the committers of the acts of force to prove their ownership rights or on the basis of any other objections by them, as do not relate directly to possession and the fact of it being taken away, or are not mentioned in the first sentence of Section **917.**

922. Persons having taken possession away by force, except in a case referred to in the first sentence of Section 917, may not rely on the fact that possessors, against whom they have committed unlawful acts, themselves had illegal possession. Possession, the legality of which is contested, shall be protected so long as it has not been proved and a court has not found that the rights presented against it prevail.

923. No ownership action shall be accepted from a person who has taken away possession by force, so long as the person dispossessed has not been restored thereto and not received compensation for all losses and expenditures.

924. An action to restore possession that has been taken away may be brought not only against the person who has taken it away by force, but also against any third party who retains such property or right taken away, knowing of the act of force that has taken place.

925. An action regarding interference with or taking away of possession may be brought within a period of one year, after the expiration of which the right to bring an action is terminated by prescription.

926. In cases where possession is taken away secretly, or the possessor is absent, the one year period shall be calculated from the time when the possessor becomes informed of the taking away of possession.

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CHAPTER 3
Ownership

SUB-CHAPTER 1
General Provisions

927. Ownership is the full right of control over property, i.e., the right to possess and use it, obtain all possible benefit from it, dispose of it and, in accordance with prescribed procedures, claim its return from any third person by way of an ownership action.

928. Although ownership may, pursuant to private volition, as well as pursuant to law, be restricted in various ways, nevertheless, all such restrictions shall be construed in their narrowest meaning and, in case of uncertainty, it shall always be presumed that ownership is not restricted.

929. The subject-matter of ownership may be anything that is not specifically withdrawn from general circulation by law.

SUB-CHAPTER 2
Acquisition of Ownership

I. Acquisition of Ownership by Appropriation

1. General Provisions

930. Ownership may be acquired by appropriation only of ownerless property and only in those cases where the taking of control over the property is directly associated with the intention to acquire ownership of it.

Note. Ownerless immovable property shall belong to the State.

931. The subject of appropriation may be:

1) ownerless live things, especially wild animals; and

2) inanimate movable things which have not yet belonged to anyone, or which have been abandoned, lost or hidden by their owner, as well as concealed property.

2. Catching of Animals

932. Animals which are still naturally in the wild become the property of those who catch or kill them insofar as the law does not provide otherwise. The wounding of an animal, without control of it being obtained, does not constitute appropriation.

933. A captured wild animal, if it escapes to the wild anew, shall be considered an ownerless animal again, but only in those cases where it disappears totally from the view of its pursuing owner or, even though the owner is still able to see it, the animal is so far away that it is not possible to pursue it.

Wild animals which are caught and locked up in cages, fishing traps, and like receptacles from which they are unable to escape, can not be the subject of appropriation.

Wild animals, which after their capture have been tamed and have become accustomed

to certain places, even though they roam free, shall remain owned by the person who caught them as long as they do not lose their habit of returning home.

934. Domestic animals shall not be considered as ownerless animals even if they run away or get lost The appropriator of such animals does not acquire a right of ownership in regard to them; the same also applies in regard to tamed wild animals.

935. Acquisition of the right of ownership of a caught or killed wild animal does not depend on whether it has been caught, or killed on one's own land or on the land of another.

A landowner has the right to prohibit the catching or hunting of animals by any other person within the boundaries of the land belonging to him or her and, if the prohibition is not complied with, claim compensation from a trespasser.

936. The right of ownership of a colony of bees living in the wild belongs to the owner of the land on which the colony is found.

937. The owner of the bees also has the right to follow his or her swarm on to the land of another person, moreover he or she shall compensate the owner of the land for any damage caused.

The owner of a swarm loses the right of ownership of a flying swarm if the owner does not pursue it and within 24 hours after the swarm has landed declare his or her ownership rights to the person who has been the recipient of the swarm or who manages the land on which the swarm has landed.

938. If a swarm settles in another person's bee-hive in which there are bees, the owner of the swarm loses his or her rights to it.

939. The right to bring an action regarding ownership rights to a flying swarm is extinguished through prescription after one month, calculated from the day of swarming.

3. Finding of Property

940. Ownership of moveable property, where the property has previously not been owned by anyone, accrues to those who find and take control thereof.

Note. The right of prohibition granted to a landowner (Section 935, Paragraph two) also applies in this case.

941. Ownership of moveable property, where the former owner has relinquished the property through express declaration or abandonment, accrues to the finder thereof.

942. Property which the owner, compelled by external circumstances, releases from his or her control shall not be considered to be abandoned.

943. Property shall be deemed lost, where persons who have lost it do not know where to search for it, from whom to claim it, or by what procedure they can regain possession of it.

944. Finders of lost property, provided they know the person who has lost it, shall return it to the latter, receiving from him or her an appropriate finder's fee (Section 948).

Notification of the finding of property that constitutes military equipment shall be

given to the nearest military authorities.

945. If a finder of property does not know who has lost it, he or she shall report his or her find to the nearest police station within one week from the day of finding it.

946. If found property is such as may deteriorate or decrease in value if kept for an extended period, the police shall, without delay, sell it at auction, and keep the money received in order to give it to the person who lost the property.

947. If, pursuant to advertisement by the police, owners of found property or persons who have lost it attend and prove their right to it, the property itself or the money received from it shall be given to them, after receiving from them or deducting expenses incurred for maintaining the property and for advertising, as well as the finder's fee due the finder. (Section 948).

948. If a finder, upon handing over the property (Section 944) or notifying the police of the find (Section 945), has claimed a finder's fee, such fee shall be determined by a court in its discretion, but shall not exceed one third of the value of the found property after deduction of expenses, unless the person who lost the property has publicly offered a greater sum, or voluntarily reached an agreement with the finder.

949. If the owner does not attend within six months of the date of the advertisement by the police, ownership of found property or money received from the sale thereof (Section 946) accrues to finders, with the proviso that storage and other expenses shall be imposed on them.

950. The provisions regarding found property (Sections 944-949) also apply to property saved from destruction.

951. If property found buried in the ground, immured or in any other way hidden, is such as may not, however, be considered to be concealed property (Section 952), the same provisions apply as regarding found property.

If an owner proves that he or she knew the place where found property was hidden, he or she do not have a duty to pay a finder's fee.

952. Concealed property means all valuable property buried in the earth, immured or in any other way concealed, whose owner due to the length of time elapsed is no longer able to be known.

Ownership of concealed property discovered on one's own land or on ownerless land accrues to the finder.

953. It is prohibited to search for concealed property on the land of another person. Those who act contrary to this provision, shall not acquire any of or anything from the concealed property they have found, and all such property shall belong to the person who owns the land.

Those who accidentally find concealed property on the land of another person shall acquire half thereof but the other half accrues to the owner of the land.

954. Where money or other valuable property for which an owner is unable to be ascertained, are found in movable property which is not buried or immured nor concealed in some other way, the provisions of Sections 952 and 953 do not apply, and the provisions regarding finding hidden property apply (Section 951).

II. Acquiring Ownership of the Fruits of Property

955. The owner of principal property also becomes the owner of the fruits thereof as soon as they appear.

956. Where persons have the right to use another person's property, the fruits of the property, as soon as they are separated, accrue to such persons, provided that at the time of separation they possess or hold the property.

957. Where persons have the right to use another person's property, the industrial fruits from the property, from the time when the work necessary for their production is complete, accrue to such persons.

958. Civil fruits of property of another person shall be obtained by persons having the right to use such property, from the time of commencement of the term for payment therefor. If the civil fruits by their nature accrue every year continuously, but the right of use terminates before the expiration of the year, such civil fruits shall be distributed between the users and those who have assigned the right to use the fruits to them, in proportion to the period such right continues during the last year of use.

959. A possessor in good faith of another person's property shall acquire its fruits at the time of separation of the fruits from the principal property, irrespective of the procedure by which they have been separated and who, except for the owner, has separated them.

III. Acquisition of Ownership by Augmentation

1. Joining of One Parcel of Land to Another

960. Augmentation by joining one parcel of land to another may arise by: formation of an island in a river, the alteration of a river bed or alluvial deposit.

961. An island, formed in a lake or a river and closely attached to the lake or river bed, belongs to the person who owns the lake or the river or the relevant part of the lake or the river.

How large a part of an island belongs to each of the owners of the opposite banks of a private river is determined according to a line drawn along the middle of the river between the water-lines of both banks at normal water level. If the island does not extend beyond this line, the whole island belongs to the owner of the nearest bank, but if the line stretches across the island, it shall be considered the boundary according to which the parts belonging to the owners of the opposite banks are determined.

962. If a river leaves its former bed and takes a new course, its abandoned bed belongs to those who own the land along the river bank, in proportion to the distance the land belonging to each stretches along the banks and to the median line of the river bed between both banks at normal water level.

The owners of the abandoned bed, within a year's time after such changes have occurred, have the right, at their own expense, to commence work for restoration of the earlier situation.

The provisions of Paragraph one of this Section are also applicable where the river

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returns to its former bed: its newly abandoned bed shall belong to those whose land is adjacent to it, proportionate to the distance these lands stretch along the bank and irrespective of whom this bed belonged to previously.

963. Flooding does not alter ownership rights and after the water has abated, the land that was beneath it shall be retained by the former owner.

964. If a river, in tearing out its bank, forms a new branch which in its further course rejoins the main river again, the island formed thereby from the land washed against by these two rivers shall be retained by its former owner.

965. Augmentations of banks or islands, which have been formed by the gradual alluvial deposit of land or the natural or artificial lowering of water levels belong to the owners of the banks or islands and together therewith their ownership boundaries shall be determined in accordance with Section 961.

966. Pieces of land, which are torn away from one parcel and brought onto another by a current or other natural force, belong with the latter only from that time when the piece of land has been firmly joined to it.

967. In the cases set out in Sections 962 and 965, a person who has suffered losses has no rights to any kind of compensation. However, in the case set out in Section 966, where a firm joining has been established between the torn-away piece of land and the land of another person, the former owner has a right to claim, within two years' time, compensation from the new owner in proportion to the extent the latter has been enriched by such augmentation.

2. Erection of Buildings

968. A building erected on land and firmly attached to it shall be recognised as part thereof.

969. A person who has knowingly erected a permanent building on another person's land may claim compensation for it only to the extent that this building falls within the category of necessary expenditures (Section 865); but if the building belongs to the category of useful or enhancement expenditures, its erector only has the right to remove it, in compliance with the restrictions referred to in Section 867, Paragraph three and Section 868.

If in such case the erector of the building has special legal relations with the landowner - as user, lessee, etc. - in place of this Section, the provisions provided for in regard to the aforementioned legal relations are applicable.

970. Persons who have erected a building on another person's land through excusable mistake may, when the landowner claims the land from them, not comply with this claim until they receive compensation for their building. Compensation may be claimed only for those buildings that are to be considered necessary expenditures, but, if the building belongs to the category of useful expenditures or the category of enhancement expenditures, the provisions set out in Section 867, Paragraphs one and two and Section 868 are applicable accordingly.

971. Where landowners in good faith utilise another person's materials for some structures on their own land, then, even though these become their property, they shall reimburse the former owner for the costs of the materials to the extent they have enriched themselves from them; but, if the landowner has utilised the materials in bad faith they shall reimburse all

losses caused to the former owner.

972. In regard to persons who erect a structure on another person's land from the materials of another, relations with the landowner shall be decided in accordance with the provisions of Sections 969 and 970, and with the owner of the materials in accordance with the provisions of Section 971.

3. Sowing and Planting

973. Trees and other plants which are transplanted to the land of another belong to the owner thereof from the time they become rooted in this land.

If such plants are again separated from the ground, they do not belong to the earlier owner, but are retained by the person who owns the land; but if they are planted anew, they become the property of the owner of the new land from the time they become rooted.

974. A tree growing on the boundaries of several parcels of land belongs jointly to those neighbours from whose land the tree grows, to each in proportion to the extent the tree stands or stretches its branches over their land. However, where, after separating such a tree from the land, it is not possible to determine the earlier ownership of its respective parts, it shall belong to all the mentioned neighbours in equal undivided shares.

975. A tree growing on the very boundary shall belong to the person on whose land the tree-trunk emerges from the ground, even though its roots stretch into the land of the person's neighbours. These neighbours have no right to cut the mentioned roots, but if the roots cause damage to their land, they may claim compensation from the owner of the tree.

976. Sown seed is owned by the person who owns the seeded land.

977. Where landowners in good faith seed their land with the seeds of another person or plant their land with the plants of another person, thus depriving the earlier owners of their property (Sections 973 and 976), they shall compensate the latter for the value of the seeds or plants to the extent they have enriched themselves from them. However, if they have sown the seeds or planted the plants in bad faith, they shall compensate for all of the losses they have caused, in full.

978. A person who, while not being a lessee, user, etc., sows or plants the land of another person may, if they have done it in good faith, claim compensation from the owner of the land for the necessary and useful expenditure they have incurred towards obtaining fruits.

979. A person who sows or plants the land of another person in bad faith, shall lose their work and seed in favour of the owner of the land, and may not claim any compensation therefor.

4. Augmentation by Joining Movable Property and Processing Property of Another

980. If items of movable property belonging to various owners are through some process, pursuant to mutual agreement or by chance, joined together, and there is no special arrangement between the participants, then the new property created through such process shall be the joint property of all of them, held in undivided shares, which correspond to the value of each separate, joined property.

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981. If items of movable property belonging to two owners are joined by one of them without the knowledge and intent of the other, and it is possible to again separate them and restore them to their former form, this shall be done at the expense of the person at fault and no changes with respect to ownership rights shall result therefrom.

982. If separation is not possible or the materials of another person have been processed without the knowledge or wish of their owner, where the joining and processing is done in bad faith the owners of the property joined or processed may, without a duty to compensate for property of other persons put into the new property or for work done, claim either the new property as their property or, leaving ownership to the party at fault, claim payment of an amount equivalent to the highest price existing for their property from the day it was taken until the day such compensation was adjudged them, and in addition thereto, compensation for all losses.

983. If the joining of property to the property of another person has been done in good faith and carried out without artistic or skilled work, ownership of the property thereby created shall accrue to the person who has made it, provided that their own materials added thereto are manifestly more valuable than those of the other person. But at the choice of the owner of the materials, they shall be obliged to either return an equal amount of materials of the same kind and quality, or pay such price for these materials as was the highest regarding them at the time when the joining took place, and, in addition, to compensate the owner of the materials regarding losses occasioned to such owner.

984. If, in the cases regarding joining referred to in Section 983, the materials of the joiner are not evidently more valuable, the person whose rights are affected may either leave the new property with the person who has processed it for the compensation specified in Section 983 or keep it himself or herself. In the latter case, the person who did the joining has the right to claim for the normal value of the materials he or she have joined to the extent the materials of the other have actually been improved thereby.

985. If, through the artistic or skilful processing in good faith of the materials of another person, something new has been created, such that the materials used in the composition thereof have lost their former and acquired a new form, then, irrespective of whether the materials of the other person can or cannot be separated from it, such new thing shall, in all cases, become the property of the processor, but subject to the duty to provide compensation on the basis of Section 983 to the owner of such other person's materials.

986. Where a person has joined or processed materials belonging to several persons, the provisions of Sections 980-985 shall also apply. When the participants have the right, as they may choose, to either keep the new thing or in place thereof to receive compensation for the materials, the issue shall be decided by a majority vote, in proportion to the amount of the materials each of them own or, if this is not possible, by drawing lots.

IV. Acquisition of Ownership Pursuant to Delivery

987. The alienation of a property by its owner is not of itself sufficient for the right of ownership in the property to pass to its acquirer, if in addition to this, another mandatory provision is not complied with, namely, the delivery of such property to the new acquirer.

Upon delivery, the new acquirer acquires the rights of ownership in the property to the same extent as they belonged to the transferor of the property.

988. Only a person who has the right to alienate the property being transferred, in his or her own or in the name of another person, and together therewith an intention to transfer the property to the ownership of another, may deliver it.

The acquirer requires the capacity and the intention to acquire ownership of the property for himself or herself or for another person.

989. In order for the delivery to be valid, a legal basis is required therefor as is actually intended to transfer ownership, and the legal transaction upon which the passing of ownership is based must be such as is not prohibited by law.

990. The delivery of possession of moveable property shall be done pursuant to provisions set out for the acquisition of possession in those cases where it passes to another person with the consent of the previous possessor (Sections 881 and 883).

The delivery of goods warehouses and stocks of goods shall be done not only by enumerating, measuring and weighing goods, but also by the delivery of keys, accounts, bills of lading, trademarks, etc., if together therewith the transferor expresses the intention to transfer their ownership, and the recipient to acquire it.

Goods or any other property with the mark of the acquirer thereon shall be deemed to have been delivered and to have passed into the ownership of the acquirer, so long as the contrary has not been proven.

991. Where property is already in the possession of the acquirer thereof, it shall suffice that there be appropriate notification from the previous owner, in order that the property pass into the ownership of the acquirer.

992. It is not necessary that there be delivery in regard to immovable property.

993. The delivery of immovable property does not of itself establish the ownership rights of the acquirer of the immovable property; these shall be acquired only on the basis of legal acquisition and the registration of a completed deed thereof in the Land Register.

Any alienation of immovable property, and in general also any change in the owners thereof, must be registered in the Land Register.

Similarly, each immovable property, which is not an appurtenance to another such property, must be registered in the name of the new owner as a new mortgageable parcel.

994. Only such persons shall be recognised to be the owners of immovable property, as are registered in the Land Register as such owners.

Until registration in the Land Register, acquirers of immovable property shall not have any rights against third parties, they may not use any of the priority rights associated with ownership, and they must recognise as valid any acts pertaining to such immovable property by the person who is indicated, pursuant to the Land Register, as the owner of such property. However, they have the right, not only to request compensation for all acts done in bad faith by the earlier owner pertaining to the immovable property, but also to request that the latter take all the appropriate steps to register the passing of the immovable property in the Land Register (Section 993, Paragraph one).

995. A person's being put into possession of acquired immovable property, as may be done by a court, shall not be a necessary condition for the acquisition of the ownership of such property, and accordingly such being put into possession shall take place only if the acquirer

definitely wishes it, particularly if alienation of the immovable property has taken place contrary to the intent of the previous owner.

996. Delivery effected under mistake regarding the deliverable property itself or the ownership rights of the transferor to such, shall not establish the passing of ownership.

If some other mistake has occurred, ownership shall still be considered to have passed, but return of the transferred object may be reclaimed through an action *in personām.*

997. Delivery may also be done with a suspensive condition; in such case, ownership passes to the acquirer only after the condition has come into effect.

The legal basis of the acquisition shall be registered in the Land Register only after the condition has come into effect.

V. Acquisition of Property Through Prescription

998. Ownership of a property may be acquired through prescription, if the acquirer has possessed it as his or her own for the period prescribed by law, and other applicable conditions of law are complied with.

999. In order that possession may establish ownership through prescription, the following are required:

1) subject-matter that may be acquired through prescription (Sections 1000 - 1005);
2) a legal basis (Sections 1006 - 1012);
3) good faith on the part of the possessor (Sections 1013 -1017);
4) uninterrupted possession (Sections 1018 -1022);
5) the elapse of the prescribed period (Sections 1023 and 1024); and
6) that the owner of the property be legally able to exercise their right to the property (Sections 1025-1029).

1. Subject-matter that May be Acquired Through Prescription

1000. Ownership through prescription may not be acquired of subject-matter as cannot be privately owned.

Provisions regarding prescription are also applicable to property as belongs to the State.

1001. Property, things or interests, which the law absolutely prohibits the alienation of, may not be acquired through prescription.

1002. If alienation is prohibited only by order of a relevant authority or directions of a private person, then such prohibitions shall avert prescription only in those cases where they apply to immovable property and are registered in the Land Register.

1003. Ownership may not be acquired through prescription for property obtained by criminal means, neither by the committer of the criminal offence, nor by a third person whose rights are obtained by alienation thereof from the committer. This restriction regarding prescription shall terminate only after such property is returned to the control of its owner.

1004. Where a dispute arises regarding boundaries, the right to ownership of disputed land may not be proved solely by the fact that it has been possessed for all of the time stipulated

for a prescriptive period.

1005. In cases where a claim against a third party regarding the return of movable property is already not allowable due to some other reason, prescription of itself also becomes inapplicable.

2. The Legal Basis of Possession

1006. In order for possession to confer the right to acquire ownership of property through prescription, it must be founded on a legal basis such as would be capable of itself to confer ownership rights, but which, due to particular impediments in the relevant case, acquisition of ownership did not immediately ensue upon.

1007. Such bases (Section 1006) are:

1) all actions and all changes in circumstances which in themselves are one of the primary acquisition forms of ownership, appropriation and augmentation included therein;

2) all legal transactions, interpreting this to mean unilateral expressions of intent, as well as agreements whose objective is to give ownership to another person;

3) intestate succession, on the basis of which heirs may, through prescription, also acquire the property of other persons, that has come within the inheritance devolving upon such heirs; and

4) judgments of a court that have come into legal effect and according to which the acquirer is recognised as having ownership rights.

1008. Ownership of property which has been pledged, lent, or given over to bailment or usufruct may not be acquired through prescription by the creditors, borrowers, bailees or usufructuaries thereof, or by their heirs.

1009. Legal transactions which are the basis for possession (Section 1007, Clause 2) must in themselves be valid and formulated in such form as is prescribed for such transactions.

1010. The running of a prescriptive period is not impeded by a mistake of fact in a transaction, but is impeded by a mistake of law.

Mistakes which pertain to the form of the legal basis for possession shall not be an impediment to the acquisition of ownership through prescription, provided that there is in general some legal basis for such possession.

A legal basis for possession may not be substituted for by the assumption that there is such basis, if the mistaken assumption is not justified by the particular circumstances.

1011. The acquisition of ownership through prescription shall not require that the basis for possession be constantly recognised, but it is necessary that the possessor during the entire prescriptive period does not relinquish the intention to possess the property as their own.

1012. Persons who acquire possession with suspensive conditions shall obtain a valid basis for possession only after such conditions come into effect.

If property is delivered subject to a resolutory condition, the basis for possession of the acquirer is immediately valid, so that in this case prescription may also be utilised by a person who reacquires the property.

3. Possession in Good Faith

1013. In order to acquire a property through prescription, it must be possessed in good faith, i.e., not knowing of impediments, which do not allow acquiring ownership of it.

A mistake by a possessor may relate only to facts; a mistake of law does not have the effect of good faith.

If a possessor, while an impediment exists, has good cause to doubt the legality of his or her possession, he or she shall no longer be recognised as a possessor in good faith.

1014. A person who does not recognise that he or she have a right to acquire a property through prescription for himself or herself, shall not be considered a possessor in good faith even if such person is mistaken regarding the true reason that is an impediment to such prescription.

1015. In order to acquire ownership through prescription, it is not sufficient that a possessor acquire his or her possession in good faith, but it is also necessary that his or her good faith continue during the entire specified prescriptive period, and accordingly prescription is interrupted by bad faith appearing during such period.

1016. If any person acquires possession through a substitute, good faith is required of both of them, but if the possession is only continued through the substitute, then good faith shall be required only of the person being substituted for.

1017. Possession in bad faith in relation to one part of a property, is not an impediment to the possessor acquiring ownership through prescription of other parts of the property.

4. Uninterrupted Possession.

1018. In order to acquire ownership through prescription, the acquirer must, during the entire period prescribed by law, continuously and without interruption, possess the acquirable object (Section 876, Paragraph one) and act with it as would an owner.

1019. Possession required for prescription shall be considered interrupted:

1) when the possessor himself or herself renounces it, or is dispossessed from it, or loses it in some other way;

2) when persons, against whom the prescriptive period runs, in some manner use, during the prescriptive period, with the knowledge of the acquirer, their ownership rights, or if the acquirer himself or herself, in some manner, recognises such rights; and

3) when the acquirer, as a result of a court summons or a protest raised by the owner, becomes a possessor in bad faith.

1020. In the cases set out in Clauses 2 and 3 of the previous Section (1019), possession shall be considered as interrupted only as against a person who uses his or her actual or assumed right according to the procedures mentioned therein, but the prescriptive period continues to run as against third parties.

1021. If, during the prescriptive period, several persons, one after the other, have possessed the property and the person against whom the prescriptive period runs has not interrupted their possession, then the possession by a predecessor shall be to the benefit of the successor, so that the possession time periods of all such persons shall be added together.

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On the basis of this provision, a prescriptive period which has commenced for an estate-leaver shall continue in regard to his or her heirs, as well as the persons who have acquired possession through a legal transaction that is valid for a prescriptive period or persons who reacquire possession which they had, through legal procedures, transferred to another.

If a prescriptive period continues for the heirs of a possessor, the period between the opening of succession and acceptance of the inheritance shall also be added to the prescriptive period.

1022. The prescriptive period shall be calculated from the day when the person who acquires the property through prescription commences possession of it, and shall be recognised as having elapsed, when the last day of the term as stipulated by law has arrived; in addition, missing hours or minutes are not required to be taken into account

In calculating the prescriptive period, the extra day of a leap year need not be taken into account.

5. Term of Prescription

1023. In implementing the provisions of Sections 1000-1022, prescription for the acquisition of moveable property shall be considered as completed after the elapse of one year.

1024. A person who has possessed an immovable property for a ten year period in accordance with the provisions on prescription (Sections 1000-1022), who has not registered such property in his or her name in the Land Register, shall be recognised as a person who has acquired such immovable property through prescription, and has the right and the duty to request that such acquisition be registered in the Land Register in his or her own name. So long as the acquirer does not do this, he or she only have the rights provided for in Section 994, Paragraph two.

6. Legal Opportunity of Owners to Use Their Ownership Rights

1025. If there are legal impediments to the exercise by the owner of a property, against whom a prescriptive period is running, of their rights in regard to such property, then during the time such impediments exist, the prescriptive period ceases to run.

1026. Persons in regard to whom legal impediments exist are the following:

1) minors, while they are under guardianship, including in relation to their independent property;

2) a spouse during marriage as against the other spouse - in relation to the property, which on the basis of law or a marriage contract, is under the administration of the other spouse;

3) the mentally ill, while they are under trusteeship;

4) soldiers, if they are on active duty - during the entire time thereof; and persons who are absent (Section 1027) -while they are absent.

1027. A prescriptive period ceases to run for persons who are absent only in the cases set out in Section 1502.

1028. If any of the persons referred to in Section 1026 dies during the time an impediment exists, or after such time but before the term of the prescriptive period has elapsed, the time

during which the prescriptive period ceased to run shall also be added for such person's heirs, provided the latter have not been the guardian or trustee of such person and in that capacity have not belatedly interrupted the running of the prescriptive period for the benefit of the person in their care.

1029. During wartime, the running of a prescriptive period shall cease in cases provided for in Section 1898, Clause 1.

7. Proof of Prescription

1030. Persons basing the acquisition of their ownership upon prescription, must prove their possession, and the continuance thereof during all of the required period. However, if such persons prove the commencement of their possession and the continuation thereof when the prescriptive period elapsed, it shall be presumed that their possession has continued without interruption during the interim as well.

1031. Where a dispute arises, the person who has acquired ownership on the basis of a prescriptive period, must prove the legal basis of their possession; if they have proved such, then they shall also be presumed to be a possessor in good faith, so long as the contrary is not proved.

It is not required that the legal basis of acquisition be proved documentarily in every case; other methods of proof shall also be admissible.

SUB-CHAPTER 3
Termination of Ownership

1032. Ownership rights to a property are terminated by the intentional act of the owner, where the owner abandons a property without transferring it to another person, as well as where the owner transfers the ownership rights to another person.

1033. Ownership rights are terminated without the intentional act of the owner:

1) where property is destroyed;

2) where ownership passes to another person through joining or through prescription;

3) pursuant to the judgment of a court, in which property is awarded to another person, or by way of sentence, its confiscation to the benefit of the State is stipulated;

4) where ownership is acquired only for a specific period or by a resolutory condition, upon the period elapsing or the condition coming into effect;

5) in regard to an acquired wild animal - upon it escaping the supervision of its owner or losing the habit of returning home; and

6) the alienation of ownership for State or public needs, by procedures provided for by law.

1034. Upon the death of an owner, ownership rights devolve to the heirs of the owner.

1035. If a person loses those personal attributes which are required for the acquisition of certain immovable property, he or she and his or her heirs by intestacy do not, due to this circumstance, lose the immovable property as already belongs to them.

SUB-CHAPTER 4
Rights of an Owner

I. General Provisions

1036. Ownership gives full right of control over a property to the owner himself or herself alone, insofar as it is not provided that this right is subject to specific restrictions.

1037. Owners, during their lifetime and also upon their death, may alienate and give to others their ownership, as a whole or in parts, or with respect only to certain rights included in ownership.

1038. Owners may possess property belonging to them, acquire the fruits thereof, use it at their discretion for the increase of their property and, generally, use it in any manner whatsoever, even if losses are caused thereby to other persons.

1039. Owners may prohibit all others from affecting their property, as well as from using or exploiting it, even if no losses are caused the owners themselves thereby.

1040. Owners have the right to self-defence and, in relation to this, even the right to destroy the property of other persons, due to which they should fear losing their own, if it is not possible for them to otherwise avert the threatened loss.

1041. Owners may reclaim their property by an ownership action against any third party possessor. Exceptions to this provision are set out in Sections 1065 and **1066.**

II. Rights of Owners in regard to Immovable Property in General

1042. Owners of land own not only the surface thereof, but also the airspace above it, as well as the land strata below it and all minerals which are found in it.

1043. Land owners may act with their land surface, airspace above it, as well as the land strata below it according to their own discretion as long as they do not infringe upon the boundaries of other persons.

III. Ownership Actions

1044. Owners may bring an ownership action against any person who is illegally retaining their property; the objective thereof is declaration of ownership rights and in connection therewith, granting of possession.

Even a person who has a revocable right of ownership may, while it exists, require return thereof through an ownership action; but the subsequent acquirer of ownership may not bring such action while the property is in the possession of another person.

1045. An action may be brought against any person who is holding a property, not excluding therefrom persons who are holding the property on behalf of another person, but such persons may be released from the action if they name the person on whose behalf they are holding the property.

1046. A person who, while not possessing the property being claimed, nonetheless formally

defends an action, may have a judgment made against him or her as if he or she were the true possessor.

If, prior to the commencement of trial, a defendant alienates property in bad faith, in order to divert an action from himself or herself, a judgment may still be made against him or her in such action, as if he or she were still in possession of the property.

1047. In the cases set out in the previous Section (1046), it may be adjudged that the defendant pay the monetary value of the property sought to be recovered, and all losses and expenses.

1048. Where a person has in good faith possessed property of another person as may be reclaimed by the other person, but the first-mentioned person has subsequently - but prior to a judgment being rendered and without there being bad faith - lost possession thereof, he or she may not be adjudged recovery of the property.

1049. Where a person, in defending an action, is not yet in possession of property, but subsequently, prior to or during trial, acquires possession thereof, the person may, on the basis of a claim raised, be adjudged recovery of the property.

1050. The subject-matter of an action may be an individual property, or an aggregation of property that consists only of tangible property, but not such property as consists of both tangible and intangible property (Section 849, Paragraph one).

1051. A plaintiff shall describe in detail the property being reclaimed, not only according to its class and characteristics but also according to special features and, if necessary, also according to its volume and size; but in an action regarding immovable property, the plaintiff shall also describe in detail its location.

1052. In an ownership action, there shall be joined not only claims regarding the property itself, but also regarding all appurtenances of such property, including not only appurtenances within the strict meaning thereof and fruits, but also compensation for all that the plaintiff has lost as a result of possession by the defendant.

1053. The liability of a defendant to a plaintiff is diverse, having regard to whether the defendant is a possessor in good faith or in bad faith of the property. From the time when action is brought against a defendant, the defendant shall be presumed a possessor in bad faith even if he or she have until then been in possession in good faith, so that he or she are not liable only for his or her prior acts or failures to act.

1054. If the defendant is in possession in bad faith, he or she shall also be liable for unintentional destruction or damage to the disputed property and its appurtenances, provided that the same would not also have occurred to the property had it been previously delivered to the owner.

1055. For alienation of property during the time of trial, each defendant shall be liable in the same way as a possessor in bad faith. If such alienation has not been necessary, as, for example, in order to prevent damage to a property, the plaintiff need not be satisfied only with recovery of the payment received for the property, but he or she may also claim recovery of the property itself and its appurtenances (Section 1052), or for compensation for the value of the property and its appurtenances, and for all losses and expenses.

1056. If the defendant has been a possessor in bad faith, he or she shall return to the plaintiff not only all the fruits that he or she have received from the property, but also those which the plaintiff himself or herself could have received, had he or she been in possession of the property. If the defendant has been in possession of the property in good faith, he or she are only required to return such fruits as he or she have received prior to an action being brought against him or her, and also only in such amount as he or she have not yet consumed during the period prior to the bringing of the action; but he or she shall return in full fruits received after an action is brought.

1057. If the defendant does not return the property in compliance with a judgment of a court, the plaintiff may, pursuant to his or her own choice, require either that he or she be given the property itself or that he or she be paid the value thereof.

1058. Property shall be returned at the place where it is located. If the subject-matter of the court proceedings was moveable property, then a possessor in bad faith, pursuant to the requirement of the plaintiff, shall return it to where he or she acquired it, but for each possessor, to where it was at the time the action was brought, even if the defendant has thereafter arbitrarily taken it away from there. Except in such cases, a plaintiff who requests that a property be returned at a place other than where it is located, shall also bear the expenditures in connection therewith.

1059. Where necessary, a plaintiff shall prove that the defendant has possession of the property or that action can be brought against him or her as a possessor.

1060. A plaintiff must prove his or her ownership rights. For this purpose, it shall be sufficient if the plaintiffs proves that he or she actually acquired such rights through lawful procedures; thereafter, the defendant must prove that the plaintiff is no longer the owner.

If a plaintiff alleges that he or she acquired the property through delivery or inheritance from another person, then he or she must also prove that his or her predecessor was the owner of it.

1061. A defendant may have the action dismissed, if he or she prove that the ownership rights to the property belong to him or her, or that he or she are allowed to possess it on the basis of some property right or such personal right as the plaintiff must recognise.

1062. If the judgment at trial is in favour of the plaintiff, he or she shall compensate the defendant on the basis of Sections 866-869, for all expenditures made in regard to the property.

1063. Property shall be returned to its owner without compensation; even a possessor in good faith does not have the right to require that an owner provide compensation for the sum paid for the property, but may only bring such claim against the person from whom such possessor acquired it.

1064. By way of exception the defendant may demand to be compensated for the sum paid for the property:

1) where this sum has been used for the benefit of the plaintiff; or

2) where the defendant has acquired the property specifically with intent to preserve it for the claimant, in such circumstances as where the plaintiff would otherwise have lost it

forever.

1065. An ownership action may not be brought if the owner has, in good faith, entrusted a move-able property to another person, delivering it pursuant to a lending contract, bailment, pledge or otherwise, and such person has given possession thereof to some third person. In this case, there may be allowed only an action *in personām* against the person to whom the owner has entrusted his or her property, but not against a third person who is a possessor in good faith of the property.

1066. If a property which has been delivered to be processed or carried, is sold, pledged or in general alienated by the processor or the carrier to another person, the owner may bring an ownership action, paying the person who is holding the property the sum contracted for its processing or carriage.

SUB-SECTION 5
Restrictions on Ownership

I. Restrictions which Relate to Ownership in All its Scope

1067. Ownership rights which belong to several persons in respect of one and the same undivided property, not as shares divided in actuality but as undivided shares - so that only the substance of the rights is divided - are joint owner ship rights.

Where property belongs to several persons in such a way that each of them has their own determined actual share, such ownership is not joint ownership within the meaning of this Section; in this case each share shall be recognised as an independent whole and as the subject of independent ownership rights for each separate shareholder.

Ownership rights of several persons to one and the same property, such that pursuant to these ownership rights the property would belong in its entirety to each of such persons, are not valid in law.

1068. The consent of all the joint owners is required in order to act with the subject-matter of the joint ownership, either as a whole or with respect to stated individual shares and if one of them acts separately then such action not only has no effect, but also imposes a duty on the latter to compensate the others for losses caused them thereby.

No individual joint owner may, without the consent of the others, encumber the subject-matter of joint ownership with property rights, nor alienate it as a whole or in part, nor alter it in some way. Therefore, every joint owner has the right to protest against such actions by one or all the other joint owners, and this right may not be revoked by a majority vote.

An exception to these provisions may be allowed in a case where one of the joint owners makes such alterations to the subject-matter of the joint ownership as absolute necessity requires - for example, necessary repair of a building. Then such joint owner has a right to claim from the rest of the joint owners that they proportionately provide compensation for the amount expended together with interest.

1069. All the joint owners, proportionately to the share of each of them, shall receive all the benefits provide by the joint property and in the same proportion also bear the losses arising from it.

The fruits of the joint property devolve to the individual joint owners, in proportion to each of their shares in it.

1070. Divided use of a joint property shall be allowed only when such property may be divided, but also in this case the use shall be proportionate to the size of the individual shares.

Each owner of a common masonry structure shall use that side of the masonry structure which is directed toward their land, and to the extent it is possible without damaging the masonry structure itself or making any significant alterations to it.

1071. Charges on the joint property, encumbrances and expenditures necessary for the maintenance of the property shall be borne by the joint owners in proportion to their shares.

1072. Each joint owner's undivided share of a joint property belongs exclusively to such joint owner. Therefore, the joint owner is allowed to act with it in every way which conforms to its substance, as long as this action does not apply to the shares of the other joint owners. On this basis, each joint owner also has the right to alienate or pledge the share of the common property belonging to such joint owner.

1073. If any of the joint owners of an immovable property alienate his or her share to a person who is not a joint owner, then the rest of the joint owners shall have a right of first refusal (Section 2060, Paragraph two and Section 2062) for a period of two months, calculated from the date that a copy of the purchase agreement is received, but in cases where it has not been possible to exercise the right of first refusal due to the fault of the alienor - a right of pre-emption (Section 1381 and subsequent Sections).

If several joint owners apply at the same time to exercise rights of first refusal or pre-emption then they shall acquire the alienated share jointly and shall divide it among themselves in equal shares, unless they themselves agree otherwise.

Note: The rights of first refusal of joint owners of ships shall be as provided for in the provisions regarding the purchase and sale of ships, but rights of first refusal of local governments shall be as provided for in the provisions regarding the conferring upon local governments of rights of first refusal regarding immovable property and rights of use of land.

1074. None of the joint owners may be forced to remain in jointly owned property, provided that it is not provided otherwise in the provisions under which the joint ownership is established; on the contrary, each joint owner may at any time require a division.

1075. If, in a case of division as set out in Section 1074, the joint owners are not able to agree regarding the form thereof, then a court, considering the characteristics of the subject-matter to be divided and the circumstances regarding the property, shall adjudge to each of the joint owners actual shares, imposing certain servitudes, where necessary, on one share for the benefit of another share, give the whole property to one joint owner, with a duty to pay the others for their shares in money, determine that the property be sold, and the moneys received divided among the joint owners, or decide the issue by drawing lots, especially where it must be decided which of the joint owners is to keep their property themselves and which of them is to be satisfied monetarily.

Note. In dividing joint ownership, wherein is included land which is agricultural in nature and outside the administrative boundaries of cities and towns, the provisions set out in Section 741, Paragraph two, and Sections 742 and 745) are applicable.

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II. Restrictions on the Right to Alienate Ownership

1076. An owner's rights of alienation may be restricted by a prohibition provided for by law, court decision, will, or contract.

1077. Alienation carried out in contravention of lawful prohibition is invalid, except for special exceptions set out in regard to certain cases.

A relevant lawful transaction does not become invalid due to an alienation not being valid.

Such transaction, provided that the acquirer did not know of the prohibition regarding alienation, is valid to the extent it is compatible with the prohibition regarding alienation.

1078. The provisions of the preceding Section (1077) also apply to such prohibitions as have been provided for by court decision.

1079. A testamentary prohibition is valid only where the person, for whose benefit it is set out, is clearly indicated, and in such case such person, after his or her rights have come into effect, may claim property alienated in contravention of the prohibition from any possessor thereof.

1080. Alienation of property may be prohibited by agreement only where the person for whose benefit such prohibition is set out has, in addition, some interest in such property. But even then, acts in contravention give the injured party only the right to claim compensation, and the alienation itself remains valid.

1081. If the actions of an owner regarding immovable property are restricted by a court decision, by contract or by testamentary provision, then such prohibition shall be valid as against third parties only when it is recorded in the Land Register.

III. Restrictions on Rights of Use regarding Ownership

1082. Restrictions on rights of use regarding ownership may be provided for by law, by court decision or by private volition through a will or contract, and such restriction may apply not only to the granting of various property rights to other persons, but also to the case where an owner must refrain from certain rights of use, or must suffer the use of such rights by others.

Note. Various other restrictions on rights of the use of property not provided for in this Part - for example, regarding mineral water springs, the installation and operation of radio stations, air traffic, parcels of land along railway lines and excavations - shall be provided for in specific laws.

1. Restrictions on Rights of Use regarding Structures and Buildings

1083. In regard to monuments which are listed in the List of Monuments Protected by the State, the provisions regarding the protection of monuments are applicable.

1084. In order to protect the safety of the public, every owner of a structure shall maintain their structure in such condition that harm cannot result from it, to neighbours, passers-by or to users of it.

If a dispute exists concerning ownership rights regarding a structure which presents a

danger, the person who is in possession of the structure at that time shall take the necessary measures forthwith, even prior to completion of court proceedings, in order to remove this danger and such person has the right to subsequently claim compensation for expenditures.

If the owner or the possessor of the structure, contrary to a request by a relevant authority, does not remove the danger presented, then the relevant institution, conducting itself according to the circumstances, shall put the structure in order or demolish it altogether at the expense of the owner.

1085. Applicable building regulations must be complied with in altering or reconstructing an already existing structure or constructing a new structure.

1086. If a commenced structure may endanger public safety, then not only the nearest neighbour, but also the owners of more distant structures have the right to raise objections against this.

Note: The provisions of Sections 1086-1092 do not apply to rural construction.

1087. No person has the right to install on their land such industrial or trades institutions as may encumber or endanger public safety or people's health through danger of fire, noise, smell, excessive quantities of smoke, and the like. Jurisdiction to decide the issue as to whether in a certain case an encumbrance or endangerment actually exists, lies in the courts.

1088. Toilet and swill pits and manure heaps may not be installed near joint fences, masonry structures and boundaries, and shall be located at least one and a half metres from a neighbour's boundary.

Stoves and kitchens may not be installed near a joint masonry structure or one belonging to a neighbour without the neighbour's consent; this does not apply to chimneys, which nonetheless must be installed so that sparks cannot fly to a neighbour's parcel of land.

1089. Owners of land do not have the right to erect thereon installations which may cause the collapse of a structure belonging to a neighbour or give rise to some other damage thereto.

1090. If a wall or a masonry structure becomes crooked or leans over by fifty centimetres or more on to a neighbour's land, the neighbour has the right to request that it be erected anew in a straight line.

1091. The building of windows on the side of an adjoining parcel of land in walls to be newly erected may be allowed only if these walls are set back not less than four metres from the boundary, or a greater distance if local building regulations so require.

The building of windows on the side of an adjoining parcel of land in already existing walls located right beside the boundary itself or nearer than four metres from the boundary, may be allowed only with the neighbouring owner's consent registered in the Land Register, and it being ensured that these windows receive light at an angle of at least 45 degrees.

Note. This Section (1091) shall not apply to the City of Riga first masonry building district, denoted in the mandatory building regulations of the City of Riga.

1092. Boundary fences shall be erected and maintained by the neighbours jointly, and if there is no specific agreement between them, a side fence extending to the street in front shall be erected and repaired by the building owner against the front of whose building the fence

comes up against the right side of, but the other side fence, by his or her neighbour. The right and the left side in such case shall be determined, standing on the parcel of land facing toward the street

2. Restrictions on the Right of Use of Installations and Gardens

1093. If the property of some person unintentionally has come to be within the boundaries of another person, then the latter shall suffer the owner of it to take it back again. But if due to such property, loss is caused to the possessor of the land, the possessor has the right to retain the property until compensation is made for such loss.

1094. The owner of a lower standing parcel of land must suffer snow and rain water to drain naturally from a higher standing parcel of land on to his or her land, and he or she have no right to install obstructions which may hinder the natural flow of water.

The owner of the lower standing parcel of land on whose land may be found a natural obstruction to the free flow of water, must suffer that the owner of the higher standing parcel of land removes such obstruction.

1095. The owner of the higher standing parcel of land does not have the right to install or to destroy something on it which, in redirecting the flow of water from its natural course, would, harming the lower standing parcel of land, divert water from it or to it.

Where devastation takes place as a result of natural force in regard to an artificial obstruction installed on a higher standing parcel of land that impedes the flow of water down to a lower standing parcel - but not where it takes place in regard to a natural obstruction thereon - the owner of that parcel of land, on which the obstruction was located, shall suffer the owner of the lower standing parcel of land to renew it, insofar as there are no losses from it but the owner of the lower standing parcel of land has benefit therefrom.

Owners of higher standing parcels of land may either themselves use rainwater flowing across their land, or they may redirect it to the land of another person with the consent of the other person, without it being required that for such purpose they obtain the consent of such an owner of a lower standing parcel of land as does not have a right in this regard to impede them and to request for himself or herself the naturally flowing water.

1096. The provisions of the preceding Sections (1094 and 1095) apply insofar as it is not provided for otherwise in laws regarding land amelioration.

1097. Masonry structures, fences, hedges, ditches and bounders which separate adjoining parcels of land, shall belong to both neighbours jointly, as long as their condition or clear boundary-marks do not indicate that they belong to one of them alone.

1098. If a tree growing on the boundary leans over a neighbour's building, such neighbour has the right to request that the owner of the tree cut it down, but if the latter refuses, the neighbour may himself or herself cut it down and keep it.

These provisions are also applicable in those cases where wind has bent a tree across the land of a neighbour.

1099. If a tree spreads its branches over the land of a neighbour, such neighbour has the right to pick the fruits growing on it, insofar as he or she can reach these from his or her land, and he or she acquires ownership thereof, as well as of the fruits which have fallen from its branches onto his or her land. The neighbour may also request that the branches be cut back to

a height of four and a half metres from the ground, but if the owner of the tree does not do it, then he or she himself or herself may cut back the branches to the height mentioned and keep them for himself or herself.

1100. In forests and areas overgrown by bushes between parcels of land, each landowner shall install and keep cleared to a width of one meter a boundary track, in which there must be ensured visibility between two adjoining boundary markers.

A boundary track shall be installed by cutting out the trees growing on it or marking with long-lasting paint the growing trees delineating the boundary track.
[15 June 1994]

1101. Bee colonies may be placed, in rural areas at least fifteen metres, but in cities, towns or villages, at least twenty five metres from traffic routes or the land boundaries of neighbours, such distance being calculated from the centre of the hive to the edge of the road or the boundary, and if the apiary is fenced - in rural areas with at least a two metre, but in cities, towns or villages, a two and a half metre high close-set fence or hedge - the bee colonies may be placed without regard to the aforementioned distances.

3. Restrictions on the Right of Use of Water

1102. The littoral zone, as well as the lakes and rivers listed in the Annex to this Section (Annex 1) are included in public waters. All other waters are private.

1103. The list of public waters may be altered only by legislative process. If in the inclusion of private waters in those waters that are public, or in the alienation of parts of immovable property, or in the restriction of existing installations, a loss is caused to some person, then commensurate compensation is due to them from the State.

1104. Public waters are the property of the State, insofar as ownership rights of a private person do not exist in regard to them. The littoral zone shall belong to the State to that point which the highest breakers of the sea reach.

1105. The boundary of a river or lake with the land at the shore thereof shall be deemed to be the waterline at normal water level.

1106. If in regulating the water discharge of a lake the water level is reduced in the lake, the lake bed cleared of water shall belong to the person who owned the lake prior to the reduction of the water level.

1107. When waters change location, the owners of the former shores, to whom belonged the fishing rights or the right to use the water for their domestic needs, also retain such rights thereafter. The owners of the new shores shall give the former shore owners the necessary access to the water, if they no longer have such usable access within their boundaries.

1108. Not only standing but also flowing private waters which are located within the boundaries of one landowner shall belong to him or her with the right to himself or herself use them, according to his or her own discretion, but waters which extend across or adjoin the parcels of land of several owners are in the joint ownership of such owners and each of them has the right to use that part of the water, which extends across or adjoins his or her land.

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1109. The median line between the waterlines at normal water level of two riverbanks shall be deemed the ownership boundary of the opposite riverbanks, but the boundary between parcels of land lying on one river bank shall be deemed to be a line drawn perpendicularly to the median line of the river through the boundary at the point of intersection with the normal waterline.

1110. Every person shall be permitted the everyday use of the water of public rivers, insofar as this is not harmful to the public and does not infringe on the rights of landowners.

1111. The suitability of rivers and lakes for navigation or rafting of timber shall be determined and permits for their use for such purposes shall be issued by the Ministry of Finance.

Note. Detailed provisions regarding the restriction of the rights of use of waters shall be provided for in a special law.

1112. Fishing rights shall be determined by the subsequent Sections (1113-1119), as well as by the Fishery Law and other relevant provisions.

1113. Every person has fishing rights within the boundaries of his or her property and an owner may prohibit third persons, insofar as it is not otherwise prescribed by law, to fish therein.

Note. This Section does not revoke corroborated fishing rights within the boundaries of the property of another person. This note also applies to Sections 1115-1117 with a note.

1114. Fishing in littoral waters is free to every Latvian citizen, in accordance with the procedures provided for in the Fishery Law.

1115. Fishing rights in the lakes listed in the attached list to this Section (Annex II) belong, within the whole area thereof and irrespective of the limitations for lakes set out in Section 1105, exclusively to the State, except for the parts set out in the list.

1116. In joint waters (Section 1108) fishing rights belong to every shoreline owner in that part of the waters nearer to their land than that of another person.

1117. Fishing rights in public rivers belongs to every shoreline owner along their boundary in that part of the waters nearer to their land than that of another person.

Note. In rivers listed in the Annex appended to this note (Annex III*)*, fishing rights in the parts set out in the list belong only to the State.

1118. A person who owns fishing rights may use a towpath for fishing needs. More detailed provisions regarding towpaths shall be set out in a special law; where the width of a towpath is not set out, it shall be four metres.

1119. It shall be prohibited to soak hemp or flax in waters inhabited by fish; in general, these may be soaked only in soaking ponds or marshes, or by redirecting needed water from lakes and rivers, but only in such manner that it may not flow back into them again.

1120. The right of an owner of land to install installations that utilise water power shall be wholly unrestricted only in cases where a river, on which such installations are to be installed, begins within the boundaries of such land and losses cannot be caused to neighbours at the upper end by the obstruction or damming of the water.

1121. If a river flows through parcels of land owned by several landowners, then each of them may install new installations that utilise water power only if the obstruction or damming of the water cannot cause losses for the neighbours.

1122. One may not hinder the use of an already existing water-power utilisation or other installation in damming or obstructing a river which belongs jointly to several owners.

1123. In order to prevent damage to the fields of a neighbour from water raised by damming for water-power utilisation installations, the installation sluices shall, everywhere it is shown to be necessary, be left open four weeks prior and four weeks after *Jāņu* day. [St. John's day, 24 June]

When fish spawn, at each water power utilisation installation sluices shall be left open or fish paths shall be installed for their passage.

1124. Each owner may install on their land a system for supply of water from waters which flow along or through their boundaries, but, from rivers which are navigable or used for rafting or those tributaries supplying such rivers with necessary water, only to the extent that it does not harm navigation or rafting of timber.

1125. Private persons may not install systems for supply of water from those waters in regard to which a system for public water supply has been installed, or from the water conduits of such a system, without a permit from the relevant authority.

1126. A system which private persons install for supply of water from their joint waters may not be on such a large scale that due to it the water level is noticeably lowered or the direction of a river changed.

1127. The irrigation of land from the waters of a jointly owned river shall be divided among the owners of the parcels of land on the shore in proportion to the size of such parcels, so that none of the owners cause loss to the others.

4. Restrictions on the Right to Use of Forests

1128. Owners of private forests are unrestricted as to actions regarding their forests.

Note. Restrictions on the right to use forests shall be provided for in laws on the management and exploitation of forests.
[24 April 1997]

1129. Hunting rights and the utilisation of these rights shall be as determined by the Hunting Law.

CHAPTER 4
Servitudes

SUB-CHAPTER 1
General Provisions

1130. A servitude is such right in respect of the property of another as restricts ownership rights regarding it, with respect to utilisation, for the benefit of a certain person or a certain parcel of land.

1131. A servitude established for the benefit of a specific natural or legal person is a personal servitude; a servitude established for the benefit of specific immovable property, so that it is enjoyed by each successive owner, is a real servitude.

1132. If doubts arise regarding the extent of a servitude, it shall always be presumed to be to the least extent.

1133. The owner of a servient immovable property shall grant the person exercising the servitude all such ancillary rights without which it would be impossible to exercise the principal right, even if these ancillary rights result in another particular form of servitude. These ancillary rights arise and also terminate concurrently with the principal right.

1134. A servitude invariably encumbers only the property itself, but not its owner, for which reason there may not be a personal duty on the part of the owner of the property regarding a servitude.

1135. A servitude must benefit the person who uses it.

1136. Servitudes, except usufructuary rights, are indivisible rights.

1137. The actual use of a servitude may be restricted as to time, and as to its place and its form of use and therefore may also pertain to only part of an immovable property.

1138. A servitude may be possessed, through the using of the servitude right.

1139. Every person who owns a servitude right shall use it justly, together therewith conserving the ownership rights of others as much as possible.

1140. The owner of a servient property, in his or her turn, may not impose any restriction on the person using the servitude: he or she shall allow such person to do everything without which it would be impossible to successfully use the servitude right, even if it is not really the subject-matter of the servitude.

SUB-CHAPTER 2
Real Servitudes

I. General Provisions

1141. The existence of each real servitude requires two immovable properties, of which one is

encumbered for the benefit of the other; the first is subject to obligations or servient, while the second has rights or is dominant.

1142. Real servitudes may also be established so that they belong only to specific persons. Such servitudes shall be considered as personal servitudes and the provisions regarding the latter are applicable to them.

1143. Servitudes are either building or rural, depending on whether the dominant immovable property is a building (no matter whether in a rural area, city or town), or land (a field, tillable land, a meadow, a yard, a garden, and the like).

1144. Both the dominant and servient immovable property must be, *vis-a-vis* each other, in such state as where the latter can genuinely provide the former with the benefit expected from the servitude. It is not necessary, however, that their boundaries meet.

1145. Each real servitude is inseparably connected with the dominant immovable property, to the extent that it may neither be alienated separately from it, nor transferred to the use of any third person.

1146. Servient immovable property must be of benefit to the dominant property, not only unintentionally or for a period of time, but through its permanent characteristics.

1147. The extent of a servitude shall be determined by the benefit to and needs of the dominant immovable property, and accordingly the servitude may not be used beyond such extent, unless otherwise agreed in establishing it or thereafter.

1148. Upon a servitude being granted, the owner of the servient immovable property does not lose his or her right to use of the rights included in such servitude, and may even grant a similar right to several persons so long as this does not disturb the already existing servitude.

1149. Each servitude applies to all parts of both the dominant immovable property and the servient immovable property.

1150. If a servitude may, without disturbing the persons using it, be used equally as well over some part of the dominant immovable property, as over the whole property, then the owner of the latter has the right to determine a certain part of the immovable property for the use of the servitude right.

1151. If the use of a servitude requires maintenance and repair of the servient property, such shall be carried out by the person who uses the servitude.

Note. An exception to this provision is set out in Section 1175.

1152. Where a dominant immovable property is divided, the servitude continues to be held by each separate part unless prior to the division, the servitude belonged to only one of them; in the latter case the servitude also subsequently enures to it alone. A servitude belonging to such part as is more distant from the servient immovable property may also be used, if the owner of this part acquires from the owners of intervening immovable property a right of way, or some other servitude, which enables the said owner to use the previously mentioned servitude.

1153. The characteristics of the individual parts of the dominant immovable property (Section 1152) and a greater need for a servitude by one part or another need not in themselves be considered; however, all the owners of the individual parts may not jointly use a servitude to an extent exceeding that previously used by the owner of the whole immovable property, and in other respects they shall comply with the provisions of Section 1147.

1154. Where a servient immovable property is divided, the servitude to which such property is subject continues to apply to all its parts, so long as it did not apply to one individual part only prior to the division, and provided that the servitude is capable, in accordance with its nature, of being used in respect of each individual part.

II. Individual Rural Servitudes

1155. Rural servitudes to which special provisions apply are: rights of way and use of water. Other rural servitudes are subject to the general provisions for servitudes.

1. Servitude of Right of Way

1156. By means of a servitude of right of way rights may be granted: 1) to a footpath; 2) to a livestock path; and 3) to a roadway.

1157. The right to a livestock path does not confer the right of grazing livestock along it.

1158. If, in establishing a servitude of right of way, the width of the way is not stated, a footpath shall be one meter, but a livestock path or a roadway, at least four and a half meters wide.

1159. Each part of a servient parcel of land is subject to the servitude of right of way. However, unless otherwise agreed, persons exercising this servitude shall restrict themselves to one specific way, which they may choose themselves but sparingly insofar as possible.

If the servitude of right of way is established by a will without its location being described in detail, then the choice of the location and direction of the right of way devolves to the bearer of the servitude, who, moreover, may nonetheless not act in an intentionally harmful way towards the other party.

1160. In establishing a servitude of right of way, the rights included in it may, in diverse ways, be restricted.

1161. Included in servitudes of right of way is also the right of travel over waters which are on the boundaries of a neighbouring parcel of land.

2. Servitude of Right of Use of Water

1162. Servitudes of right of use of water include the servitudes of: 1) conducting water; 2) drawing water; and 3) right of watering livestock.

1163. A servitude of conducting water gives the right of conducting water to oneself from another person's spring or other water, or across another person's land, or the right of conducting water from one's own parcel of land across land of a neighbour.

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1164. A servitude of conducting water may be established even if there is no water yet on the servient parcel of land, and the right granted to persons to look for water there and afterwards, if they find a spring, to conduct it to their own parcel of land.

1165. If, in a servitude being established, the route for the conducting of water is not specified in detail, then the choice of this route is made pursuant to the provisions of Section 1159. It is prohibited, however, to direct water conduits through those places where, at the time the servitude is established, there are buildings, trees or gardens.

1166. A person who has the right to conduct water to or from land may do so only by means of pipes or ditches; but masonry ditches for this purpose may be installed only with the agreement of the bearer of the servitude.

1167. If several persons have the right of conducting water to themselves from one and the same spring, and there is insufficient water for all their needs, then the use of this servitude shall be divided proportionately among them.

1168. A servitude of drawing water gives the right of drawing water for one's own needs from another person's river, well or other reservoir.

1169. A person who has the right of drawing water, therewith has the right of a footpath.

1170. A servitude of watering gives the right to water livestock on the land of another person.

1171. A servitude of watering always also includes, joined therewith, the right to a livestock right of way.

III. Individual Servitudes of Buildings

1172. Servitudes of buildings, regarding which there are special provisions, are as follows:

1) the right of support;
2) the right of installation;
3) the right of building projection;
4) the right of drainage;
5) the right of water disposal;
6) the right of building height;
7) the right of light; and
8) the right of view.

These servitudes shall be adjudged pursuant to the general provisions for servitudes unless otherwise provided by law or determined when they are established. In addition to the aforementioned, other servitudes may be established, where one neighbour renounces in favour of another, from other restrictions which have been imposed on the latter regarding construction.

1173. There may also be established for the benefit of buildings such servitudes as, in accordance with general provisions, are to be considered rural servitudes, namely servitudes of right of way and of right of use of water.

1. Right of Support

1174. This servitude gives the right for one's building to be provided support by a wall, masonry structure, posts, or vaults belonging to a neighbour.

1175. Unless otherwise provided, the owner of a servient building shall maintain the supporting object in order and repair it.

1176. If any doubts arise as to the method of repair and nothing regarding this has been specified in establishing the servitude, this issue shall be decided according to the state the supporting object was in at the time the servitude was established.

1177. While the supporting object is under repair, the person using the servitude shall provide for the support of the building at his or her own expense.

1178. If an owner renounces ownership rights with respect to the servient building, wall or masonry structure, therewith they are released from the duty to repair such and from the servitude in general.

2. Right of Installation

1179. This servitude gives the right of installing separate beams, stones, iron bars or clamps in a wall or masonry structure of a neighbour so long as building regulations are not contravened thereby.

1180. Persons using this servitude may replace beams, stones, etc., which have become unfit, by new ones, but, may not later install such in a greater number than they were originally permitted.

3. Right of Building Projection

1181. This servitude gives the right of attaching to one's building, a construction or an extension which projects over the parcel of land of a neighbour.

4. Right of Drainage

1182. This servitude gives the right of conducting water from the roof of one's building to the parcel of land of a neighbour, by way of drip as well as through drainpipes.

1183. A person exercising this right is not allowed to cause damage to the servient parcel of land by extending their drainpipes or roof gutters and changing their direction without need.

1184. A person who must allow drainage from the building of a neighbour is not allowed to build so as to impede such, but the person who has the right of drainage may not on his or her part make any changes in his or her building or roof which would result in intensified drainage or in alterations to its initial direction.

5. Right of Water Disposal

1185. This servitude gives the right to conduct duty water to within or through the boundaries

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of another person's property.

1186. The entitled person is not allowed to use this servitude in order to conduct filth and foetid liquids. These may be conducted only through underground channels which may be installed in the land of another person only on the basis of a separate servitude.

6. Right of Building Height

1187. So long as it does not contravene building regulations, the right of building height may be established:

1) so that the person using it is permitted to erect a higher structure, to his or her neighbour's detriment, than following the general provisions would allow; or

2) so that the person using this right may prohibit his or her neighbour from erecting as high a structure as he or she could pursuant to law.

7. Right of Light

1188. A right of light may be established, granting the right:

1) to maintain windows or openings for light in the wall or masonry structure of a neighbour;

2) to install windows or make openings for light in one's wall or masonry structure adjoining the boundary of a neighbour, or closer to it than permitted by law (Section 1091); or

3) to prohibit a neighbour from constructing a building which obstructs the light.

8. Right of View

1189. This servitude gives the right to prohibit everything connected with the servitude that restricts the servitude user's unobstructed view.

SUB-CHAPTER 3
Personal Servitudes

I. Usufructuary Rights

1. General Provisions

1190. A usufruct is a right granted to a person to receive benefits from, to use and to acquire fruits from the property of another person.

1191. All kinds of property may be the subject of usufruct.

1192. If usufruct is granted with respect to an unspecified part of property, it shall be presumed that the usufruct is granted with respect to half of it.

If a usufructuary right is divided among several persons without specifying the extent of the parts of each separate person, such right shall belong to them in equal shares.

1193. A usufruct may be ordinary or extraordinary depending on whether the property transferred to usufruct is consumable or not.

1194. Legal relations arising from a usufructuary right shall firstly be determined pursuant to the provisions set out in any particular instance, so the person establishing it may in diverse ways restrict or vary such right, provided this is not contrary to the essence of usufruct. If there are no such particular provisions, the provisions of the following Sections shall apply.

2. Ordinary Usufructuary Rights

1195. A usufructuary has the right to all fruits, income and benefits derived from the property transferred to usufruct. The extent of this right shall not be determined according to the needs of usufructuaries, and they may also use the property for profit.

1196. A usufruct in immovable property shall pertain to augmentations of such property only where such augmentations are directly connected with the principal property.

1197. A usufructuary may not claim for himself or herself concealed property which is discovered on the parcel of land subject to his or her usufruct.

1198. No distinction arises on the basis that the fruits of a property have been created of their own accord or have been produced as a result of processing, or whether the cause of their creation has come into effect only during the time period of the usufruct, or already existed previously as well.

1199. A land usufruct also includes its appurtenances, servitudes, inventory, rock quarries, lime and sand pits, as well as the diverse mineral resources thereof, and capacity for hunting and fishing thereon.

1200. If a forest is a part of land subject to usufruct, the usufructuary may cut trees in it only in such quantity as are needed for domestic use, but if a usufruct pertains directly to a forest, the usufructuary may, conforming to all forestry regulations, cut trees thereon not only for heating and for structures, but also for sale.

If it is not intended that a forest on a parcel of land subject to usufruct be cut, the usufructuary may cut therefrom only materials needed for domestic use for fence pickets, poles, and the like, provided further that he or she shall use for this purpose only the newest growth, but not large trees.

1201. A usufructuary of a forest may take only those fallen and storm-damaged trees which he or she would have been allowed to cut while the trees were standing in place.

If the fallen and storm-damaged trees belong to the owner, the owner shall remove such trees in good time in order not to hinder the usufruct.

1202. The right to the use of a usufruct may be transferred to another person, for a specified period or in regard to some part, only with the consent of the owner.

1203. A usufructuary may not alienate the usufructuary right to another person, except the owner.

1204. A usufructuary may not encumber a property subject to usufruct with property rights.

1205. Usufructuaries may not only receive fruits from the property but also in diverse ways utilise it, provided that they do not in substance harm it.

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1206. A usufructuary may not do anything which results in a deterioration of the circumstances of the owner, either by destroying anything useful or by failing to utilise the servient property in compliance with its intended purpose.

1207. A usufructuary may not completely transform and alter the servient property, even if thereby the property could be improved or its profitability increased.

If a usufructuary has arbitrarily altered the servient property he or she shall, pursuant to the request of the owner and within the time period of the usufruct, restore it to its former state at his or her own expense, but if this is not possible, shall make compensation for all losses.

1208. A usufructuary of a rural immovable property may make all kinds of improvements to it, provided that its nature is not changed and income commensurate to its intended purpose is not decreased thereby. Observing this condition, he or she may also install new installations and open new sources of income.

1209. A usufructuary of a building may also make all kinds of improvements to it, provided that the building remains, both as a whole and in its separate parts, in its form and primary nature the same as it was. Accordingly, these improvements shall be restricted solely to maintenance of its existing condition and such enhancements as do not become a part of the building itself and may always be separated from it.

1210. If a usufructuary erects a building on servient land, upon the termination of the usufruct neither he or she nor his or her heirs may demolish it, unless the usufructuary has specifically acquired such right.

1211. A usufructuary of movable property may not alter or utilise it in a way inappropriate to its intended purpose; and he or she may improve and enhance such property only to such extent as its nature and primary purpose is not altered thereby.

1212. A usufructuary shall maintain and utilise the servient property in a way appropriate to its intended purpose, with the care of an industrious and prudent owner.

If a usufructuary observes such care, he or she shall not be held liable either for the deterioration of the property or for its destruction, if such deterioration or destruction take place during the proper utilisation of the property.

1213. A usufructuary shall maintain buildings at his or her own expense; in this respect, however, he or she have an obligation to carry out only reasonable repairs, but not improvements. He or she may maintain existing enhancements according to his or her own volition.

A usufructuary shall insure buildings against fire.

1214. If a usufructuary has made expenditures on necessary repairs, in excess of the value of the usufruct, the usufructuary may claim reimbursement for the amount exceeding the value.

1215. A usufructuary is not required to renew buildings which collapse because of old age; but also may not require that the owner repair them.

1216. In regard to structures and repairs which, pursuant to law, are required to be made by

the owner, a usufructuary shall provide, without compensation, materials found on the parcel of land subject to the usufruct.

1217. A usufructuary shall replace domestic animals which have strayed or have become of no use, from natural increase; in gardens he or she shall plant new trees in place of dead ones.

1218. In receiving all benefits from a servient property, a usufructuary shall also bear all associated charges and encumbrances, excepting liability for debts to which the property is subject, but not excepting the interest on such debts.

All real charges to which a servient property is subject, taxes and fees, as well as ordinary and extraordinary supplies, insurance premiums, food, and the like, shall be borne and fulfilled by the usufructuary.

1219. After the expiration of the term of a usufruct, the usufructuary or his or her heirs shall return the property to its owner in actual fact and in such condition as it ought be after proper use.

1220. A usufructuary shall provide security only if it was specifically agreed upon when the usufruct was established.

1221. An owner may not in any way hinder a usufructuary from properly using his or her rights, and accordingly, without losing the right to act with his or her property in all other relations, he or she may not do anything which restricts the rights of the usufructuary or otherwise harms him or her.

1222. The owner of a servient property may not make any changes in it contrary to the volition of the usufructuary, for example, to erect a building on the servient parcel of land, to build up higher an already existing building, and the like.

1223. Similarly, the owner may neither encumber the servient parcel of land with servitudes to the detriment of the usufructuary, nor renounce a servitude belonging to the parcel of land.

1224. An owner may neither take nor remove anything belonging to the parcel of land subject to usufruct, irrespective of whether this is a building, or only a tree which such owner has planted himself or herself.

3. Extraordinary Usufructuary Rights

1225. If consumable property is made subject to usufruct, then from the time of its receipt a usufructuary becomes the owner of such property and after termination of the usufruct only has a duty to return property in the same amount, of the same kind and of the same quality, or to provide compensation for the value thereof.

1226. If the subject of a usufruct is capital which is due or other claims, then the usufructuary has the right not only to receive income from such a claim, but also to request the capital itself when its term comes due.

II. Right of Dwelling

1227. Aright of dwelling is a property right to use as a dwelling the house of another person,

provided no injury is caused to the house itself.

1228. A person to whom a right of dwelling belongs, may transfer the premises to others only with the consent of the owner.

1229. A right of dwelling which is granted to several persons jointly shall remain in effect to full extent as long as at least one of the users of this right is alive.

1230. Expenditures for necessary repair of a dwelling and other charges shall be borne by the users of the right of dwelling.

SUB-CHAPTER 4
Establishment of Servitudes

1231. Servitudes may be established:
1) by law;
2) by a judgment of a court; or
3) by a contract or a will.

1232. Only the owner of immovable property may, pursuant to a contract or will, acquire a servitude for the benefit of such immovable property or encumber it with a servitude.

If dominant or servient immovable property is owned by several persons jointly, the consent of all such persons is required for the establishment of a servitude.

1233. Servitudes may be both acquired for and attached to property not yet existing - for example, a house intended to be constructed, a spring to be found, and others.

1234. A new servitude may be attached to an immovable property which already bears a servitude only when no loss can result to the prior servitude therefrom.

If mortgages are attached to an immovable property, a servitude limiting the rights of the mortgage creditors may be imposed on such property only with their consent.

1235. A property right arising from a servitude shall be established and effective for both parties, i.e., the owners of both the dominant and servient property, only after its registration in the Land Register; until that time only a personal obligation exists between them, the registration of which in the Land Register may, however, be requested by each party, provided all other provisions necessary for the servitude have been fulfilled.

1236. In addition, in cities and towns, every contract regarding establishment of a servitude, which is concluded between neighbours to erect anew or commence to reconstruct a building, is valid only if it has been presented to the relevant institution and is recognised as being in accordance with existing building regulations.

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SUB-CHAPTER 5
Termination of Servitudes

I. General Basis of Termination

1237. Both personal and real servitudes are terminated:
1) by renunciation of them;
2) by merger of the rights and the duties in one person;
3) by destruction of the servient or of the dominant property;
4) by a resolutory condition coming into effect or expiration of a time period;
5) by pre-emption; or
6) through prescription.

1238. Renunciation of a servitude belonging to a person may be provided for either in a contract pursuant to which the person using the servitude transfers it back to the owner of the servient property, or implicitly, whereby the person using the servitude consents to such action by the owner of the servient property, with which the use of the servitude is incompatible.

If a person using a servitude simply does not voice his or her opposition to such action, pursuant to which the use of the servitude becomes impossible, or suffers such action silently, this shall not yet be recognised as a renunciation of the servitude. But if the mentioned action consists of the erection of some building and, being aware of this, the user of the servitude does not, in accordance with lawful procedures, protest prior to its completion, he or she may only claim compensation for the servitude which is rendered impossible, but may not require that the building be demolished.

1239. If the dominant immovable property belongs to several persons, then, to make renunciation effective, the consent of all of them is required; otherwise the renunciation shall also not be binding upon those who have expressed it

1240. Renunciation shall be interpreted within its narrowest meaning; if a person who has several servitude rights to one and the same property renounces one of them, such renunciation does not apply to the others.

1241. If the rights of ownership in dominant and servient property merge in one person only for a certain time period, then after it has elapsed, the servitude shall be again renewed, if it is not provided otherwise; but if the merger is without conditions and for an unlimited period, then the servitude is also forever terminated.

If only a part of the dominant or servient immovable property is joined to the other, then, with regard to the part not joined, the servitude shall still remain in effect.

Where a servient immovable property belongs to several persons jointly, the joining of the dominant and of the servient immovable property shall terminate the servitude only in cases where all owners of the servient immovable property have jointly acquired the dominant property.

1242. A servitude which has been terminated by the destruction of the servient or the dominant property shall be renewed if this immovable property is renewed, even if by then the time pursuant to which the servitude is terminated through prescription has elapsed.

1243. If in regard to a servient immovable property, only such change takes place as

following which use of the servitude right is still possible, the servitude is not terminated thereby.

1244. If a servitude is allotted for a certain time period, the owner of the servient immovable property may not shorten the period of use by delaying the granting of such servitude. Where this is contravened, the person using the servitude may not claim for the specified time period to be extended, but he or she may claim compensation for losses related to the delay.

1245. If a personal servitude is provided for the period of time until some third person attains a certain age, but in the interim such third person dies not having attained such age, the usufructuary or dwelling rights of the person using the servitude are retained by the latter until the specified years have elapsed.

1246. If it is provided that a personal servitude shall be for a period of time ending when a certain condition regarding some third person comes into effect, but in the interim such person dies prior to the condition coming into effect, the rights of the user of such servitude are retained for the servitude user's entire life.

1247. If the usufructuary right in regard to a property is bequeathed so that it commences only upon a certain condition or time period coming into effect, the heir is allowed to grant the usufructuary right regarding such property to a third person only so long as the designated condition or time period have not come into effect.

1248. If a person who has been bequeathed a usufructuary right by a will dies, prior to the expiration of a specific time period that may be set out or prior to a condition that may be set out coming into effect, but such right must devolve to a third person only after the expiration of the aforementioned time period or the coming into effect of the aforementioned condition, the owner shall not be compelled to grant the usufructuary right to such third person prior to then.

1249. A servitude may be redeemed, compensating the user thereof, only through mutual agreement of both parties, but not pursuant to the unilateral demand of one party.

Even the improper use of a servitude does not give the owner of the servient property the right to demand that the servitude be redeemed; the servitude does not terminate either because of such improper use or because the user of the rights of servitude avoids performing his or her duties.

1250. A servitude shall be terminated through prescription if the person entitled thereto has not voluntarily, within a period often years, used it personally or through other persons.

Such servitude as may be exercised only every second year or every second month or only at certain times of the year, shall terminate as a result of not being used after twice the length of the period has elapsed.

In order that a building servitude be terminated through prescription, it is also required that the owner of the dominant immovable property has allowed the taking place, in the servient tenement, of something completely incompatible with the use of the servitude.

1251. If, within the prescriptive time period of the prescription, only one of the joint owners has not used the servitude, then it shall not be terminated through prescription.

1252. If a person has partly used a servitude, the servitude shall thereby be protected against

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prescription to its full extent.

1253. An exception from this provision (Section 1252) is provided with respect to the usufructuary right as follows: if, during the entire time of the lawful prescriptive period, the person who uses such right has used it only in part, such right is terminated in regard to the part not used.

1254. Where a servitude is used completely differently than as is appropriate, that shall be deemed equivalent to it not being used.

1255. If a servitude has not been used due to natural impediments or impediments created by the owner of the servient property himself or herself, the prescriptive period ceases to run during the period that such an impediment exists.

1256. The following shall not be terminated by prescription:

1) rights of dwelling;
2) biennial usufructuary rights; and
3) rights of access to a cemetery.

II. Special Forms of Termination of Personal Servitudes

1257. Personal servitudes shall not devolve to the heirs of the user of the servitude, but shall terminate upon the death of the user.

1258. If such servitude is, by contract or will, already from the very beginning also granted to the heirs of the user, then such establishment shall be deemed to be duplicated or renewed so that the servitude devolves to an heir on the basis of the rights of the heir himself or herself and not on the basis of inheritance rights.

In this case, the servitude shall always be terminated if the closest heir by intestacy or testamentary heir of the user of the servitude dies, and shall not devolve to his or her other heirs.

1259. If a servitude is established without a fixed time period for the benefit of a legal person, it shall be terminated not earlier than after one hundred years have elapsed, unless the legal person itself has ceased to exist earlier.

CHAPTER 5
Real Charges

SUB-CHAPTER 1
General Provisions

1260. A real charge is a permanent duty attached to immovable property to repeatedly provide specified performance of money, in kind or by corvee.

1261. A duty to bear a real charge to which immovable property is subject shall, already as a result of the acquisition itself, devolve to every acquirer of such immovable property so that it is not required that he or she specifically assume it

1262. Sale at auction of immovable property does not terminate a real charge attached to it.

1263. A real charge may be imposed on servient immovable property and on its owner, for the benefit of either a natural or legal person, as well as other immovable property.

1264. A real charge which is established for the benefit of immovable property shall not be separated from it, and shall be alienated only together with it.

1265. A real charge established for the benefit of a person may be transferred by such person to another, provided the real charge does not become greater or more onerous thereby.

1266. Several owners of servient immovable property shall jointly be liable in regard to the real charge to the person entitled thereto, so that such person may claim performance of the whole charge from each of them.

If the servient immovable property is divided, the real charge shall still remain attached to all the parts thereof, provided the person entitled has not specifically himself or herself agreed to the division of the immovable property and the real charge attached to it.

1267. The owner of servient immovable property may be relieved from liability for a real charge by withdrawing from the immovable property.

1268. Real charge debts shall be secured by immovable properly and therefore every new owner shall pay for such debts of his or her predecessors, but for not more than a period of three years before the passing thereof.

1269. Where a concursus proceeding is established against the owner of servient immovable property, current real charges on such property shall be assumed by the entirely of properly subject to concursus proceedings.

SUB-CHAPTER 2
Establishment and Termination of Real Charges

I. Establishment of Real Charges

1270. Real charges may be established by law, by contract or by will.

If a real charge is established by contract or will, it comes into effect as against third persons only when registered in the Land Register with respect to the servient immovable property.

II. Termination of Real Charges

1271. A real charge terminates upon the confusion of rights and duties thereof in one person. Upon such confusion terminating, the real charge is not again renewed, provided it is not expressly agreed otherwise.

1272. Real charges may also be terminated pursuant to an agreement, and pursuant to last will instructions or some other unilateral expression of volition on the part of the chargee.

1273. Upon a servient immovable properly being destroyed, the real charge also terminates of

its own accord.

1274. The right to term payments or duties terminates through prescription if these have not been claimed within a period often years.

1275. Prescription does not apply to the real charge itself if such charge is registered in the Land Register.

1276. If pursuant to law, contract, or a unilateral expression of intent one real charge for performance in kind or by corvee is replaced by another, or is converted into a money charge, it shall be presumed that the earlier charge is terminated and a new one has been created in its place.

III. Forms of Real Charges

1277. Real charges are either public or private.

Public real charges are also subject to the provisions of the previous Sections (1261-1276).

CHAPTER 6
Pledge Rights

SUB-CHAPTER 1
General Provisions

1278. A pledge right is such right in regard to property of another (Section 841) as on the basis of which the property secures the claim of a creditor so that the creditor is able to receive from the property payment for such claim.

1279. A pledge right in regard to movable property is called a possessory pledge, if upon such property being pledged, possession of it is transferred to the creditor. The pledging of an immovable property without transfer of possession is called a mortgage.

If movable or immovable property bearing fruits is pledged so that the creditor possesses and derives fruits from it, then such a pledge is called a usufructuary pledge.

Note.

1. A pledge right in registered mercantile marine ships shall be established without transferring the ship to the possession of the pledgee. Such pledge is called a ship mortgage. Specific provisions are set out in the Ship Mortgage and Marine Claims Law.

2. A pledge right in movable property may be established without transfer of such property to the possession of the pledgee pursuant to provisions regarding commercial pledges. Provisions regarding commercial pledges are set out in other laws.
[16 October 1997]

I. Claims Secured by Pledge

1280. It is necessary that in regard to each pledge right there be a claim, regarding which the

pledge is liable.

1281. A mortgage may be established as security for claims which may arise in the future from credit available to debtors (credit mortgage). In registering such mortgage in the Land Register, the amount of the credit available shall be indicated, in regard to which extent the credit mortgage also has priority rights from the time it is registered in the Land Register.

1282. It is not necessary, for security to be created pursuant to a pledge right, that the claim be a monetary claim, that its term be due or that an action may be brought in regard to it.

1283. A pledge right, as an ancillary right, is in regard to its effect dependent on the effect of the claim. If the claim is restricted, only a restricted action may be brought with respect to the pledge right.

1284. If a claim may not, pursuant to law, be maintained, the pledge right established to provide security for this claim is also not in effect, and the pledger, if he or she has already given the pledge to the creditor, may request that it be returned.

1285. A pledge right may not exceed the claim which it secures. Upon discharge in full of the latter, the former is also terminated.

1286. A pledge right shall remain in effect until a creditor is fully satisfied, for whom, after partial payment is made, the pledge therefore also secures the yet unpaid part of the debt.

1287. If a claim is secured by a pledge right on various properties and is discharged only in part, the creditor retains the pledge right on all the pledged properties since, in their entirety, each of these is security for the claim of the creditor.

1288. If a creditor after death leaves more than one heir, each of them may exercise the pledge right established by the estate-leaver in full extent, but may claim payment from the debtor only in regard to his or her own share of the estate.

1289. If a claim for a fixed term is secured by a pledge right, it still takes immediate effect, but so long as the term provided for has not elapsed, a creditor may not look to the pledged property for settlement of the claim.

If a conditional claim is secured by a pledge right, it shall not have effect during the period the condition is not in effect. But, as soon as the condition comes into effect, the pledge right shall be deemed to have already been created as of the date of its establishment. However, if the condition is such that it may not be fulfilled contrary to the will of the debtor, the pledge right comes into effect only from the date the condition comes into effect.

If a condition or period is specified not for the claim but only for the pledge right itself, then the pledge right comes into effect only from such time as when the condition or the time period come into effect.

1290. Unless specifically agreed otherwise, a pledge right shall not only secure the principal claim but also its associated ancillary claims. The priority of a mortgage shall be determined pursuant to the date of its registration in the Land Register. Ancillary claims associated with the principal claim shall also be discharged pursuant to the same priority; however, interest shall only be paid for the last three years prior to the sale at auction of the immovable property. Interest claims on previous years shall be discharged similarly to the personal debt

claims of creditors.

1291. Ancillary claims (Section 1290) shall, similarly to principal claims, conform to law.

1292. Pledged property shall also secure payment for the necessary expenditures incurred by the creditor for the maintenance and storage thereof.

The pledged property shall secure payment for useful expenditures only in instances where these have been made with the consent of the pledger; otherwise, the creditor may only bring an action *in personam* for compensation to such extent as, at the discretion of the court, corresponds to the value of the pledged property.

A creditor may not claim any compensation for enhancement expenses, as well as for those useful expenses which have been made contrary to the express volition of the pledger; but he or she is allowed to remove his or her enhancements if these can be separated from the pledged property without causing any injury to it.

1293. Provisions regarding the extent of liability of a pledge (Sections 1290 to 1292), may freely be varied in establishing the pledge right. The security provided by a pledge may also be made applicable to only part of a claim.

II. Subject-matter of Pledge Right

1294. The subject-matter of a pledge right may be all property regarding which alienation is not specifically prohibited, not only already existing but also future, and both tangible (movable or immovable) and intangible property.

1295. If a joint owner pledges a joint property with the consent of the other joint owners, the pledge right applies to the whole property; but without the consent of the other joint owners, a joint owner is allowed to pledge only his or her undivided share of the joint property.

1296. The provisions of the previous Section (1295) and Section 1298 are not applicable to movable property which has been provided to the creditor by way of possessory pledge. The security provided to the creditor by such pledge extends to the whole of the property, provided that the creditor has not acted in bad faith, even if the property has been pledged to the creditor by only one of the joint owners, without the consent of the others.

1297. Establishing a pledge right on a share of an immovable property, or on a part of a share belonging to a joint owner, is not allowed.

1298. If upon a joint owner's undivided share in joint property being pledged, such share has not yet been specified, the pledge right is applicable to all parts of this property, but upon the property being divided, the pledge right shall be restricted only to the share of the joint owner.

1299. Where a building or a parcel of land is pledged, the pledge right in itself also applies to servitudes belonging to such building or parcel.

1300. The owner of a property may not have a pledge right in his or her own property. But where a creditor acquires the ownership of property pledged to such creditor, the rights of the creditor, acquired pursuant to the prior pledge right of the creditor as against other creditors to whom the property is pledged, remain in effect.

III. Scope of Pledge Right

1301. Not only individual properties but also aggregations thereof may be pledged.

1302. A pledge right on an individual property also includes its appurtenances and augmentations, as well as fruits which come into being during the time an action is being brought against a defendant, or which have subsequently come into being.

1303. A pledge right, the subject of which is an aggregation of property, applies not only to the already existing but also to future, and not only to tangible but also to intangible parts of such aggregation, provided that it is not clearly evident that the intention of the pledger was only to pledge such aggregation of property as was constituted when the pledge was given.

IV. Establishment of Pledge Right

1304. A pledge right may be established pursuant to a contract, a will or judicial process.

1305. Property which it is prohibited to alienate may not be pledged pursuant to a contract or a will.

Note. The provisions of Section 1076 and subsequent Sections, regarding the consequences of alienation done contrary to a prohibition, also apply to pledge.

1306. Property may only be pledged by a person who has the right to freely act with his or her property.

A person who may freely act with his or her property, may also pledge it for the obligations of another person.

1307. A judgment of a court by which a specified sum of money, or the execution of some other thing which can be monetarily evaluated is adjudged against a debtor, may be a basis for the acquisition of a mortgage upon the judgment being registered in the Land Register.

1308. An Orphan's court may demand that notes, on the immovable property of guardians and parents as the guardians of their children (Sections 191 and 224), be registered in the Land Register, in order to provide security for such claims as may arise during administration of the property of wards. There shall be set out, in decisions of the Orphan's court, the extent of the security amount.

V. Termination of Pledge Rights

1309. A pledge right terminates of its own accord as soon as the claim for which it has been established is discharged, irrespective of the procedure by which this has been done.

1310. If the rights of a creditor with regard to a discharged claim are again renewed, together therewith pledge rights are also renewed of their own accord.

1311. If an obligation is only renewed, the previously existing pledge right may, by mutual agreement of the parties, remain in effect.

1312. A pledge right shall terminate, even though the claim secured by it still exists, in the

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following cases:

1) when a resolutory condition comes into effect, or the term of the pledge right, as established by a condition or for a certain time period, has elapsed;

2) when such revocation or restriction as is associated with the right of the pledger to the pledged property comes into effect, but the rights of a possessory pledgee shall not be disturbed thereby if such pledgee has received the pledge unconditionally and in good faith;

3) where the pledged property is destroyed, and additionally thereto, if it has been insured, upon the whole of the property or part thereof being destroyed the pledge right passes to the indemnity obtained from the insurance company, provided that it is not otherwise provided for in the company's articles of association; upon a destroyed property being renewed, for example a building which has burnt down or collapsed being built anew, the pledge right on such property is also renewed; and

4) by confusion, when a pledgee acquires the ownership of the property pledged to him or her, or when a debtor becomes an heir of the pledge creditor; an exception from this provision is provided for in Section 1300.

1313. A pledge right is also terminated upon it being expressly renounced by the pledgee.

1314. A sale of a pledged property, which is legally made by a pledgee, shall terminate not only their own pledge right but also the pledge rights of the creditors subsequent to them on this property; but as long as they have not been satisfied, both they themselves and the other creditors shall retain a pledge right on the amount received from the sale of the property to the extent necessary for their satisfaction.

If the already completed sale of a pledged property is revoked, then the debtor shall retain his or her right of ownership, and the pledgee shall retain their pledge right on the property.

VI. Consequences of Pledge Right

1. Rights of Pledger or Pledge Debtor

1315. The pledging of pledged property does not terminate the ownership rights of the pledgers thereof. Pledgers may still possess and use the pledged immovable property as long as they do not voluntarily transfer it to the possession and use of the pledgee, or as long as they are not forced to do so by judicial process.

1316. Pledgers may exercise all the rights of an owner in regard to their pledged property, including the right to bring actions regarding ownership thereof, insofar as this is generally allowable (Sections 1065 and 1066) and does not conflict with the rights of the pledgee.

1317. If some right to a pledged property is granted, thereby decreasing the value of such property, then insofar as the security of the pledgee is decreased thereby, such granting is in effect with respect to the pledgee only with his or her consent.

1318. If, upon a property being pledged, the pledger has not yet been its owner, but has, notwithstanding, possessed it in such manner that he or she may acquire ownership of it through prescription (Section 998 and subsequent Sections), the running of the prescriptive period may also continue and terminate in regard to the pledger during the time period the property is pledged, even if the pledger has transferred it to the possession and use of the pledgee.

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2. Rights of a Pledge Creditor or Pledgee

1319. A pledgee who has not been satisfied by a debtor within the time provided for, may resort to the pledged property for satisfaction and, for this purpose, take all the necessary steps for its sale.

1320. As long as the payment term has not come due, a pledgee may not sell the pledge; moreover, if he or she does sell it, he or she shall make compensation for all losses and expenditures caused to the debtor resulting thereby.

If a purchaser had knowledge that the acts of the pledgee were contrary to law, the debtor has the right to demand that the sold property be returned.

1321. A pledgee is allowed to sell a pledge on the open market only in a case where the debtor, either when pledging or subsequently, expressly grants such right to the pledgee. The selling of a pledged immovable property shall be done on the basis of the provisions regarding voluntary selling at an auction by court proceedings.

If such a right has not been granted to the pledgee, the pledge may only be sold by way of auction through a court.
[12 December 2002]

1322. If a pledgee and a debtor have agreed not to sell the pledged property, then such agreement shall be deemed to apply to sale on the open market.

1323. A debtor, as the owner of property, in providing security to a pledgee always has the right to demand that the property be sold at auction in order to pay for his or her debt out of the amount received.

1324. If a pledge is disputed by other creditors, referring to superior rights to it, before the claim secured by it is discharged, the pledgee may demand that the debtor defend the disputed pledge right and make compensation for all losses and expenses occasioned to the pledgee.

1325. The sale of pledged property requested by a pledgee may be prevented by a debtor only by him or her paying the pledge debt in full, but not by payment of some part thereof or by a promise to provide security to the pledgee by a guarantee or in some other way. But if the debtor discharges his or her debt in full, even at the time of the sale itself, the sale shall be stopped and the pledged property shall be returned to the debtor.

1326. If payments on a claim by a pledgee are divided between several time periods, then the pledge may be sold as soon as there is default in regard to any of such time periods, provided it has not been directly agreed that there is not to be a sale until there has also been default in regard to the last, or the second, or the third, etc. time period.

1327. If a pledgee and a debtor have specifically agreed that, in case of default, the pledged property may immediately be sold, then the former has neither the duty to specifically remind the latter nor to notify him or her beforehand of his or her intention to sell; but if there has not been such agreement, the pledgee shall notify the debtor beforehand of his or her intention to sell the pledge.

1328. A pledgee to whom the debtor allots the right to sell the pledged property on the open

market, shall be liable for the sale as an authorised person, and he or she shall compensate the debtor for any losses as may result to the debtor due to lack of care on his or her part. If bad faith enters into the sale, and the purchaser has participated in the bad faith of the pledgee, the debtor has a right to demand that the sold property be returned, repaying to the purchaser the purchase price with interest.

1329. If, in order to satisfy his or her claim, a pledgee sells the property pledged to him or her or requires that it be sold at auction, the surplus as may be received, as exceeds his or her claim, shall be returned to the owner of the sold pledge, provided other creditors do not have a right thereto.

1330. If the amount received from the sale of a pledged property is such as does not suffice to fully satisfy the pledgee, he or she retain the right to claim as against the debtor for payment of both the balance of the debt and the necessary expenses incurred in connection with the sale.

1331. Until the sold pledge is transferred to a purchaser, the pledger retains his or her ownership rights and the pledgee retains his or her pledge rights in it.

1332. Rights pass to the purchaser of pledged property in such extent as they belonged to the debtor.

1333. If a sold pledge is replevied from a purchaser, the purchaser must claim compensation for losses from the pledger and not from the pledgee who has sold this property to him or her as a pledge; an exception to this may be allowed only where the pledgee has expressly assumed liability or, in selling, has intentionally misled the purchaser.

1334. An agreement by which a pledgee, in case of default by a debtor, may retain the pledged property in place of his or her claim is invalid.

1335. A person who accepts as a pledge a claim on debt against a third person, must inform such third person in order that he or she not repay the debt to his or her direct creditor.

1336. If, in such a case the debtor (Section 1335) does not make payment within the set time period, the pledgee has the right to either claim for satisfaction from the third person who is in debt to the debtor of the pledgee, or to cede his or her claim, selling it to another.

1337. A creditor who has received in pledge a claim on a debt (Section 1335) and to whom a document concerning such claim has been delivered, acquires the rights of a possessory pledgee to such claim. In such case, if he or she do not receive his or her interest when due, he or she, unless otherwise agreed, may take the interest which is due on the claim pledged to him or her and, upon receiving satisfaction therefrom, shall return any surplus to his or her debtor.

1338. If the pledged claim is discharged, fulfilling it for the benefit of the pledgee, then, upon receiving the monetary amount, the latter shall settle with the debtor, but if the subject-matter of the pledged claim has been tangible property, shall acquire the right of a direct pledge on it.

1339. Upon a pledged claim being discharged, the pledge right on it is also terminated. But if a claim is discharged through the first creditor being paid, after the pledgee, on the basis of

Section 1335, has already notified the debtor of the pledger of such pledge, the debtor of the pledger is not released from his or her obligations as a result of such payment

SUB-CHAPTER 2
Possessory Pledge

I. Establishment of Possessory Pledge

1340. A possessory pledge (Section 1279) is established by the delivery of movable property by a debtor into the possession of a pledgee, with the intent that it shall be security for his or her claim if, in addition, this intent has been expressly stated, or clearly manifested by implication.

Delivery of possession of a possessory pledge to the pledgee shall take place pursuant to the general provisions regarding the acquiring of possession of movable property.

1341. A person who is entitled to freely determine what is to take place with respect to property, may also provide it to another person by way of a possessory pledge.

1342. If property provided for the processing or transport thereof, is pledged to a third person, it secures the debt only to the extent of the payment required for processing or transport, on payment of which the owner of the property is always entitled to redeem it.

1343. If, for the security of his or her claim, a person in good faith accepts as a possessory pledge such movable property as the owner has voluntarily entrusted (Section 1065) to the pledger, the pledgee may have resort to this property with respect to the settlement of his or her claim until the property is redeemed by the pledger or the owner.

1344. If a property obtained by criminal means or a lost property is pledged, regarding which the pledgee did not and was not able to know, the pledgee is entitled, both as against the pledger and any third person, to retain such property until the settlement of his or her claim, for securing which the property has been provided to him or her; but he or she shall immediately return the property to its owner without compensation as soon as the owner becomes known, and may only bring his or her claim, as well as an action for compensation for expenditures and losses, against his or her debtor or the person from whom he or she has received the property.

1345. A pledgee who receives a property as a possessory pledge, where it is known such property has been obtained or lost by way of crime, shall return the property to the claimant-owner thereof, without compensation.

1346. If a property which a pledgee has received in good faith by way of possessory pledge, is taken away from him or her on account of some legal reason, or if such significant deficiencies appear in regard to the property as diminish its value to such an extent that this value does not reach the extent of the secured claim, the pledgee is entitled to claim compensation from the debtor for all losses caused him or her thereby.

II. Rights and Duties of Possessory Pledgees

1347. During all the time while a pledged property is in his or her hands, a possessory pledgee

shall take care of it as would a careful proprietor.

If a pledged property is damaged or destroyed due to the fault of the pledgee, whether because of inadequate care, gross negligence or bad faith, he or she shall provide compensation for losses incurred to the pledger, and the latter has the right to deduct this compensation from his or her debt.

If, despite the care provided, damage or destruction of a pledged property is caused by a criminal offence or *force majeure*, the pledgee is not liable therefor, and the losses shall be borne by the owner of the property.

1348. A pledgee is not allowed to use a property pledged to him or her unless he or she have been specifically permitted to do so; but also in this case, he or she are liable for any improper use of this right.

1349. If, during such use as is not in accordance with an agreement, a pledged property becomes damaged or destroyed, the pledgee is also liable for the losses caused in cases where this is caused by accident or as a result of *force majeure.*

1350. If the claim of a pledgee has been through some procedure discharged, or his or her pledge right has been terminated in some other way, he or she shall forthwith return the possessory pledge to the debtor as soon as the latter attends therefor, provided the pledgee is not entitled to also retain the property (Section 1353) after this, or he or she have not become the owners of the property himself or herself and are able to immediately prove this.

1351. The right of a debtor to redeem a pledge which is in the possession of a pledgee by paying for the debt shall be neither limited by any time period nor terminated through any prescription.

1352. A pledgee does not have a duty to return the pledge prior to being fully satisfied with respect to all claims which it secures (Section 1290 and subsequent Sections).

1353. A pledgee may also retain the pledge for all his or her other claims, even personal claims, against the pledger; but such right applies only against the pledger himself or herself and his or her heirs, and not against third persons. In addition, the right to retain the property does not include the right to sell it in order to settle other claims of the creditor.

1354. If an owner alienates property provided by way of possessory pledge to a creditor, the latter does not have a duty to surrender the property, but may retain it until all claims secured by the pledge are settled.

1355. A creditor may also further pledge a possessory pledge, but not otherwise than together with the obligation itself which is secured by the pledge, nor for a greater amount than due to him or her from the pledger. Upon termination of the pledge right of the creditor himself or herself, either by payment of his or her claim or due to some other reason, the right of the second pledgee is also terminated.

1356. General provisions regarding the right of a creditor to sell a pledge, upon not receiving satisfaction thereof when due, are also applicable to a possessory pledge.

1357. If a pledgee, without significant cause, delays the sale of a pledge, the creditors who have brought collection proceedings in respect of the surplus may request a court to determine

a time period for the sale of the pledge by the pledgee.

III. Termination of Possessory Pledge Right

1358. General provisions regarding termination of a pledge right (Section 1309 and subsequent Sections) are also applicable to possessory pledge rights.

1359. A possessory pledge right may also be terminated by implicit renunciation.

Implicit renunciation of a possessory pledge right shall be deemed to have occurred in the following cases:

1) where the pledgee returns the pledge transferred to him or her without any other purpose being evidenced therefor; and

2) where he or she, pursuant to last will instructions, lawfully bequeaths the pledged property to his or her debtor.

1360. If a pledgee accepts some other security offered by the debtor, be it a pledge or a guarantee, such acceptance shall not of itself be deemed to be a renunciation of the earlier pledge right, provided the renunciation is not directly expressed or is the indisputable conclusion to be drawn from the circumstances of the matter.

1361. Neither a claim secured by a possessory pledge, nor the pledge right are terminated by prescription, provided the pledgee has not relinquished possession of the pledge.

SUB-CHAPTER 3
Usufructuary Pledges

1362. If movable or immovable property bearing fruits is delivered into the possession of a creditor by way of pledge, then the creditor not only has the right but also the duty to reap fruits and income from it.

Pledgees are not allowed to retain the reaped fruits and income for his or her benefit, but shall sell them, and credit the proceeds therefrom to payment of his or her claim, firstly interest and then principal; in addition, those fruits and income shall also be credited which he or she could have reaped, but due to negligence, have not.

A pledgee has a right to deduct normal interest from such income, even if such interest has not been specifically covenanted for.

1363. Charges on pledged property bearing fruits, if not otherwise specifically agreed in regard to such charges, shall be borne by the owner and not by the pledgee in possession thereof.

1364. Liability for losses due to the fault of a creditor, occasioned regarding property pledged to the creditor, as well as compensation due the creditor in regard to expenditures made for the property, shall be determined in accordance with the provisions regarding possessory pledges.

1365. If immovable property is pledged and concursus proceedings regarding the property of the pledger have been commenced, the pledgee shall transfer not only this immovable property itself, but also the fruits they have reaped from the date the concursus proceedings are established, to the entirety of property subject to concursus proceedings.

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Note. Pledge rights registered in the Land Register and claims secured by a possessory pledge shall be settled outside the concursus procedure.

1366. Property bearing fruits may also be pledged with it being agreed that the pledgee, in place of interest due to him or her, shall receive the income therefrom.

In such case, unless otherwise agreed, the pledgee does not have the duty to provide an accounting regarding the fruits and income which he or she has obtained, even if the value thereof exceeds the extent of the lawful interest.

SUB-CHAPTER 4
Mortgages of Immovable Property

I. Establishment of Mortgages

1367. A mortgage gives a creditor a property right in regard to pledged immovable property only after registration in the Land Register.

1368. In order that the registration of a mortgage in the Land Register be in effect, the following is required:

1) that it be registered at the relevant institution (Section 1369);

2) that it be registered in due time (Section 1370);

3) that the claim has the characteristics required for registration (Sections 1371 and 1372);

4) that the immovable property for which the mortgage is registered in the Land Register also has the characteristics prescribed for that specific purpose (Section 1373); and

5) that the forms prescribed by law have been observed in the course of registration.

1369. The registration of a mortgage in the Land Register may only be made at the Land Register office in whose administrative area the immovable property is located. More detailed provisions regarding procedures for registering a mortgage in the Land Register are to be found in the Land Registry Law.
[24 April 1997]

1370. Registration of a pledge right in the Land Register shall not be allowed at such time as when the impediments referred to in Section 45, Clauses 1 and 2 of the Land Registry Law exist.
[24 April 1997]

1371. Only those claims shall be registered in the Land Register which are generally secured by a pledge on immovable property, irrespective of whether this pledge is established pursuant to a court decision or a legal transaction.

1372. Registration of pledge rights in the Land Register shall only be allowed with the consent of the pledger, which he or she have expressed either in establishing the pledge right or subsequently. This provision does not apply to those cases where the pledge right is registered on the basis of the judgment or decision of a court.

1373. A mortgage shall only be registered in the Land Register for a specific amount of

money and in regard to a specific immovable property, the owner of which designated in such Register is the pledger.

II. Extension and Discharge of Mortgages

1374. Each novation, of a claim registered in the Land Register, shall also be registered in such Register; otherwise it shall be binding only upon the contracting parties, but not upon third persons.

1375. If, in novating, a change in creditors takes place, then for the registration of the novation in the Land Register the acknowledgement of both the creditor and the debtor is required; but in making an ordinary cession, the acknowledgement of the cedent is sufficient, and the consent of the debtor is not necessary.

Note. Exceptions from the procedures prescribed by this Section (1375) are set out in the Law on Forced Novation of Some Debts.

1376. If a novation concerns the nature of a claim itself, so that lawful relations in regard to other claims which have previously or subsequently been registered in the Land Register on the same immovable property are, as a result, also altered, then for the registration of such novation in the Land Register, the consent of not only the contracting parties but also of the rest of the persons interested in the matter is required.

1377. If any of the creditors acquires possession of the immovable property on which they have a mortgage, neither the mortgage rights of the creditor nor the rights of other creditors to their claims registered in the Land Register on the same immovable property are altered thereby.

1378. The alienation by a debtor of immovable property to a third person does not alter the rights of mortgage creditors, and any such alienation may only be done by leaving in effect the pledge rights to the immovable property being alienated.

1379. Mortgages shall be discharged in accordance with the same provisions as those which are set out for all pledge rights (Section 1309 and subsequent Sections).

For full discharge of a mortgage, it is not sufficient that the basis of the mortgage alone be discharged, because such a discharge is not binding upon third persons until the discharge of the mortgage is registered in the Land Register. The provisions regarding procedures for registering a discharge of a mortgage are to be found in the Land Registry Law.
[24 April 1997]

1380. Discharge, both full and partial, of pledge rights registered in the Land Register shall only be allowed with the consent of the creditor. This provision does not apply to those cases where the pledge right is discharged on the basis of a judgment or decision of a court.

If immovable property on which mortgages are registered is sold at auction and registered in the Land Register in the name of the person who, as the highest bidder, has become its owner, then after the purchase price is paid, all debts registered against the immovable property regarding which the purchaser has not directly given notice that he or she assumes such debts himself or herself, shall be discharged independently of the consent of the creditors.

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CHAPTER 7
Right of Pre-emption

SUB-CHAPTER 1
Establishment and Use of Right of Pre-emption

1381. A right of pre-emption is the right to acquire immovable property alienated by another person, by taking precedence over the acquirer thereof in relation to priority as against him or her, and the assumption of his or her rights.

The right of pre-emption is a property right, and it may not only be used against the first acquirer of the immovable property who is subject to this right, but also against subsequent acquirers.

1382. A right of pre-emption may be established by law, contract or a will.

A right of pre-emption established by contract or a will binds only the persons interested in the property and their heirs; however, this right may also become binding upon third persons, if the contract or will establishing this right is registered in the Land Register; in such case, this right shall be determined solely pursuant to the provisions set out in the contract or will and only where such provisions do not exist, pursuant to the provisions of law regarding pre-emption.

1383. A right of pre-emption shall not be allowed in all cases of alienation, but only in those where the pre-emptor can fully compensate the acquirer for everything the acquirer has paid, or still must pay, for the acquired property.

Where an immovable property is given as a present, alienated after settlement or exchanged, the right of pre-emption shall not be allowed.

Where immovable property is sold at auction by way of enforcement proceedings, the right of pre-emption may not be used.

1384. All duties undertaken by an acquirer of immovable property shall be assumed by the pre-emptor of such property, and the pre-emptor may not restrict himself or herself only to a promise to pay the acquirer the amount which the acquirer has undertaken to pay for the immovable property, or to ensuring payment of this amount by way of guarantee or some other procedure; but the pre-emptor shall, in making application regarding his or her right, forthwith pay this amount, adding thereto compensation for expenditures (Section 1388) in money; but if the acquirer refuses to accept this money, the pre-emptor shall pay it into court.

1385. If a pre-emptor himself or herself has a claim which is secured by the immovable property which is to be pre-empted, or, if he or she prove that other creditors whose claims are secured by a mortgage on this immovable property are ready to acknowledge the pre-emptor as his or her debtor, he or she are allowed to deduct these debts from the amount to be paid in by him or her (Section 13 84).

1386. If it is proven that the immovable property which is to be pre-empted has been sold to some person for less than it is worth on account of personal good will (friendship purchase), then the pre-emptor shall pay its actual value pursuant to a court assessment.

1387. Where there is cause for well-founded suspicions that, for purposes of discouraging a pre-emptor, a seller and a purchaser have presented a higher purchase price than they have actually agreed to with each other, then the pre-emptor has the right to require that they

confirm with their signature that, in entering into the purchase agreement, they did not act in bad faith and that the price presented is in fact the amount they have agreed to with each other and that has already been or is still to be paid.

1388. A pre-emptor shall also reimburse the acquirer, in addition to all that which the latter has paid for the immovable property (Section 1384), all of the necessary and useful expenditures incurred by the acquirer in regard to this property, and his or her expenses for its alienation and fees paid in regard to it; it is not required that enhancement expenditures be reimbursed.

1389. A person who has a right of pre-emption may not transfer it to anyone else and, if an opposing party requests, he or she shall confirm with his or her signature that he or she have carried out the pre-emption only for himself or herself and for his or her own benefit.

SUB-CHAPTER 2
Consequences of Right of Pre-emption

I. Duties of an Acquirer to a Pre-emptor

1390. All rights of the acquirer are assumed by the pre-emptor and accordingly, if the immovable property has already been delivered to the possession of the former, he or she shall firstly transfer it with all its appurtenances to the pre-emptor in the same condition in which he or she received it.

1391. Fruits reaped from immovable property shall be returned by the acquirer only for the period of time during which the acquirer has delayed its delivery. But for fruits which have matured and have not yet been reaped, the pre-emptor, in his or her turn, shall reimburse the acquirer for production expenses.

1392. An acquirer of immovable property shall compensate the pre-emptor in regard to deterioration of the property only when it has occurred due to the fault of the acquirer after an application for pre-emption has been made; he or she shall reimburse for earlier deterioration only where it has been occasioned due to bad faith, in order to prevent the pre-emption.

1393. Servitudes, real charges, and mortgages with which an acquirer has encumbered immovable property shall be assumed by the pre-emptor, provided they have already been established prior to the right of pre-emption being applied for, and without bad faith. However, the acquirer shall fully reimburse the pre-emptor in regard to all such encumbrances.

II. Duties of an Alienor to a Pre-emptor

1394. A pre-emptor shall enter into a legal relationship with the alienor only then when the acquirer has transferred all his or her rights to the pre-emptor and he or she have thereby fully assumed the position of the acquirer.

If the alienor had a duty prior to the alienation of immovable property to offer it to such person as had rights of pre-emption, and the alienor did not do so, then the pre-emptor may claim from the alienor compensation for losses caused him or her thereby.

III. Duties of an Alienor to an Acquirer

1395. An alienor has a duty not only to make compensation to the acquirer for losses which the acquirer surfers as a result of the use of the right of pre-emption, but also to defend the acquirer in court in actions brought by the pre-emptor.

1396. An alienor shall be released from the duties referred to in Section 1395 if the acquirer, knowing that an application of right of pre-emption may be made, has not provided for himself or herself to be compensated in such event.

SUB-CHAPTER 3
Termination of Right of Pre-emption

1397. Right of pre-emption shall be terminated:

1) where the alienation pursuant to which such right arose is set aside;

2) where a person to whom such right belongs renounces it; or

3) where the right to bring an action regarding the right of pre-emption is lost through prescription.

1398. After application is made in regard to a right of pre-emption, the participants to a contract may not commence anything further which would prevent this right; also, they may not revoke the alienation contract, albeit transfer has not yet taken place.

1399. A right of pre-emption is terminated where, prior to alienation or when alienation takes place, the person to whom this right belongs expressly states his or her consent to alienation of immovable property or where he or she, following alienation, expressly or impliedly renounce their rights.

1400. Aright of pre-emption terminates through prescription if an action regarding the right of pre-emption is not brought within a year from the day the immovable property is registered in the Land Register in the name of the acquirer.

PART FOUR
Obligations Law

1401. Obligations rights are rights on the basis of which one person - the debtor - is required to perform certain actions of a financial value for the benefit of another person - the creditor

1402. Obligations rights arise either from a lawful transaction, or from wrongful acts, or pursuant to law.

CHAPTER 1
Lawful Transactions in General

1403. A lawful transaction is the performance of a permissible action to establish, change or terminate lawful relations.

1404. In each lawful transaction the parties, the subject-matter, the expression of intent, the elements, and the form shall be taken into account.

SUB-CHAPTER 1
Parties to a Transaction

1405. In order for a transaction to have legal force, it is necessary that the parties to the transaction have legal capacity and the capacity to act; transactions made by persons without legal capacity, or the capacity to act, are void.

1406. Not only natural persons but also legal persons shall have legal capacity in lawful transactions, unless otherwise provided by law.

1407. The State, local governments, associations of persons, institutions, establishments, and such aggregations of property as have been granted the rights of a legal person shall be considered to be legal persons.

1408. Minors, persons under guardianship due to a dissolute or extravagant lifestyle, and the mentally ill lack the capacity to act, unless directly otherwise provided by law.

1409. Lawful transactions made by persons with the capacity to act while they are unconscious or in a state of mental incompetence are void.

1410. Anyone may make lawful transactions not only personally, but also through substitutes, who by their actions may acquire rights for their principal, as well as impose duties on them.

Legal persons shall make lawful transactions through their legal representatives.

1411. Persons without the capacity to act shall be represented in lawful transactions by their parents, guardians or trustees.

SUB-CHAPTER 2
Subject-matter of Lawful Transactions

1412. The subject-matter of a lawful transaction may be not only an action, but also an inaction, or also an action the purpose of which is to establish or to restore a property right, as well as an action with some other purpose.

1413. The subject-matter of obligations rights may be only that which is possible; otherwise, the transaction is void. Nevertheless, it is not necessary that the subject-matter of the transaction already be in existence when transaction is made; a transaction may also apply to future property.

1414. The subject-matter of a lawful transaction may only be that which has not been removed from the scope of private law; otherwise, the transaction is void.

1415. An impermissible or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law, may not be the subject-matter of a lawful transaction; such a transaction is void.

1416. The subject-matter of an obligation, as well as its performance, may not remain solely within the discretion of the debtor.

1417. If the subject-matter of the transaction is completely unspecified, the transaction is void.

1418. When the subject-matter of a claim is fungible property (Section 844), and the quantity or quality thereof is not specified, then irrespective of such, the transaction is valid, if the right to specify the aforementioned subject-matter is given by law or by a personal instruction to a third person or to a court in its discretion, or if in general there is a reliable standard by which the subject-matter can be specified. However, if the third person who is charged with specifying the subject-matter is not willing to, or is unable to undertake such, then the transaction is void.

1419. When the subject-matter of an obligation is non-fungible property (Section 844) which is described only by kind, then in case of doubt such subject-matter may be specified by the debtor, unless the contract right has been established by a will.

The same shall be observed even when there is an alternative subject-matter of the obligation.

1420. Both the debtor and the creditor may exercise the right to choose (Section 1419) only once, unless they have been specifically granted the right to choose several times, or if the obligation is not such which periodically recurs. When choice is permitted only once, then the debtor may do so until such time as the obligation has been fulfilled, but the creditor may do so also in bringing an action, unless they have, however, specifically expressed their intent previously.

1421. If in an alternative obligation both subject-matters are accidentally destroyed, then the debtor shall be completely released from fulfilling his or her duties, without, however, losing the right to require that the creditor fulfil his or her corresponding duties. But if only one of the subject-matters is destroyed, then the debtor shall retain his or her right to choose and may

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pursuant to his or her discretion deliver either the remaining subject-matter, or the value of the destroyed subject-matter. Conversely, if the creditor was granted the right to choose, he or she may only accept the remaining subject-matter.

1422. If one of the subject-matters offered as an alternative is destroyed due to the fault of the opposing party, or during a delay by that party, then the one who has the right to choose - irrespective of being the debtor or the creditor -shall retain this right and may, pursuant to his or her volition, as the debtor, deliver the remaining subject-matter or the value of the destroyed subject-matter, or as the creditor, request one or the other. However, if the opposing party has destroyed both subject-matters, then the one who has the right to choose may choose compensation for either one or the other.

1423. If one or both subject-matters are destroyed due to the fault of the one who has the right to choose, then he or she shall lose this right, and in the case of only one subject-matter being destroyed, he or she may either give or claim the remaining subject-matter, depending on whether he or she has the duty to give or the right to claim; but if both subject-matters are destroyed, then the opposing party shall choose the subject-matter for which he or she shall receive compensation.

1424. If in the cases set out in Sections 1422 and 1423 the subject-matter has been destroyed due to the fault of the creditor, then, in addition, the creditor shall compensate the opposing party for all losses.

1425. Each obligation shall be fulfilled in full, and no one may be forced to accept the fulfilment of only part of the obligation, even when the subject-matter of the obligation is divisible.

1426. If one of the parties involved in an indivisible obligation is forced to compensate the losses of the opposing party due to failure to fulfil, then this compensation may be delivered also in parts; in an obligation involving several parties, each of them, by delivering his or her share, shall be released from liability, pursuant to general provisions.

SUB-CHAPTER 3
Expression and Authenticity of Intent

I. Expression of Intent

1427. Part of the essence of a lawful transaction is the expression of intent by the transactor, but a bilateral or multilateral transaction requires a coherent expression of intent by all the parties. As long as intent has not yet been expressed, it has no legal effect.

1428. The expression of intent may be express or implicit.

Express intent may be expressed in words, orally or in writing, or by signs which have the meaning of words.

Intent is implied when it is manifested without the direct purpose of expressing intent precisely in this meaning. For an action to be considered to be an expression of implied intent, it must be such as to allow a clear inference of the existence of such intent.

1429. If the law prescribes a certain form for the expression of intent, then an implied

expression of intent, even though it may be absolutely clear, shall not be sufficient.

1430. Silence shall not be considered to be either consent or dissent, except in those cases when the law specifically requires the breaking of silence in order that it not be considered to be consent.

1431. The signing of a deed shall be considered to be consent to such deed, regardless of whether it applies to the signatory or to a third person, if the contents of such were known to the signatory and if he or she has a personal interest in, and the right to object to, the lawful transaction to which the deed applies.

1432. A person who expresses implied or express consent thereby agrees to the action with all its legal consequences, and he or she may not thereafter restrict such consent.

1433. Consent may be presumed only in cases specifically prescribed by law.

1434. Consent may be given not only prior to the relevant action, but also when it is commenced, and even later; in the latter case it shall be called confirmation.

A later confirmation may be expressed expressly or be implied from actions and may apply not only to another person's actions, but also to one's own, whether they be permissible or impermissible.

1435. A later confirmation shall have retroactive effect and therefore it shall be applicable to the time of entering into the transaction, except in the following cases:

1) when the action in question has been prohibited by law and the reason for the prohibition was removed only later;

2) when the confirmation occurs only after the transaction has been performed and its consequences have taken place; or

3) when the confirmation may only occur according to a certain form; in this case it shall have neither retroactive effect, even though the confirmed action itself has been performed in accordance with the specified form, nor shall it have effect at a future time, unless the aforementioned form may not yet be performed.

1436. A later confirmation shall not affect the rights acquired in the interim by a third person.

1437. The expression of intent must be serious; an expression made only as a joke shall have no legal consequences.

1438. If intent is expressed for appearances only, then it shall have no legal consequences, as long as it does not involve the illegal deceit of a third person.

Note. The provisions regarding the contesting of a transaction which has been concluded by the debtor with the intent to defraud the creditor are contained in the Civil Procedure laws.

1439. When the transaction is with serious intent, but is concealed by another transaction, then the former shall be in effect, unless there has been an intention to deceive a third person thereby or to do something illegal in general; but the latter transaction, entered into for appearances only, shall remain in effect only insofar as deemed necessary in order to maintain the former in effect.

II. Authenticity of Intent

1440. For a lawful transaction to be in force, it shall not suffice for the participants to express their intent; it is also necessary for the intent to originate from their own free will, without mistake, fraud or duress.

1. Mistake

1441. A mistake may arise from a complete absence of information, or only insufficient information regarding factual circumstances -mistake in fact - or regarding legal principles - mistake in law.

1442. A mistake in fact shall not harm the performer of the activity, as long as the mistake has not occurred due to his or her own negligence.

1443. A mistake in one's own acts shall not be excusable, except in cases prescribed by law.

1444. An excusable mistake (Section 1442) shall affect the validity of the transaction variously, depending on whether the mistake is substantial or not.

1445. A mistake in substance (Section 1444) shall invalidate the entire transaction, because it must be assumed that the person who so errs, has not even given the transaction his or her acceptance and therefore the transaction has not happened.

1446. The only consequences of a mistake of little substance (Section 1444) shall be to protect the person who erred from losses as far as possible. Therefore the transaction itself shall still be valid, but the one who has made the mistake has the right to ask only for restitution, or commensurate compensation for losses which he or she has suffered due to the mistake.

1447. If a misunderstanding has taken place regarding the type of the transaction, as when one participant believes that he or she is entering into a different contract than from what the other participant believes, then the contracting parties are not in agreement, the mistake shall be considered substantial and therefore the contract shall be void. But a person who has given someone an item, with the intent of making a gift of it, does not have the right to ask for the return of this item if the recipient has already used it, even though he or she did not receive it as a gift.

1448. Similarly (Section 1447) the absence of an agreement between the contracting parties shall also invalidate a lawful transaction in the case of a misconception regarding the identity of an item, when each contracting party believes it to be of a different kind or type.

1449. A mistake regarding the reason for a transaction is of little substance and shall not invalidate the transaction, unless someone has promised or performed something due to a supposed obligation.

1450. If the mistake concerns a person involved in the transaction, then it is void unless the mistaken identity is immaterial to the one who has erred. However, if the mistake concerns someone's personal abilities and characteristics, the transaction is void only if the erroneously presumed characteristic was a matter of substance due to the nature of the transaction.

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1451. A mistake is substantial when a characteristic has been assumed for the subject-matter of the contract due to which the subject-matter would be included in a different type of goods than the one to which it truly belongs. However, consideration must also be given to whether the assumption mentioned has in fact induced the person who has made the mistake to enter into the contract in its current form.

1452. When there is an mistake concerning the quantity of items of the same type, in a transaction regarding fungible property, unilateral transactions shall be differentiated from bilateral transactions. Unilateral transactions shall remain valid, and moreover from the two quantities the lesser shall be given; but bilateral transactions are void if the obligor has had the intent to give less, but the other side to receive more. In the opposite case, the contract shall remain valid and the lesser amount shall be given. Any other mistake regarding the quantity of objects shall not be substantial, unless a special agreement exists.

1453. A mistake regarding the lawful relationship of the contracting parties with the subject-matter of the transaction shall not be substantial.

As an exception, a mistake regarding the lawful relationship of the contracting parties with the subject-matter of the transaction shall be substantial, and the transaction itself is void, when one of the participants believed himself or herself to be acquiring the rights to another person's property, whereas the subject-matter of the transaction was his or her own property.

1454. The transaction is void if its subject-matter or the larger part of its subject-matter no longer exists.

1455. A mistake which is only about a name or the designation of another person or thing is not substantial and shall not be considered.

1456. When in a multilateral transaction only one of the participants in the transaction has made a mistake, then he or she may demand that the transaction be performed, especially if he or she has a lawful interest therein and if he or she has fulfilled the obligations he or she has undertaken.

1457. If the transaction has been entered into by a substitute of a person, then the mistake to be considered shall be that of the substitute, not of the party for which he or she was substituting.

1458. The mistake shall be proved by the party demanding either that the transaction be declared invalid or that losses be compensated, on the basis of this mistake (Sections 1447 and 1448).

2. Fraud

1459. Fraud is the illegal deception of another person for the purpose of inducing him or her to perform acts in contravention to his or her interests or to refrain from such acts.

1460. If a party is easily able to detect the deception, he or she shall not be considered defrauded in a legal sense.

1461. A party induced to enter into a transaction by fraud may demand that it be declared

invalid. However, if fraud is the motive for only a few of the provisions of the transaction, then the defrauded party has the right to bring an action only for compensation for losses.

1462. If in a bilateral transaction both parties have deceived each other, then neither of them has the right to bring an action against the other. If the contract has not yet been performed, then one party may not ask the other to perform it, but if it has been performed, then neither party may claim compensation for losses from the other.

3. Duress

1463. Duress may consist of physical force or of threats which induce fear in a person. When physical force is used, there is no expression of intent and there is no act by the person under duress.

1464. Only duress of an illegal nature shall affect lawful transactions.

1465. For the fear created by threats to have legal import, it needs to be substantiated; therefore the threatened harm may not be insubstantial; there must be genuine fear that the threats will be realised; and there must be no reasonable alternative other than to submit.

1466. Persuasion alone, if it does not involve fraud, shall not affect the validity of the transaction.

1467. A lawful transaction concluded under duress is not invalid of itself, but the person under duress may contest it.

1468. If in a multilateral transaction a third person has put another under duress, then the person under duress may demand that the transaction be repealed, and also that the person placing him or her under duress compensate for losses.

SUB-CHAPTER 4
Elements of Lawful Transactions

1469. The elements of a lawful transaction are essential, or natural, or incidental.

1470. The essential elements of a transaction are everything necessary to its concept and without which the intended transaction itself is impossible. Therefore, nothing in such essential elements may be altered, even with the agreement of both parties.

1471. The natural elements of a transaction are those which are its direct consequences by law if the transaction is entered into according to its essential principles. Therefore these elements are self-evident, even without a special arrangement, but they may be removed or changed by special agreement, which shall be proved by the party referring to such.

1472. The incidental elements of a transaction are the expansion or limitation of the direct consequences of the transaction (Section 1471), as well as its ancillary provisions. This shall include conditions, terms and binding directions.

SUB-CHAPTER 5
Form of Lawful Transactions

I. General Provisions

1473. The form of a lawful transaction shall depend on the discretion of participants in the matter, except in instances specifically indicated by law.

1474. The participants to a transaction may enter into it in accordance with the procedures provided for by a notary public or by the Law On Orphan's Courts or a private procedure, accept an oral agreement or draw up a written deed, enter into the transaction in the presence of witnesses or without such, and they may make it public or not. This provision shall not apply to those instances in which the law requires a specific procedure for entering into a transaction.

Besides a notary public or an Orphan's court, the following persons may certify: a regimental commander, or another officer with equal authority, may certify deeds pertaining to a person in the military service during wartime; the commander of a war-ship - deeds pertaining to a per son serving on a war-ship during wartime; consuls - deeds of persons living in a foreign state according to the provisions of the consular regulations.
[22 June 2006]

1475. In cases where the form for a transaction is required by law, or where the contracting parties make the validity of their transaction dependent on the form, failure to comply with the form shall render such transaction invalid.

Previous agreements made between contracting parties in such cases shall have no legally binding force, and until such are articulated in the relevant form, each contracting party shall have the right to unilaterally withdraw from such.

1476. The entering into or certification of a transaction by the institutions mentioned in Section 1474, or by the officials mentioned in the same, shall not preclude any internal defects, and also shall not infringe on the rights acquired by a third person.

1477. Corroboration shall be required in those cases when the transaction grants property rights to immovable property.
Property rights established by law shall be in effect even if they are not entered in the Land Register.

1478. The lack of corroboration is not a reason for a transaction to lose its effect; until the corroboration, an acquirer may not make use of ownership rights or any other property rights, and may only bring an action *in personam* against the alienor.

1479. When the transaction has been completely entered into in all other ways, then the subject-matter of the action *in personam* (Section 1478) is corroboration, and the fact that the deed has not yet been entered in the Land Register shall not be a reason for either of the participants to withdraw from the matter without the agreement of the other. If a person has acquired property rights in an auction, or pursuant to a judgment of a court coming into effect, and all other conditions have been observed, then corroboration may also take place based on the unilateral request of the acquirer.

1480. In the situations indicated in Section 1477, the consequences of corroboration are the

awarding of property rights to the acquirer, thus the corroboration mentioned shall give all participants complete security, even if it was conducted erroneously, because the Land Registry Office is solely responsible for mistakes. Corroboration does not rectify internal defects of the transaction, and a deed which is not in force according to its substance does not thereby acquire any legal effect. Similarly, corroboration shall also not affect the rights of a third person previously registered in the Land Register.

1481. Corroboration shall be considered as completed, and the certified transaction shall not be disputed after the court has printed an announcement in the newspaper *Valdības Vēstnesis* that persons with objections should come forward within six months time. When it is clear that no objections have been brought forward during this time, a decision shall be taken to recognise the transaction as in effect and all subsequent contests against it shall be dismissed. However, the publication of such an announcement shall depend upon the intent of the participants of the transaction.

II. Written Form of Lawful Transactions

1482. A transaction shall be set out in written form either as required by law, or pursuant to the voluntary agreement of the participants.

1483. The law requires the written form:

1) as an essential element of certain transactions;

2) in order to complete the transaction at the institutions mentioned in Section 1474 or with the officials mentioned therein;

3) to register the transaction in the Land Register;

4) as a condition for the right to make claims on the basis of the transaction.

1484. If the law requests the written form as an essential element of the transaction, then the transaction is not in effect until the relevant deed is complete.

1485. If the participants to such a transaction (Section 1484) agree regarding all the essential provisions, then either one of them may ask the other to prepare the relevant deed.

1486. In the cases where the law determines that a transaction shall be entered into before a notary public, a previous agreement alone, even though it may be stated in a separate deed, shall have no effect, and shall not grant the right to a claim. However, if in such bilateral transactions one of the participants has already performed something for the benefit of the other, then he or she shall have the right to reclaim such.

1487. If the written form is required because, in certain cases, the transaction may not have legal effect without being registered in the Land Register, then the transaction shall be binding in and of itself as soon as the participants agree on all its essential elements, even without statement in a written form. Therefore none of them shall have the right to withdraw from the agreement unilaterally, and each may demand that a relevant deed be drawn up by the other.

1488. When the right to claim on the basis of a transaction generally, and its performance especially, is dependant on the written form as required by law, then, if no written deed is drawn up, the following shall be observed:

1) A transaction which both sides have performed shall have the same consequences as if it were in written form, and compensation may not be reclaimed for whatever has already

been given or done pursuant to such transaction.

2) If one of the participants voluntarily performs the contract, but the other accepts the performance in full or in part, then the former shall no longer have the right to reclaim what he or she has performed, unless the other is on his or her part willing to perform such as he or she must perform; but if the latter avoids performing his or her obligation, then the former, although he or she may not require the performance of the contract, shall have the right to reclaim what has been performed or to claim compensation.

3) As long as neither side has performed anything, the right to claim shall not be allowed, the transaction itself shall not be in effect, and any of the participants may unilaterally withdraw from the agreement.

1489. If the law requires a written form for the transaction, but the parties themselves have agreed on the transaction, then it must be determined whether the purpose of their agreement was to create a written deed only as a means to facilitate evidence, or in order not to give the transaction legal effect until expressed in a written form. In the former case, the transaction shall be in effect even before the deed is drawn up, as soon as the parties agree on its substance, and from that moment on they shall begin to have the right to demand that the transaction be stated in writing. In the latter case, however, the transaction which has taken place between the parties shall not be binding on either party until the deed is prepared in full, and therefore both parties shall have the right to unilaterally withdraw from the transaction.

1490. If a dispute arises regarding the purpose of the aforementioned agreement (Section 1489), then it shall be assumed, in case of doubt, that the sole purpose of the drawing up of the deed was the facilitation of evidence. This shall be especially the case when the parties have agreed to put the transaction in writing only after they have agreed on all other provisions of the lawful transaction.

1491. In the cases when the stating of the transaction as a written deed is not an essential provision for it to be in effect (Section 1484 and the end of Section 1489), an earlier written draft, if it includes all the essential elements and ancillary provisions of the transaction and is signed by the participants, shall have equal effect to a written deed, and therefore either party can request the other to prepare and to sign such a deed.

1492. The written deeds of a transaction may be drawn up in whatever form the participants choose; moreover no special formalities shall be required and the participants to the transaction shall not be bound to any forms.

1493. For a deed to be in effect, as its essential appurtenance in a unilateral transaction, the signature of the party involved or his or her substitute shall be required, but other transactions shall require the signatures of all participants, or also their substitutes.

When the deed is drawn up in several copies, for distribution to the participants, the recipient shall not be required to sign such copy, as long as he or she has signed the others.

1494. Persons unable to write may entrust another person to sign on their behalf, which shall be verified by two witnesses with their signatures.

SUB-CHAPTER 6
Time and Place in Lawful Transactions

1495. In the calculation of a time period - a year, month, week or day - it shall be counted from a certain moment to a corresponding moment in the subsequent period.

If the end of the years or months being calculated falls in a month without a corresponding date, then the tune period shall end on the last day of this month.

1496. If the expiration of a relevant term grants rights or a certain capacity to someone, then he or she may already make use thereof upon the commencement of the last day of that term.

1497. If after the expiration of a specified term someone loses a right due to his or her failure to act, then he or she may still act on the last day of that term, and his or her rights end only at the end of this day.

1498. If a term within which something must be done ends upon a day when, according to the law, such can not be done, then the time for fulfilling the duty shall be extended to the day following the term, when there is no such legal impediments.

1499. In transactions, as in lawful relations in general, a person's place of residence may be significant, as well as his or her presence there or absence from it.

1500. A person who has left the borders of the State shall be considered an absentee.

1501. Persons who, though present at their place of residence, due to external circumstances are not themselves able to defend their rights, such as unborn children, minors, the mentally ill and the otherwise gravely ill shall be considered equivalent to absentees according to the law.

The persons who shall be considered equivalent to absentees according to the law shall be protected against losses only in those cases where they do not have a guardian or a trustee or where they do themselves harm without the participation of a guardian or a trustee.

1502. The law shall protect an absentee only when he or she is absent (Section 1500) with good cause, and when, with good cause, he or she has not designated a substitute, or when a substitute has been designated, but such substitute has withdrawn without the knowledge or participation of the absentee.

Issues regarding whether good cause exists shall be decided pursuant to the discretion of the court.

1503. Absentees, and persons who shall be considered equivalent to absentees according to the law, may request to be restored to their previous status if they have no other means to recover their forfeited rights.

SUB-CHAPTER 7
Interpretation of Lawful Transactions

1504. In interpreting a transaction, consideration shall be given to the meaning of the words used in the transaction, and if they are not ambiguous, then they shall be strictly observed, as

long as there is no proof that they do not concur with the intent of the participants.

1505. If doubt arises regarding the meaning of words, their sense shall be observed, and the clearly expressed or otherwise demonstrated intention of the participants to the transaction.

1506. Expressions of intent which are completely opaque and incomprehensible, and directly self-contradictory, shall not be interpreted, but shall be declared as non-existent.

1507. An interpretation pursuant to which a transaction is maintained and remains in effect to the extent possible shall be preferred to an interpretation which has the opposite consequences.

1508. A cautious interpretation shall be preferred to others, and on that basis, the one which binds the debtor least will be preferred.

1509. Bilateral transactions which impose duties on both parties shall be interpreted, in case of doubt, against the person who is the creditor in the relevant case, and who therefore should have expressed himself or herself with more clarity and definiteness.

1510. Transactions regarding maintenance, and last will instructions, shall be interpreted in a manner so that, in case of doubt, the rights established by the transaction or the instructions shall remain in effect to as great an extent as possible.

CHAPTER 2
Contracts

1511. A contract within the widest meaning of the word is any mutual agreement between two or more persons on entering into, altering, or ending lawful relations. A contract in the narrower sense applied here is a mutual expression of intent made by two or more persons based on an agreement, with the purpose of establishing obligations rights (Section 1401).

1512. The essence of any contractual obligation includes a promise made by one party and its acceptance by a second party (a unilateral contract), or a mutual promise and its acceptance by both parties (a bilateral or multilateral contract).

1513. A unilateral promise which a second party has not yet accepted shall not establish any obligations.

SUB-CHAPTER 1
Contracting Parties

1514. Everything which is stated concerning the capacity of a person to perform lawful transactions in general shall also be applicable to the entering into of contracts.

1515. If a person acts as an agent for a disclosed principal, i.e., enters into a contract directly in the name of the principal without exceeding the limits of his or her authority, then the contract shall bind, both in regard to duties and to rights, the principal himself or herself directly.

1516. If a person acts as an agent for an undisclosed principal, i.e., enters into a contract on behalf of the principal, but not in his or her name, the contract shall be in effect, both in regard to duties and rights, only pertaining to the contracting party, but it shall be in effect in regard to the principal only when the contract is specially transferred to him or her.

1517. If an agent for an undisclosed principal makes use of the benefit received from the contract in favour of the principal, then the duty of performance shall also pass over directly to the latter, proportionately to the benefit consumed, in favour of the other contracting party.

1518. If an agent exceeds the scope of the authority granted to him or her, or has never had the characteristics of an agent, then the other contracting party shall make his or her claims only against the agent, unless the principal confirms the contract at a later time.

1519. The rights and obligations arising from a contract, insofar as they are not purely personal, shall pass over to the heirs of the contracting parties and the successors in interest, unless the law provides for specific exceptions.

Apart from this case, neither rights, nor obligations shall arise for third persons from a contract, unless the contracting parties are their agents (Section 1515-1518).

1520. If one contracting party makes a promise to another in favour of a third person, then not only the promisee but also the third person in whose favour the promise was made shall gain the right to demand the performance of such contract from the promisor.

1521. The rights of a third person arising from such a contract (Section 1520) shall become independent and not subject to the intent of the promisee, only when the third person himself or herself enters into the contract.

1522. Until the third person enters into the contract (Section 1521) it shall be valid only between the contracting parties: they can revoke the contract at any time by mutual agreement, and the person to whom the promise was made in favour of a third person, may release the other person unilaterally from the obligations he or she has undertaken; but the other person, however, shall not have the right to withdraw from the contract unilaterally, and therefore the rights of a third person arising from the contract shall become independent as soon as the intent of the promisee can no longer be altered, as, for example after his or her death or after he or she has become mentally ill without cure.

1523. A third person in whose favour something was promised in a contract by other persons shall not have the duty to accept this promise; if the third person rejects it, then the possible consequences shall be borne only by the party which accepted the promise.

1524. The creditor may also be a person who is not specified individually if the debtor undertakes, in an issued document, to carry out the obligations specified therein for the bearer.

1525. Apart from the State, such bearer papers may be issued by State-established credit institutions and stock companies.

1526. The holder of the bearer paper shall be regarded, as long as the paper is in his or her possession, as the creditor to its issuer, while the latter shall be regarded as his or her debtor.

1527. The right to claim established by the bearer paper shall be ceded by passing this document from one person to another.

1528. The person passing on the bearer paper (Section 1527) shall be held responsible to the recipient only for the existence of the claim, i.e., the authenticity of the paper, but not for the security of the claim, i.e., the solvency of the debtor.

1529. The debtor of the bearer paper shall not raise any objections against the bearer that he or she might have had against the first or any subsequent holders of this paper; likewise the debtor shall also not evade the performance of his or her obligations by referring to the means by which the bearer has obtained the paper, or the price he or she has paid for it.

1530. Bearer papers may be the subject-matter of property as well as personal, or claim, rights.

1531. If the holder loses such a paper or it is destroyed, he or she may request the court to summon its holder; and if no one comes forward by the expiration of the designated time period, and there are no other obstacles, he or she may claim for the lost paper to be acknowledged as destroyed and to be replaced by a new one, or else, if the date of payment is already past due, to demand payment.

An ownership action against the new holder who has responded to a summons shall be allowed only if he or she has obtained the paper in bad faith, which must be proved; a holder in good faith shall not be obliged to surrender it.

1532. Bearer papers may be taken out of circulation by endorsement across the holder's name, or any other notations, as specified in the articles of association of credit institutions.

SUB-CHAPTER 2
Agreement between the Contracting Parties

1533. A contract shall be considered to be finally entered into only when the contracting parties have reached complete agreement regarding the essential elements (Section 1470) with the purpose of mutually binding each other.

If according to the law, or the agreement of the contracting parties, the contract is required to be concluded in a particular form, then Section 1475 and subsequent sections, as well as Section 1482 and subsequent sections, are applicable.

1534. The agreement which has been made between the contracting parties regarding essential elements of the contract, if they have directly reserved the right to still negotiate certain ancillary provisions, shall be regarded only as a preliminary discussion. But when they have not reserved such a right concerning ancillary provisions, the contract shall be regarded as finally entered into, unless it indicates opposite intention, and in such case the natural elements (Section 1471) of the transaction shall be settled in accordance with the provisions of the law concerning the nature of this transaction, but the incidental elements (Section 1472) - pursuant to the discretion of the court.

1535. The parties may agree either simultaneously, or one before the other, in which case the transaction shall begin with either a promise made by one party and which is afterwards accepted by the other party, or with an acceptance which is expressed in the form of a demand

or a request

1536. A contract offer made only by one party shall have no binding force, even if a definite promise is added, and therefore, as long as the other party has not accepted this promise, it may be revoked.

1537. If a contract is entered into between absent parties, it shall be regarded as finally entered into from the moment the party to whom the offer was made informs the offerer of its acceptance, even though the offerer might not yet have received the notification. If the acceptance is not unconditional, and the offer called for further negotiations, the contract shall be regarded as finally entered into from the moment one of the parties declares its final unconditional consent.

1538. If the offerer sets a fixed term for the reply, then he or she shall be bound until the expiration of the term; but if a time period is not set, the offerer shall have the right to revoke the offer if the other party, is delaying notification of its acceptance. The issue of whether the other party has delayed shall be decided by a court. In matters regarding trade, each case when the notification was not made as soon as possible shall be considered to be a delay.

1539. If the offer is revoked, but the person to whom it has been made is not aware and cannot be aware of such revocation, and also is not guilty of any delay, then the offerer shall pay this person for the losses arising from the belief that the offer is still in effect.

1540. The person who, by way of advertisement, has bid a certain remuneration for the performance of some action, may revoke their bid while this action has not yet been performed in the relevant manner, but only by the same kind of advertisement

If someone has already made preparations to perform the action for which the remuneration was bid, then the bidder shall remain bound by their advertisement, presuming, however, that the indicated action is performed in the proper manner. If the bidder has set a certain term for performing the action, and it expires, then the bid shall no longer be in effect, but it may not be revoked before the expiration of the term.

1541. A letter of intent with the purpose of entering into a contract shall take effect as soon as the essential elements of the contract have been established by it.

SUB-CHAPTER 3
Subject-matter of Contracts

1542. Everything that is specified in Section 1412 and subsequent sections regarding the subject-matter of a legal transaction shall also concern the subject-matter of a contract.

1543. Contracts regarding something impossible shall not be in effect; but when their execution is impossible not in general, but only for the promisor, or when the impossibility is a result of the promisor's own actions, he or she shall compensate the person to whom the promise was made for losses. If the subject-matter of the promise is alternative, and one of the subject-matters is impossible to perform, the obligation shall be regarded to be an unconditional obligation which concerns only the possible subject-matter.

1544. A contract regarding property which cannot be circulated is not valid, even if it might

later be able to be circulated; but if the person to whom such thing was promised did not know of the characteristic, he or she may demand payment of compensation for losses from the opposing party. If property is taken out of circulation only insofar as the debtor is concerned, but the creditor may take possession of it, then the contract shall be in effect

1545. A contract regarding the property of another, even though it is entered into without the owner's consent and knowledge, shall establish valid rights to claim, except in the case when the contract concerns property acquired by means of a criminal offence, and the promisee is aware of it

1546. A contract making a promise that a third person shall perform something shall bind neither the promisor nor the third person.

As an exception, such a promise shall be in effect in the following cases:

1) when someone undertakes the obligations of another person's debt;

2) when someone promises to procure a guarantor for oneself;

3) when a person's manager makes a promise and asserts that this person shall confirm it; and

4) when a promise has been made securing it with contractual penalties or by undertaking to compensate for losses.

In all such cases, contractual penalties or compensation for losses shall be paid if the promise is not kept.

1547. If someone makes a promise either to ensure that a third person performs something, or to induce him or her perform it, then it shall be an action of the promisor himself or herself, and therefore, the promisor shall compensate for losses if the third person does not undertake to perform such action.

SUB-CHAPTER 4
Ancillary Provisions of Contracts

1548. Any contract may be supplemented with various ancillary provisions, namely, conditions and terms.

I. Conditions

1. Types of Conditions

1549. A condition is such an ancillary provision as renders the effect of the contract dependent upon a certain subsequent and unknown, or to be supposed as such, event.

1550. No condition exists when it is known for certain from the very start that a forthcoming event shall occur, or that the contrary shall happen, i.e., that it is certain not to occur. In the former case the condition is called necessary, but in the latter case - impossible. Impossible conditions shall also include conditions regarding the non-occurrence of an unavoidable event, but necessary conditions shall include conditions regarding the non-occurrence of an impossible event.

1551. Conditions are either suspensive or resolutory, depending on whether they determine the beginning or the end of the effect of a contract.

1552. Conditions are either casual, when their coming into effect is in no way dependent on the will of a conditionally entitled person, or arbitrary, when they are entirely dependent on the will of such person, or mixed, when causality is coincidental with arbitrariness. Differing from these three types of conditions, are such conditions as the coming into effect of which is dependent on the will of a third person.

1553. Conditions become impossible for either physical or legal reasons.

Illegal and immoral conditions, i.e., such as directly or indirectly promote, through their content, illegal or immoral actions, shall be equivalent to legally impossible conditions in regard to the effect thereof.

1554. Conditions which are not admissible in last will instructions pursuant to Section 588, shall not be admissible in contracts.

2. Legal Consequences of Conditions

1555. If the expression of a condition is so unspecific or vague, that it is not possible to interpret such, then the conditional instructions of such shall not be in effect.

1556. If the performance of the condition depends solely on the intent of the obligee, i.e., when it is specified that a debtor shall perform his or her obligation when a creditor wishes to accept it, then such a condition shall not affect the transaction, unless the content of the instructions clearly displays the opposite intention.

If performance is determined solely by the volition of the debtor, the contract is void.

1557. A conditional claim shall devolve to the heirs of the conditional creditor, except in cases when the claim or the performance of the condition has pertained specifically to the creditor. Similarly, a conditional claim shall also remain in effect in regard to the heirs of the conditional debtor.

1558. While it is still not known whether the suspensive condition will or will not come into effect, the conditionally entitled person shall have only an expectant right which the opposing party in the contract cannot eliminate either by withdrawing unilaterally or by any other action according to his or her will.

1559. The conditional obligor shall not do anything that would prevent the condition from coming into effect.

The conditionally entitled person may not bring an action for the performance of the contract before the condition comes into effect, but if the conditional obligor threatens his or her right or gives other cause, security for the coming into effect of the condition may be demanded.

1560. If, on the basis of a contract entered into with a suspensive condition, a property is transferred to the conditionally entitled person, then, until such time as it is known whether the condition will come into effect, such person shall be regarded as the administrator of the property of another person, shall not become its owner by prescription, and shall return it upon request, but hence he or she shall not bear any risk regarding such property.

1561. When a suspensive condition has come into effect, the contract shall be regarded as

entered into unconditionally from its inception, if the subject-matter to be performed still exists. Deterioration of the property during this interval shall be borne by the creditor and he or she shall have no right to claim that the debtor return the income acquired during this tune period. The prescriptive period for the right to claim arising from the contract shall be calculated only from the date the condition has come into effect.

1562. When it is certain that a suspensive condition will not come into effect, the contract shall be regarded as not having been entered into; therefore everything that may already have been performed pursuant to it shall be restored or repaid.

1563. While it is not known whether the resolutory condition will or will not come into effect, the contract is in effect just as an unconditional contract, and if on the basis of such a contract the entitled person is given a certain property, then such person shall become its owner and may exercise all ownership rights.

1564. The consequences of a resolutory condition not coming into effect are that the contract shall remain in effect and therefore the property obtained on the basis of the contract shall become irrevocable.

1565. If a resolutory condition comes into effect, a contract shall be regarded as not having been entered into. Both parties shall restore everything they have obtained from one another on the basis of the contract; but the fruits which were obtained in the interim shall be retained by the party which received them during the existence of the contract If one of the parties, during the same interim period, granted a third person the rights to a certain property, then such rights, despite the coming into effect of the resolutory condition, shall remain in effect; but the one who established such rights, however, has the duty to arrange for their annulment as regards the opposing party in the contract, or, if that is not possible, to pay compensate him or her for losses.

1566. If, while a resolutory condition is still uncertain, there is cause for fear that the conditionally entitled person will not be able to carry out his or her obligations (Section 1565) when the condition comes into effect, then the conditional obligor may demand security from him or her.

1567. Necessary conditions (Section 1550) shall have no consequences, and a contract in which they appear shall be regarded as an unconditional contract.

1568. An impossible suspensive condition (Section 1550), if it is affirmative, shall void the effect of a contract; but if it is negative, the contract shall remain in effect as an unconditional contract An impossible resolutory condition, whether affirmative or negative, shall have no consequences.

If a condition is impossible only in part, then the part which is possible shall remain in effect.

1569. If the performance of a condition relates to insurmountable difficulty only for the person to whom it specifically applies, this condition shall nevertheless be in effect However, if the cause of the difficulty lies in a situation common to all, such a condition shall be regarded as impossible.

If a condition appears impossible at the tune it is prescribed, but later changing circumstances render its performance possible, such condition shall be regarded as possible.

1570. Immoral and illegal conditions (Section 1553, Paragraph two) shall entirely nullify the instruction dependant upon them.

1571. A contract whereby a person undertakes to suffer certain losses if he or she does something unmoral or illegal shall be valid.

A contract whereby someone has negotiated something for oneself for refraining from an illegal action or merely for performing one's duty shall not be binding.

3. Performance of Conditions

1572. An affirmative condition is performed as of the moment the event has actually occurred; but a negative condition - as of the moment when it is apparent that the event is impossible.

1573. The manner in which a condition is to be performed shall be specified in accordance with the purpose thereof when it was specified, such that its literal performance, on the one hand, shall not always be adequate, but, on the other hand, shall not always be necessary.

Even if the event or the action on which the validity of the contract depends is by itself entirely meaningless, nevertheless its coming into effect or performance must be awaited.

1574. If a certain term is set for the performance of a condition, it shall be observed, but if it is not observed, the condition shall be considered to not have been performed. In addition the period during which the debtor was hindered in performing the condition, through no fault of his or her own, nevertheless, shall be deducted. If no term is set, then it is irrelevant when the condition is performed.

1575. If several conditions are prescribed together, then each of them shall be performed in full; but if they are prescribed alternatively, then the performance of one shall be sufficient, pursuant to the discretion of the person who is restricted by such conditions.

If one of the alternative conditions later becomes impossible to perform, the performance of the other condition shall be sufficient, even if the person who prescribed the conditions had retained the right to choose.

1576. The provisions of Sections 594 and 595 on the performance of conditions of last will instructions also apply to the conditions of contracts.

1577. A condition shall be considered to have been performed when the person for whose benefit it was prescribed releases the other party from the duty to perform it.

1578. If an obligor performs his or her obligations before the prescribed condition has come into effect, believing that it has already come into effect, then he or she has the right to request the return of his or her performance unless the condition has in the interim actually taken effect.

II. Terms

1579. Pursuant to a term the beginning or the duration of the rights arising from a contract is made dependent on the occurrence of a certain moment in time, which is, in accordance therewith, called either the beginning of the term or the end of the term.

1580. Including a term in a contract does not affect the rights which shall be considered to have been acquired without conditions and, therefore, shall devolve to the heirs and are restricted only to a certain time period as regards their application.

1581. In case of doubt, the designation "several", or "a few" days, weeks, months, etc. shall be interpreted as three of the respective time periods.

1582. If a term is set depending on a future event which is not certain to come into effect, then in case of doubt the designated time period shall acquire the nature of a condition.

1583. If the determination of the time from which the right granted by a contract shall take effect is left entirely within the discretion of the person to whom the right has been granted, then such right shall also devolve to his or her heirs.

A payment or a performance the determination of whose term has been left to the debtor may not be claimed until after the death of the person.

If the determination of the duration of the rights to use a certain thing is dependant on its owner, then such rights shall expire upon his or her death, unless he or she has determined the duration during his or her lifetime.

1584. In case of doubt, it shall be assumed for every term that it was determined in favour of the obligor rather than the obligee.

1585. The obligor may perform his or her obligation before the specified term, unless the opposite has been specifically agreed to, or if it is not clearly apparent from the circumstances of the matter that the term was established for the benefit of the creditor.

If the obligor performs his or her obligation before the specified term, then he or she shall have no right to request the return of his or her performance.

1586. The expiration of a term shall have no retroactive effect, and therefore, the person who must return property shall not have a duty to also provide the fruits which have been received from it from and after the entering into of the contract.

SUB-CHAPTER 5
Consequences of a Contract

1587. A contract legally entered into shall impose on a contracting party a duty to perform that which was promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, shall give the right to one party to withdraw from the contract, even if the other party is compensated for losses.

1588. One party may not withdraw from a contract without the consent of the other party, even if the latter fails to perform it and due to the failure to perform it.

1589. Unilateral withdrawal from a contract shall be permitted only when it is based on the nature of the contract, or when the law provides for it in certain circumstances, or when such right was expressly contracted for.

1590. Each party shall have the right of claim for the performance of the contract by the other

party, and such right shall also pass to their heirs, except in cases when the obligation is restricted pursuant to the contract to the contracting person, or when the subject-matter of the contract is such an action for which the particular personal abilities and relations of the obligor are of importance.

1591. If an action is brought concerning the performance of a bilateral contract, the plaintiff shall either promise appropriate performance, or prove that he or she has already performed the contract on his or her part. Otherwise no objection may be raised against him or her for not performing the contract, unless it arises from the nature of the contractual relationship that the defendant shall perform first.

1592. No contract which encourages anything illegal, immoral or dishonest shall be binding. If one party has been persuaded to enter into such a contract fraudulently, then he or she has the right to request compensation for losses.

SUB-CHAPTER 6
Duty of Liability

I. General Provisions

1593. In every alienation contract for consideration, such as purchase, barter, distribution of estate and joint property, pledge and settlement, the alienor shall be liable to the acquirer for the following:

1) that the property shall not be replevied; and

2) that the property has no hidden defects and possesses all the good qualities which are warranted or presumed.

1594. The duty of liability shall exist, even though such duty may not be directly specified in the contract.

1595. The duty of liability shall be borne by the alienor, regardless of whether he or she alienated the property himself or herself or through his or her substitute; the latter shall be liable only if he or she has undertaken such directly, or has exceeded the limits of his or her authorisation. The court shall not be liable for sale at auction, nor shall a pledgee who alienates a pledge be liable.

1596. The duty of liability shall pertain to everything that is the subject-matter of alienation.

If several separate items of property are alienated jointly, then the alienor shall be liable for the replevin of each separate item. But, if an aggregation of property (Section 848) is alienated, then the alienor shall be liable for each separate item of property therein only if the alienation was intended less of the aggregation of property than of the separate components, or if the separate components are specified. If, on the other hand, alienation of the aggregation of the items of property was intended as alienation of the whole, then the separate items shall be recognised as alienated in the state they were at the time, assuming, however, that the alienor did not act in bad faith.

1597. In risky contracts, including speculative purchases, the alienor shall not be subject to the duty of liability, unless he or she has acted in bad faith.

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II. Replevin Liability

1. Liability Conditions for Replevin

1598. Replevin requires that the property shall be replievied from its acquirer for the benefit of a third person, fully or in part, by specific court procedures, based on such right as was in effect at the time of alienation.

1599. Replevin which is possible only in the future shall not create claims related to replevin which has already taken place.

1600. In the case of a past replevin (Section 1598), the duty of liability towards the acquirer of property shall remain with the alienor, whereby replevin in this case for the benefit of a third person is not only on the basis of ownership rights, but also any other property rights.

If a third party brings an action concerning a particular servitude, except a usufruct, then the provisions specifying liability for defects (Section 1612 and subsequent Sections) are applicable.

1601. As soon as a replevin action is brought against an acquirer, he or she shall invite the alienor to participate in the trial process and replace him or her, but if there have been several alienors, all of them shall be invited.

If the alienor, after being invited, does not participate in the trial and does not undertake to replace the acquirer, then the latter shall conduct the trial by himself or herself and shall use all the means of defence known and available to them against the action which has been brought.

If the acquirer did not invite the alienor to participate in the trial in tune, or is negligent in the conducting of the trial, or makes a settlement with the opponent, or submits the matter to arbitration, then he or she shall lose the right to bring an action against the alienor.

1602. Not inviting the alienor to participate in the trial shall not harm the acquirer:

1) if the acquirer has been released from this duty by means of a contract;

2) if the alienor is absent and his or her place of residence is unknown; or

3) if the alienor has intentionally delayed the invitation.

2. Cases When the Alienor Shall not be Subject to the Duty of Liability.

1603. The alienor shall not be subject to the duty of liability:

1) if the acquirer loses the alienated property not pursuant to a court judgment, but pursuant to an administrative order, or in connection with force or a natural force;

2) if the reason for recovery became applicable only after the actual alienation and, therefore, due to the acquirer's own actions or inactions;

3) if the acquirer knowing that the property of another person was being alienated or that it was pledged, did not retain the right to bring an action for replevin;

4) if the trial is lost and has resulted in replevy due to the fault or negligence of the acquirer; or

5) if pursuant to a contract either the acquirer has expressly waived the right to seek liability, or the alienor has expressly repudiated such duty; but if, in addition, the latter has acted in bad faith, then he or she shall nevertheless compensate the losses of the acquirer.

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1604. An offer to give the acquirer the property already replevied from him or her and free of any claims, shall not release the alienor from his or her duty of liability.

3. Scope of an Alienor's Duty of Liability

1605. When alienated property is replevied, its alienor shall compensate for all losses that the acquirer has suffered therefrom, including court proceedings costs or the property itself, unless such expenses have already been paid by the party to whom the property was adjudged.

1606. If the value of the replevisable property has not changed, the alienor shall pay court proceedings costs and shall return only the payment for the property he or she has received. Otherwise the value of the property at the time of the replevin shall be considered, with the condition, however, that in no event shall the acquirer receive more than twice the amount he or she has paid for it.

1607. If several items of property were alienated for a joint price, but thereafter only some of them were replevisable, then the alienor shall be compensated for the replevisable items, even though the value of the other items might be equal to the total sum paid for all of the items together.

1608. If a part or certain appurtenances of an alienated property are replevisable, not only their specific value itself, but also the resulting decrease in the value of the other, not replevisable items shall be taken into account.

1609. If the contracting parties have specially agreed between themselves on the amount of compensation in the event of a property being replevied, then the matter shall be decided on the basis of such agreement.

1610. If there are several alienors, they shall not bear the duty of solidary liability, but each shall be liable for his or her own share.

1611. The alienor's duty of liability shall continue as long as anyone may make bring an action against the alienated property, and it shall end no sooner than when the acquirer through prescription acquires the property rights in regard to this property which were alienated from him or her. However, if immovable property is alienated, and an invitation has been made with the alienation, the duty of liability shall end if no claims have been made by the expiration of the term specified in the invitation.

III. Liability for Defects and Characteristics

1. Alienor's General Liability

1612. The alienor shall be liable not only for the faults and defects of the alienated property of which he or she had knowledge but did not declare, but also for hidden defects of which he or she did not have knowledge.

1613. The alienor shall not be liable for insignificant defects which do not hinder general use of a property, nor for defects regarding which the acquirer had knowledge or which could not remain hidden to him or her after ordinary inspection. The alienor shall also be released from

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any liability if the defects of a property were known only to the substitute for the acquirer.

1614. Liability for defects of a property shall fall upon the alienor only if they already existed before the entering into of the alienation contract and did not arise thereafter.

Defects, which existed in a property before its alienation but were remedied during the alienation, shall not have any significance.

1615. Non-declaration of generally known charges on an alienable property shall not subject the alienor to any liability.

1616. The alienor shall in any case be liable for defects he or she has declared to be non-existent.

1617. Even though the alienor may, by means of a special contract, repudiate liability for defects, nevertheless, even in such case he or she shall be released from it only if he or she did not in bad faith conceal such defects from the acquirer or fail to disclose them to him or her.

1618. If the alienor has expressly declared that the property has certain good characteristics, he or she shall be liable for such, even in such case when he or she has declared it only after the alienation.

Praising the property in general terms shall not impose any other duties upon the alienor except for the general liability borne by every alienor.

2. Scope of the Alienor's Liability and Means of Defence for the Acquirer

1619. If the alienor has assumed liability within certain limits, then nothing may be required of him or her beyond such limits, unless he or she acted in bad faith.

1620. The alienor who has failed to disclose or concealed, in bad faith, certain defects of the property he or she was aware of, or has expressly declared that it has certain characteristics, shall compensate the acquirer for all losses. In all other cases the acquirer shall only have the right to request pursuant to his or her own choice either the setting aside of the contract, or a reduction in the price of the property.

1621. An action for revocation of a contract shall not be admissible in the sale of property of little value.

1622. The purpose of an action for revocation of a contract is to take back sold property and to return payment or some other performance received for such.

1623. The alienor shall return the payment and interest received for a property and, in addition, shall reimburse the necessary and useful expenditures incurred for the benefit of the property, as well as property alienation costs and reduction in the value of the property resulting since the alienation; therewith the alienor shall release the acquirer from all duties he or she has had to undertake pursuant to the alienation contract, or as a result of it.

1624. When an acquirer brings an action for revocation of a contract, he or she shall return the property with all its appurtenances, as well as the fruits both received and not received due to negligence. In addition, he or she shall compensate for losses which have been incurred as result of his or her fault, and release the property from charges and encumbrances if he or she

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has encumbered such property. Until all of the above mentioned has been performed, the acquirer may not require that the alienor perform the duties specified in Section **1623.**

1625. The purpose of an action for property price reduction is to reduce the price or any other performance received equal to the lesser price or performance which would have been received for the property, if its defects had been known.

1626. Before a contract is revoked (Section 1622 and subsequent Sections), an action for price reduction may be renewed several times because of the defects of the same property, with the condition, however, that the acquirer shall not profit by it.

1627. Before a judgment is rendered in an action for price reduction, the plaintiff shall always have the right to bring an action for revocation of the contract instead of the first mentioned action, if he or she finds the object entirely useless, however, the plaintiff shall pay the opposing party's court proceedings costs for the earlier case.

1628. The acquirer may defend his or her rights not only by an action in accordance with the procedure specified in Sections 1619 and 1620, but, on the same grounds of having the right to claim, he or she may also make an objection of inadequate performance of the contract against the alienor's action for counter-performance (Section 1591).

1629. If the contract was entered into by several acquirers in solidarity, they may also bring an action in solidarity. The heirs of the acquirer shall have the right to bring an action to revoke the contract only jointly; each heir may also bring an action for price reduction independently of the others, in the amount of his or her share.

1630. If a contract was entered into by several alienors jointly, they shall answer to both actions (Section 1620) in solidarity. If there are several heirs of the alienor, actions may brought only against each of them separately, in the amount of the share of each.

1631. Actions may also be brought regarding appurtenances and parts of the principal property, as well as to separate objects in aggregations of property, assuming, however, that duty of liability exists in relation to each of them separately (Section 1596, Paragraph two). In such a case, although only one of the objects might have a defect, it may be requested either that the whole be taken back, or that the price be reduced, or that compensation proportionate to the whole be given.

1632. If an alienated property is recovered or accidentally destroyed, this shall not prevent the actions brought on account of its defects or promised but unfulfilled characteristics.

1633. The right to bring an action to revoke a contract shall be extinguished through prescription six months from the day of entering into the contract, or from the day of any special guarantee (Sections 1616,1618 and 1619) being given.

1634. The right to bring an action for price reduction shall lapse a year from the day of entering into the contract, or from the day of any special guarantee (Sections 1618 and 1619) being given.

CHAPTER 3
Obligations and Claims arising from Wrongful Acts

SUB-CHAPTER 1
Wrongful Acts and Degrees of Fault

1635. Every delict, that is, every wrongful act *per se*, as a result of which harm has been caused (also moral injury), shall give the person who suffered the harm therefrom the right to claim satisfaction from the infringer, insofar as he or she may be held at fault for such act.

By moral injury is understood physical or mental suffering, which are caused as a result of unlawful acts committed to the non-financial rights or non-financial benefit delicts of the person who suffered the harm. The amount of compensation for moral injury shall be determined by a court at its own discretion, taking into account the seriousness and the consequences of the moral injury.

If the unlawful acts referred to in Paragraph two of this section are expressed as criminal offences against a person's life, health, morals, inviolability of gender, freedom, honour, dignity or against the family, or minors, it is presumed that the person who suffered the harm as a result of such acts has been done moral injury. In other cases moral injury shall be proved by the person who suffered the harm.

Note. The term act is used here within the widest meaning, including not only acts, but also the failure to act, that is, inaction.
[26 January 2006]

1636. If a person exercises a right belonging to him or her, or acts pursuant to the wishes of the aggrieved party, or is forced to act in justified self-defence due to the unlawful acts of the latter party, there is no delict.

1637. Children under seven years of age, and the mentally ill, shall not be held liable for delicts.

Persons with the capacity to act shall not be held liable for delicts, if they committed the delict while unconscious or in a state of mental incompetence. Persons, whose condition is self-induced by means of alcoholic beverages, or other means, shall be held liable for their delicts.

1638. If a subordinate commits a delict pursuant to the orders of his or her supervisor, the former shall not be held liable, if the act is not itself criminal.

1639. A person who allows a delict to take place shall be liable for it in circumstances where, due to his or her personal relationship with the transgressor, as one of the parents or as the employer, he or she have the opportunity, and therefore the duty, to prevent such a delict.
[22 December 1992]

1640. There are various degrees of fault, depending on whether the act was committed in with wrongful intent, or only due to negligence.

1641. As wrongful intent shall be understood every intentional harm.

1642. If both parties acted with wrongful intent, with one and the same purpose, and in relation to the same subject-matter, then one party may not bring an action against the other

on this basis. However, if only one party acted with wrongful intent, then the party who thereby suffered harm shall have the right to request satisfaction from the other, even if he or she is at fault for negligence.

1643. Any previous agreement not to compensate for losses from an act committed with wrongful intent shall be void. However, the aggrieved may waive a claim regarding a wrongful act, if he or she is sufficiently informed regarding both the claim and the basis thereof.

1644. If a person inflicts harm upon another without wrongful intent, if such person is at fault for the wrong, then he or she acted negligently.

Negligence can be gross or ordinary.

1645. A person acts with gross negligence if his or her conduct is reckless and careless in the highest degree; or if he or she acts with less care towards the property of another entrusted to him or her than he or she would apply to his or her own property; or if he or she initiates a course of action, the harmfulness and dangerousness of which could not and should not have been unknown to him or her.

In terms of compensation for losses and other legal consequences, gross negligence shall be wholly equivalent to wrongful intent.

1646. Ordinary negligence shall be considered to be that lack of care and due diligence as must be observed by any reasonably prudent and careful manager.

1647. When a person gives the same kind of care to the property or business activities of another as he or she usually do to his or her own, he or she shall not be liable for negligence in such cases as indicated in the relevant sections, unless such negligence was gross.

1648. If, in contractual relations, one party has the duty to safeguard a certain property, then regardless whether it is pursuant to the provisions of the contract or of law, the party upon whom this duty is imposed shall be liable both for the theft of the property, as well as for the acquisition of ownership of the property by a third person through prescription.

1649. In claims arising solely from delicts that do not affect already existing contractual relations, the transgressor is liable for all, even ordinary negligence.

The provisions regarding the degree of negligence to be considered as fault in the relations arising from the contract, or from the administration of the property of another, as well as in bringing actions against a person as regards the possession of the property of another, are set out in the relevant sections.

1650. If two persons are mutually at fault for negligence, the claims arising therefrom shall be mutually adjusted to the extent to which they cover each other.

SUB-CHAPTER 2
Default

I. Types of Default

1651. Default is the illegal delay of the performance of obligations or the acceptance of

performance. The former refers to the debtor in default, the latter to the creditor.

1. Default of the Debtor

1652. The debtor shall be in *default per se* with all its consequences:

1) when the debtor has gained possession of property by criminal or generally illegal means;

2) when it is not possible to contact the debtor during the time designated for performance and the absence is without good cause; or

3) when the debtor has allowed the time period set either by law or contract, or also by custom for performance to elapse.

If in the contract regarding the supply of goods, purchase or provision of services does not have a time period for the payment of compensation contracted for, moreover, the debtor for whom the obligation is fulfillable has not received a reminder from the creditor or his or her substitute (Section 1653) earlier, the debtor shall be in *default per se* with all its consequences if the debtor has not made a payment within a period of thirty days after:

1) the day of receipt of an invoice or other equivalent payment request;

2) the day of receipt of the goods or services if the period of receipt of the invoice or other equivalent payment request is not known for sure or if the debtor has received an invoice or other equivalent payment request earlier than the goods or services; or

3) the day on which acceptance or examination (inspection) provided for by law or the contract has been performed in order to determine the conformity of the goods or services with the provisions of the contract, and the debtor has received an invoice or other equivalent payment request on such day or prior thereto.

The provisions of Paragraph two of this Section shall not apply to a debtor who is a consumer.

[26 January 2006]

1653. In cases other than those mentioned above (Section 1652), in order to declare the debtor in default, the debtor must first receive a reminder from the creditor, or his or her substitute.

1654. The debtor, or his or her substitute must receive the reminder, personally.

1655. The reminder may not be issued at a time when or in a place where the performance of obligations cannot be injustice be expected.

1656. A debtor shall not be considered to be in default, if the reason for the default is reasonable doubt on his or her part regarding either the obligation required to be performed by him or her generally, or regarding its scope.

1657. A court may release the debtor from consequential losses due to default also in other cases where the debtor cannot be considered at fault due to lack of care, recklessness or negligence, or if performance did not occur due to *force majeure*.

2. Default of the Creditor

1658. The creditor shall be in default, if he or she, without legal justification, does not accept the performance of the obligations, which the debtor offers to him or her or his or her substitute in the manner agreed, in the proper place, and at the proper time.

The debtor's offer must be such not only in words but also in actions that there is a real

possibility that it will be performed.

The debtor must offer to perform the obligations in full, and therefore the creditor's refusal to accept only partial performance of the obligations shall not be considered to be a default.

1659. A delay of the debtor's offer for only a short time shall not give the creditor a valid reason to refuse to accept the performance, unless the debtor concurrently promises to compensate for losses, or if the delay is of no significance.

1660. The creditor shall be considered to be in default, if he or she did not arrive for the performance of the obligation at the appointed place and time when the debtor was present and ready to perform his or her obligations.

Furthermore, the creditor shall be considered to be in default, if he or she avoids providing the calculations requested by the debtor in order to pay, if such calculations are necessary for the full payment of the claim.

II. Consequences of Default

1661. If the debtor is in default, then not only is his or her obligation still in effect, but also the duty of liability for accidental destruction of the subject-matter of the obligation shall be added to it

The debtor shall not be liable for the accidental destruction of the subject-matter of the obligation, if he or she proves that this subject-matter would have been destroyed even if the creditor had received it on time and the creditor would also not have been able to sell it.

1662. Default shall place a duty upon the debtor to compensate for all losses to the creditor in full. If compensation must be made for the value of the subject-matter, such value shall be calculated based on its highest price since the time of the default.

1663. If the creditor is not interested in the performance of the contract due to the debtor's default, then he or she may request its revocation.

1664. If the creditor is in default, then the risk for the accidental destruction of the object (Section 1661) is transferred to him or her, while the debtor is liable only for the losses which they caused maliciously or with gross negligence.

The creditor shall compensate the debtor for all losses caused by his or her default.

III. Prevention of the Consequences of Default

1665. The consequences of either the debtor's or the creditor's default may be prevented if the party in default promises to perform, or to accept that which he or she is entitled to pursuant to his or her contract, and to also ensure to the opposing party the providing of that which he or she has the right to receive due to the default.

1666. In applying the provisions of Section 1665, it shall, however, be assumed that if the debtor is in default, the status of the matter is such that the creditor does not have a right to request the revocation of the contract due to this default (Section 1633), but if the creditor is in default, it shall be assumed that the debtor has not in the interim submitted the subject-matter of the obligation to a court.

1667. If both parties are in default at the same time, then the consequences of default shall mutually cancel each other and neither party shall have a basis for bringing an action against the other on the basis of default.

If both parties are not in default at the same time, then the later default avoids the consequences of the previous default which have not yet occurred.

1668. If the opposing party accepts performance after default without objection, or if the obligation is cancelled by its novation, or also if the right to claim is extinguished through prescription, then no action may be brought based on default.

CHAPTER 4
Mutual Relations of Joint Obligors

SUB-CHAPTER 1
General Provisions

1669. If more than one person from one or the other side or from both sides participate in an obligation right, then the claim and relevant obligations thereto shall be either several, such that each creditor may claim only his or her own part of the subject-matter and each debtor must perform only his or her own part of the obligation, or joint.

1670. A claim or an obligation shall be recognised as joint or solidary when each of several creditors may claim the entire subject-matter, or when each of several debtors has the duty to perform it all; the subject-matter may, however, be claimed and is required to be performed only once. In such case the former are called joint creditors, but the latter joint debtors.

1671. Included in the essential nature of every solidary obligation is that it is based on one and the same basis and all parties have one and the same subject-matter of performance. However, rights as well as obligations may be unconditional for one party, but for others time or certain conditions may limit them.

SUB-CHAPTER 2
Establishment of Solidary Obligations

1672. Solidary obligations may be established pursuant to a contract, a will or by law.

1673. A contract and a will establish a solidary obligation only when expressly stated by the contracting parties or the testator.

1674. Pursuant to law, a solidary obligation is established when the subject-matter of performance is indivisible, namely, when it is either a certain action, or inaction, and also when a certain thing is entrusted jointly to more than one person for bailment, or lending, rental, or pledge by more than one person.

1675. If a criminal offence has been committed jointly by more than one person, they shall be solidarity liable for the losses caused thereby.

1676. If administration has been a joint one with more than one administrator or official, they

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shall have solidary liability for the duties arising from such administration.

SUB-CHAPTER 3
Consequences of Solidary Obligations

1677. Every joint creditor or person with solidary rights may claim the entire object of the obligation, but when the claim is satisfied, the rights to claim of the other joint creditors shall cease.

1678. A joint creditor who receives the performance of an obligation (Section 1677) shall give the others a certain part only when they are in a partnership, or when he or she for some other reason is charged with such duty pursuant to a contract, a will or law.

1679. If one joint creditor has granted certain relief, the rights of the other creditors shall not be restricted thereby.

1680. If a joint creditor has achieved the reinforcement of or security for a claim, that shall also benefit the other creditors.

1681. The debtor has discretion as to which of several joint creditors will perform an obligation, in addition to which the debtor may also include possible counterclaims. However, if one of the joint creditors has already brought an action for performance, then the debtor shall not have the right to pay any of the other creditors, and such payment shall not release him or her from the obligation to the plaintiff.

1682. Each of the joint debtors or solidary obligors may be compelled to perform the whole obligation, and their performance shall release the others from their obligations.

1683. A creditor may, pursuant to his or her discretion, request the performance of the whole obligation from all or from only a few joint debtors, or from only one debtor, but if the object of a claim is divisible, the creditor may, if he or she so wishes, claim only a part. However, a creditor shall not for such reason lose the right to the whole claim, but may claim the rest even from the same joint debtor from whom only a part was claimed previously.

1684. A joint debtor from whom a performance of an obligation is requested, may propose a set-off of only his or her own counterclaims against the creditor unless the joint debtors are in a partnership relationship.

1685. Debt relief, granted by a creditor personally to only one joint debtor, shall not benefit the other debtors.

1686. A joint debtor who has satisfied a creditor may request respective compensation from the others, if there are no special restrictions against such.

If the joint debtor who has paid acted in bad faith, he or she shall thereby lose the right to compensation from the others.

1687. The other joint debtors shall not be liable for the consequences of a default which occurred through the fault of only one debtor, nor shall they be liable for contractual penalties which were promised by only one of them.

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1688. Except for defaults (Section 1687), all other consequences caused by a wrongful act of a single joint debtor shall be borne by the others also. Therefore, if the subject-matter of an obligation has been damaged or destroyed through the fault of one joint debtor, the others shall also be liable for losses.

1689. The making of a claim against one of the joint debtors shall interrupt the running of the prescriptive period for the claim against the others also.

1690. Every novation, whether made by one joint creditor or by one joint debtor, shall revoke the rest of the former solidary obligation.

CHAPTER 5
Reinforcement of Obligations Rights

1691. The force of an obligation, may, in addition to pledge rights (Section 1278 and subsequent Sections) be reinforced by:

1) a guarantee,
2) contractual penalties, or
3) earnest money.

SUB-CHAPTER 1
Guarantee

I. General Provisions

1692. A guarantee is a contractual duty to be liable for the debt of a third person to a creditor without, however, releasing the third person from the debt.

1693. Any person having capacity to act may be a guarantor.

1694. A guarantee shall require an existing principal debt, and guarantees may be made in regard to all types of obligations, including those arising from wrongful acts, present and future obligations, definite and indefinite obligations, conditional and unconditional obligations, for the whole of the principal debt or a part of it.

1695. A guarantee shall be made in writing.

II. Consequences of a Guarantee

1. Duties of a Guarantor

1696. The obligation of a guarantor shall correspond in general to the obligation of the principal debtor and therefore may not apply to a larger sum, nor be unconditional if the obligation of the principal debtor is only conditional. If the guarantor has provided a guarantee for a sum that exceeds the principal debt, then only the sum of the principal debt may be claimed from him or her; but if the guarantor has unconditionally guaranteed a conditional debt, the condition shall also apply to him or her.

1697. If the guarantor undertakes to pay a smaller sum than the principal debtor has undertaken, or offers only a conditional guarantee for an unconditional debt, then only that which he or she has undertaken may be claimed from him or her.

1698. A guarantor shall be liable not only for the principal debt itself, but also for ancillary claims thereto, losses arising through the debtor's fault or default, and court costs.

1699. Several persons who have guaranteed on behalf of one and the same debtor and in regard to one and the same debt, shall be liable solidarity.

1700. When a guarantee is provided on behalf of one and the same debt jointly by a person with capacity to act and a person lacking capacity to act, then the entire obligation passes to the first guarantor if he or she knew or should have known that the other guarantor did not have the capacity to undertake a guarantee.

2. Rights of a Guarantor

A. Guarantor's Rights against a Creditor

1701. A guarantor against whom a creditor brings an action may use all the defences of the principal debtor, except those against which the creditor specifically wanted to protect himself or herself by means of a guarantee, or when their use is specifically related to the person of the principal debtor.

1702. When an action is brought against a guarantor, he or she may request that the creditor first bring an action against the principal debtor, if collection proceedings from him or her can be accomplished equally successfully and easily.

This right shall not apply if a guarantor specifically derogates from it. The assuming of the obligation by the guarantor in lieu of the principal debtor shall also be regarded as such derogation.

1703. An action may also be brought immediately against a guarantor:

1) if the principal debtor is absent, or the guarantor is unable to provide his or her place of residence; or

2) if the principal debtor has been proven to be insolvent in fact, or concursus proceedings regarding his or her property have been commenced.

B. Guarantor's Rights against the Principal Debtor

1704. The claim of a creditor against the principal debtor shall be transferred to the guarantor in such amount as the guarantor has satisfied the creditor. Claims and objections arising from the legal relationship existing between the guarantor and the principal debtor shall remain unchanged.

1705. A guarantor may bring a subrogation action against the principal debtor only after he or she has actually settled the debt or part thereof, or at least has had the duty to settle it imposed upon him or her by a court judgment. The manner of settlement shall have no effect. A reduction made by a creditor in favour of a guarantor shall not reduce the guarantor's claim against the principal debtor.

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1706. A guarantor who has paid in lieu of the principal debtor before the due date of the obligation may request the reimbursement this payment from the principal debtor only after the due date.

If the principal debtor incurs financial losses or squanders his or her property such that recovery from the guarantor by means of a subrogation action is unlikely to succeed, then a guarantor may require security from him or her prior to the payment

1707. If the guarantor has given a guarantee as a manager for the debtor and has finished this management, the guarantor may claim from the principal debtor a release from the guarantor's duty prior to the payment.

1708. If a guarantor has paid the debt in good faith, without making use of the defences and objections known to him or her and without the consent of the principal debtor, then the defences that the guarantor could make against the creditor may be made by the principal debtor in the subrogation action of the guarantor.

1709. If, after a debtor paid the debt without informing the guarantor thereof, the latter pays it a second time, then the guarantor shall have the right of subrogation against the debtor. However, if a guarantor pays first without informing the debtor thereof, and the latter therefor also pays, then the guarantor may no longer take action against the debtor and may claim repayment of the non-existent debt from the creditor.

III. Termination of Guarantee

1710. A guarantee shall be terminated by any action that discharges the principal obligation, releasing the debtor from it.

1711. A cancellation agreement between a creditor and a debtor shall also benefit the guarantor, unless there was a contrary intent, or if the guarantee was not given as a gift, such that the guarantor has already declined from the very beginning to bring a subrogation action against the principal debtor.

1712. A guarantee shall be terminated by any event that releases the principal debtor.

1713. If a creditor and a principal debtor inherit from each another, then the obligation of a guarantor shall terminate, but the guarantor shall retain the right to request the return of that which has been expended by him or her as guarantor. When a principal debtor and a guarantor inherit from each another, only the principal debt shall remain in effect, but the guarantee shall terminate unless the claim arising from it provides such benefits to the creditor as the principal claim does not. If, however, a creditor and a guarantor inherit from each another, then the guarantee shall terminate, but the obligation of the debtor shall remain in effect.

1714. The guarantor shall be released from his or her liability when the creditor has acted negligently in collection proceedings from the debtor and has permitted an inexcusable delay under the circumstances.

1715. If a guarantor has undertaken an obligation for a certain time, then he or she shall be liable only for this time.

SUB-CHAPTER 2
Contractual penalties

1716. Contractual penalties are penalties which a person undertakes to bear regarding his or her obligation in such case as he or she does not perform the obligation, or does not perform it satisfactorily.

1717. Contractual penalties may be included in any contract, and may be expressed not only in terms of money, but also as other valuable property.

The contracting parties shall determine the amount of the contractual penalty, and it is not limited to the amount of the losses expected as a result of non-performance of the contract.

1718. If someone has to bear contractual penalties, then a creditor may request either its payment or the performance of the contract; but if the creditor chooses payment, he or she may no longer request the performance of the contract, and vice versa.

If the subject matter of a contract was a promise not to do something, then only a contractual penalty may be claimed.

1719. The person who suffers contractual penalties may not choose between performance of the contract and payment of the contractual penalties.

1720. A creditor may claim both contractual penalties and performance of the contract:

1) if such was expressly agreed; or

2) if the contractual penalty agreed to was not based on non-performance in general, but for failure to perform in the proper time.

1721. If someone performs only part of his or her obligation, then he or she must, nevertheless, pay the entire amount of the contractual penalty, not only the proportionate part.

1722. Payment of contractual penalties shall not release the payer of the contractual penalties either from the interest or the fruits due from him or her, or from compensation for losses to the extent that they exceed the amount of the contractual penalties, unless the opposite has been expressly agreed upon.

1723. The right to claim contractual penalties, as well as liability for the payment of such, shall devolve to the heirs of the respective person; but if there is more than one heir, they shall not be liable solidarity

1724. When a principal obligation terminates, the agreed contractual penalties shall also automatically terminate.

SUB-CHAPTER 3
Earnest money

1725. Earnest money shall mean that which is given by one party to the other party at the time of entering into a contract not only as proof that a contract has been entered into, but also to secure its performance.

1726. Money as well as other valuable property may also be used as earnest money. The amount thereof shall be determined by mutual agreement of the parties.

1727. The promise of earnest money by itself shall not be sufficient, and rights regarding it shall be established only by it being given.

1728. Upon earnest money being given a contract shall be considered to be entered into, if otherwise it complies with all requirements of law, and either party may demand its performance.

1729. When a contract secured by earnest money has been performed, the earnest money shall be either returned to the party from whom it was received, or included in the performance of the contract, unless the contracting parties have expressly agreed otherwise.

1730. If a contract is not performed either because it was revoked by mutual, voluntary agreement, or because its performance became impossible through no fault of the giver of the earnest money, then the earnest money must be returned to the latter.

If a contract is not performed through the fault of one contracting party, then if the recipient of the earnest money is at fault he or she must give twice the sum to the giver; but if the giver of earnest money was at fault he or she shall lose the right to request its return. Moreover, the party at fault shall compensate the opposing party for all losses.

1731. If the parties have agreed that a contract already entered into may be revoked, forfeiting the earnest money, and if, as a result, the giver of the earnest money withdraws, he or she shall forfeit, but if the opposite party withdraws, he or she must repay twice the amount of the earnest money.

This provision shall be applied if the contracting parties have agreed that, upon the failure of one party to perform his or her obligations within the specified term, the other party shall be released from his or her obligation.

CHAPTER 6
Protection of Obligations Rights

1732. Obligations rights, like all other private rights, shall be protected only through the courts; therefore no one may seek their rights by arbitrary and forcible means.

1733. Self-help shall be permitted only in exceptional circumstances, when its purpose is to prevent an attempt to illegally alter existing relations, but even in such case, only within the necessary limits of self-defence. The principal means of protecting obligations rights outside of a court include detainer rights and distress.

SUB-CHAPTER 1
Detainer Rights

1734. On the basis of detainer rights a person who is in possession of certain property may keep it until his or her own claim is satisfied.

1735. Detainer rights (Section 1734) belong to the lessor of a fruit-bearing parcel of land in regard to production from the parcel of land and to the movable property of the lessee located there, because of a late payment under the lease, as well as all other claims that might arise against a lessee on the basis of a lease. The lessor shall also have the same right against a sub-lessee to whom the lessee has sub-leased his or her lessee rights.

1736. Detainer rights belong to the person who rents out a building or premises therein, or an open lot not meant for fruit production, and these rights shall be applicable to property of the tenant which the tenant has brought into the building or onto the lot for use or storage, including goods, but not intangible property and claims of the tenant, even if documents regarding such were brought there; these detainer rights belong on the basis of claims arising from the rental contract. If a tenant further sublets the building or the lot, then the property brought there by the sub-tenant shall also be liable to the claims of the original landlord, insofar as the sub-tenant shall be liable to their landlord. This shall not restrict the right of the tenant to freely use his or her property as long as the landlord has not detained it.

1737. Detainer rights may be exercised only when the person detaining has gained possession of a property by lawful means, and when his or her claim against the opposite party concerns the detained property, and also when the obligation is already due to be performed and is neither restricted by a condition nor by a term.

1738. The connection of the right to claim with the detained property (Section 1737) shall be recognised:

1) when the possessor has incurred expenditures with respect to such property, which the opposing party must reimburse;

2) when the claim of the possessor has arisen from the same transaction in relation to which he or she is being requested to return the property;

3) when a debt must be paid from the detained property;

4) when someone has suffered a loss from the property of another, and the owner must compensate for it; or

5) when the property must be returned in exchange for a certain counter-performance; in such case the property may be detained while the promised counter-performance has not occurred.

1739. The person detaining shall keep the property with the same care as is applicable regarding a possessory pledge and he or she shall not have the right to discharge his or her claim by alienating the property or otherwise expending it

1740. Detainer rights shall terminate when a counterclaim is discharged, or when the possessor surrenders possession of the property without exercising the detainer rights; however, the possessor shall not thereby lose the right to claim.

SUB-CHAPTER 2
Distress

I. Purpose of Distress

1741. Distress rights are rights possessed by the owner of a parcel of land or his or her substitute (user, lessee, manager), if the domestic animal of another enters his or her parcel of

land or if strangers intrude illegally thereon, to catch and detain domestic animals, and take property from persons.

A thief may also be personally detained.

Servants of the owner or his or her substitute, even without their being specifically instructed to do so may also exercise distress right.

1742. The purpose of distress is to ensure compensation for the losses inflicted, to provide evidence of delict, or merely prevent the occurrence of such violation or loss.

II. Distress Provisions

1743. Distress shall be lawful only if it occurs at the time of the action itself and within the boundaries of the parcel of land wherein the losses or delict occurred.

1744. The distrainor shall avoid excessive force and cruelty, and shall in general do nothing that is not necessary or which would exceed that which is required for the lawful purpose (Section 1742).

1745. No one has the right to resist distress, and resistance to it by means of counter distress shall be considered to be prohibited self-defence.

1746. If the person whose property has been distressed was not present at the distress, he or she must be informed immediately thereof, but if the person is unknown, the local police must be informed so as to examine the loss without delay and inform the relevant persons thereof.

1747. The distrainor shall be responsible for safe-keeping of the distressed property, and in particular for the care and feeding of the distressed animals; but he or she may not use them for his or her own benefit, otherwise he or she shall not only lose any right to reimbursement of the expenses for keeping and feeding them, but shall have to compensate for all losses. The distrainor shall be obliged to milk the milch animals.

Note: Compensation rates for the keeping of distressed animals shall be issued and published for general knowledge by the Minister for Agriculture in consultation with the Minister for the Interior.

III. Consequences of Distress

1748. If distress occurred as a result of losses inflicted, it shall be presumed that the losses were actually inflicted. The distrainor must prove the extent of the losses.

1749. A distrainor shall have the right to keep the distressed property at his or her place as long as the person whose property has been distressed has not redeemed it and compensated not only for the losses inflicted, but also for all the expenditures for distress, care and feeding.

1750. As soon as the person whose property has been distressed ensures compensation for losses by some other acceptable means, the distressed property shall be returned to him or her immediately.

1751. If the person whose property has been distressed is unknown and does not appear pursuant to notice (Section 1746), then the police shall sell the distressed property at auction,

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make payment for compensation of the losses and expenditures of the distrainor from the sum received, and pay the remainder to the person whose property was distressed, if he or she appears within six months; after that the surplus shall be paid into the State revenues.

1752. If the person whose property has been distressed is at fault for some wrongful act, then he or she shall, in addition to the compensation for losses, pay distress or redemption money, which shall also be paid in such cases when only possession has been disturbed, although no losses have been incurred.

Note. Distress money shall be taken for each distressed animal according to the rates issued every three years and published for general knowledge by the Minister for Agriculture in consultation with the Minister for the Interior.

CHAPTER 7
Interest

1753. Interest shall mean the compensation to be given for granting use of, or for lateness relating to a sum of money or other fungible property (Section 844), proportionate to the amount and the duration of use thereof.

1754. In regard to interest it is always required that there be a principal or capital debt.

1755. The same type of property as the principal debt consists of shall be given as interest; regarding monetary debts, however, the parties may specifically agree that as interest the creditor shall have the use of some property of the debtor, or receive some other performance from the debtor.

SUB-CHAPTER 1
Creation of Interest Obligations

1756. The duty to pay interest shall be based either on a legal transaction or on law.

1757. In contracting for interest, the interest rate shall be specified. If that is not done, it shall be considered that the interest rate set by law has been implicitly agreed to (Section 1765).

1758. Among traders who have running accounts one with another, it shall be deemed that it is implicitly agreed that interest set by law shall be added to the net balance which appears when such accounts are settled, even without prior express agreement therefor.

1759. Interest shall also be paid even if not specifically agreed to, on the basis of law, in the following cases:

1) regarding lateness in regard to each payment of a debt, even though the debt itself may be interest-free; such interest is called late-payment interest;

2) regarding another person's money - not only when a holder thereof has used it for the holder's own benefit, but also when the holder has a duty to deposit this money in an interest-bearing account and failed to carry out such duty;

3) regarding all the moneys that an authorised person or any person in charge of the property of another person advances on behalf of the person they substitute for;

4) regarding goods which traders or other tradespersons have given on credit to persons not belonging to their trade, beginning from the time when, according to local custom, trade accounts submitted to the purchaser must be paid, unless it has been otherwise agreed regarding the time of payment; and

5) regarding claims secured with fruit-bearing property transferred to the possession of the creditor (Section 1362).

1760. Interest set by law (Section 1759) shall not be demanded separately, but together with the principal obligation and therefore such interest may not be demanded subsequently, if at the relevant time silence was maintained regarding it or the payment of the principal debt was accepted unreservedly.

SUB-CHAPTER 2
Termination of Interest Obligation

1761. The duty to pay interest terminates in regard to each separate period of time:

1) upon payment;

2) pursuant to an abatement, which shall be deemed to have implicitly taken place regarding interest set by law, if a receipt is issued without any objections when the capital sum is received;

3) through prescription, if by the time the prescriptive period elapses interest has neither been paid by the debtor nor demanded by the creditor.

1762. The duty to pay interest shall terminate completely:

1) with the termination of the principal obligation;

2) in regard to late-payment interest, when a debtor tenders payment; but if a creditor specifically extends the period for payment of the capital, late-payment interest shall also not apply in regard to the elapsed time; and

3) in the case set out in Section 1760.

1763. Augmentation of interest shall cease:

1) when the amount of interest still outstanding has reached the amount of the capital sum;

2) when concursus proceedings are instituted in regard to the property of the debtor.

SUB-CHAPTER 3
Restrictions regarding Interest

1764. In all financial transactions and documents which establish the duty to pay interest, interest may be contracted for, in an amount which may be determined by agreement of the contracting parties, but in unilateral documents - by the issuers thereof pursuant to their discretion, to the extent restrictions are not provided for by law in regard to this.

1765. The interest rate shall be precisely stipulated in the document or transaction. If this has not been done, as well as in cases where the law requires calculation of lawful interest, that is, at six per cent per year.

The lawful interest amount for the late payment of such a money debt, which is contracted for as compensation in the contract for the supply of goods, for purchase or provision of services, shall be seven percentage points above the basic interest rate (Section

173, Paragraph three) per year, but in contractual relations in a consumer participates – six per cent per year.

The basic interest rate shall be four per cent. This basic rate shall change every year on 1 January and 1 July by such percentage points in which amount since the previous interest basic rate changes has increased or decreased the latest refinancing rate, which the bank of Latvia has specified prior to the relevant half-year date. After the 1 January and 1 July each year, the Bank of Latvia shall publish without delay in the newspaper *Latvijas Vēstnesis* a notice regarding the interest basic rate in effect in the relevant half-year.

Interest shall be calculated only on the principal itself. But if within the term stipulated, interest is not paid for one year or more, pursuant to the demand of the creditor lawful interest shall be calculated on the outstanding amount of interest from the commencement of the term referred to.
[26 January 2006]

1766. When a special promissory note is issued in regard to an outstanding debt, or when a new promissory note is received in place of an earlier one for the capital itself plus the outstanding interest, the creditor may calculate new interest in regard to the outstanding interest.

1767. In financial transactions where the contractual interest rate exceeds interest set by law (Section 1765), a debtor has the right, six months after entering into the transaction, to accordingly repay the capital sum, but with the condition that the creditor shall be given notice thereof not less than three months in advance.

1768. The term with respect to payment of interest shall depend on the mutual agreement of the contracting parties who may also stipulate payment in advance.

1769. The return of interest that has been paid by mistake without a duty to pay, as well as sums larger than due, may be claimed.

CHAPTER 8
Losses and their Compensation

SUB-CHAPTER 1
Types of Losses

1770. A loss shall be understood to mean any deprivation which can be assessed financially.

1771. Losses may be either such losses as have already arisen, or such losses as are anticipated; in the former case, they give rise to a right to compensation, but in the latter case, to a right to security.

1772. A loss which has already arisen may be a diminution of the victim's present property or a decrease in his or her anticipated profits.

1773. A loss shall be considered: direct where it is the natural and inevitable result of an illegal act or failure to act; indirect where it is caused by an occurrence of particular circumstances or relationships; and accidental where caused by a chance event or *force majeure.*

1774. An accidental loss is not required to be compensated by anyone. Therefore, if a fortuitous impediment prevents a person from performing an obligation that has been undertaken, it shall be considered that circumstances are as if the person had performed the obligation, unless the person had accepted the risk of casualty loss in a contract.

Note: Exceptions to this provision are set out in Section 1421 and subsequent Sections, and in Section 1661 and subsequent Sections, as well as in the provisions regarding various specific types of contracts.

1775. Compensation shall be payable for any loss which is not accidental.

SUB-CHAPTER 2
Right to Claim Compensation

1776. A victim may not claim compensation if he or she could have, through the exercise of due care, prevented the loss (Section 1646). An exception to this provision shall be allowed only in a case of malicious infringement of rights.

1777. Victims may not claim compensation for losses they have suffered from being on a shooting training area during a time when the armed forces were engaged in military training, unless the troops have not complied with the regulations specially issued for such cases.

1778. Compensation for losses may be claimed not only by the victim but also by the victim's heirs.

SUB-CHAPTER 3
Duty to Compensate for Losses

1779. Everyone has a duty to compensate for losses they have caused through their acts or failure to act.

1780. Losses that have been caused by children who are not more than seven years of age, by mentally ill persons, or by a person having capacity to act but when the person is in a state of unconsciousness or mental disturbance, shall be compensated for from the property of these persons to the extent that they are not deprived of means needed for their maintenance. If losses have occurred through the negligence of a person whose duty it is to supervise the aforementioned persons, such person shall be primarily liable regarding the losses, to the extent of his or her own property.

1781. A person who has instructed another person to perform a wrongful act shall be liable for the action of the other person, notwithstanding that the acts of such person exceed the limits of the instructions. A person who has given another person cause for such action as results in losses to a third person, shall similarly be liable.

1782. A person who fails to exercise due care in choosing servants or other employees and to previously satisfy himself or herself as to their abilities and suitability to perform the duties as may be imposed on them, shall be liable for losses they cause a third person thereby.

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1783. A duty to compensate for losses shall pass to the heirs of the person who causes the losses, unless otherwise provided for by law.

1784. If a person suffers losses from the illegal actions of another person outside the scope of contractual relations, the person causing the losses shall be liable for all such losses (Sections 1772 and 1773).

1785. If the duty to compensate for losses arises from a breach of contractual obligations, then the amount of compensation shall be determined in accordance with the contract.

SUB-CHAPTER 4
Valuation of Losses

1786. In evaluating losses one shall consider not only the value of the principal property and its appurtenances, but also the detriment indirectly caused by the loss having taken place and lost profits.

1787. Mere possibilities shall not be used as the basis for calculating lost profits, rather there must be no doubt, or it must at least be proven to a level that would be credible as legal evidence, that such detriment resulted, directly or indirectly (Section 1773) from the act or failure to act which caused the loss.

1788. When a monetary debt is not paid by the due date, the creditor may demand only the interest set by law in compensation for the lost profits, unless the creditor is able to definitely prove that the losses suffered exceed such sum of interest.

1789. In evaluating particular property, one shall consider not only its normal value, but also its special value to the injured party. Value based only on personal inclinations (Section 873) need not be considered.

1790. In evaluating losses, the place of performance shall also be taken into account: if such place is specified in the contract, the value, at such place, of the property regarding which compensation is to be made shall be observed; but if it is not specified, the price existing at the place where the action for compensation of losses was brought shall be determinative.

1791. If a loss has resulted from a breach of contractual relations and a specific term was specified for the performance of the contract, such term shall be taken into account in evaluating the loss. However, if a term was not been specified in the contract, the time period in which a judgment regarding the compensation of the losses has been rendered and come into effect, shall be taken as the basis in regard to the valuation.

1792. If a claim for compensation of losses has arisen not from a breach of contractual obligations, but from acts which are of themselves illegal, then the loss valuation shall correspond to the value of the subject-matter at the time the loss was occasioned.

CHAPTER 9
Cession of Right to Claim

SUB-CHAPTER 1
Legal Basis for Cession

1793. Claims may be transferred from a former creditor to a new one by cession, which may take place:

1) pursuant to law, without an expression of intent from the former creditor;

2) pursuant to a judgment of a court;

3) pursuant to a lawful transaction, regardless of whether it was entered into by the creditor on the basis of a legal duty or voluntarily.

1794. Persons acting for another and in general, all substitutes, shall cede all the rights acquired on the basis of their authorisation or their authority to act as a substitute to the person whose business affairs they conduct, or in general to the person they act on behalf of.

1795. If a person has the duty to relinquish a certain property, then he or she shall also cede all rights pertaining to such property.

1796. A person who must compensate another person for lost or damaged property may also require the cession to him or her of the claims relating to this property.

1797. A person who in lieu of a debtor satisfies a creditor shall provide by contract that the creditor cedes the claim to him or her, either before the satisfaction or during the time of satisfaction, and if this has been done, then the claim *per se* shall be considered to have been ceded to him or her at the moment of satisfaction.

SUB-CHAPTER 2
Subject-matter of Cession

1798. All claims may be the subject-matter of a cession, irrespective of whether they arise from a contract, or from wrongful acts, including also such claims as to which their term has not come into effect, as well as conditional and even future and uncertain claims.

1799. Exceptions to the provisions of Section 1798 are:

1) all claims the exercise whereof is associated with the person of the creditor, whether pursuant to an agreement of the contracting parties or pursuant to law; and

2) claims the substance whereof would alter completely if they were performed for another person, rather than the actual creditor.

1800. If no other agreement has been made, the cession of the right to bring an action shall be considered to be the cession of the claim which is the subject-matter of the action; but only the right to claim shall be transferred to the cessionary (Section 1801), rather than the contractual relation giving rise to the rights.

SUB-CHAPTER 3
Form of Cession

1801. A contract of cession between the creditor who cedes the claim (the cedent), and the person to whom it is ceded (the cessionary) may be entered into in any form whatsoever. The consent of the debtor against whom the claim is directed is not required, and the cession shall be in effect, even if the debtor has no knowledge thereof.

1802. If a deed has been drawn up regarding the claim to be ceded, in addition to being delivered to the person to whom it is ceded, either an endorsement shall be written on the deed in respect of the cession, or a special document shall be drawn up.

1803. A promissory note may be ceded with an endorsement either in the name of a specific creditor, or any bearer. In terms of transfer, the latter type of promissory note, as well as promissory notes with a blank endorsement, are subject to the provisions of the law regarding bearer paper.

SUB-CHAPTER 4
Consequences of Cession

1804. Regardless of cession, the former creditor shall still be the creditor until such time as the cessionary receives satisfaction from the debtor, or has brought an action against the debtor, or at least has informed the debtor of the cession in an appropriate manner. Until such time, the debt may also be paid to the cedent, as well as a settlement may be made with the cedent, and likewise the cedent retains the right to claim.

1805. The cessionary may exercise the rights of the creditor from the moment of cession and take action with respect to the claim on this basis, ceding it to another and using it against the debtor.

1806. The cessionary shall not gain more or greater rights by cession than the cedent had; but the right to claim itself is transferred to the cessionary with all the rights belonging to it at the moment of cession, even if they were based on personal goodwill towards the cedent, insofar as no exception to this provision has been specified regarding them.

The rights to the outstanding interest, if not otherwise specifically agreed to by contract, shall be transferred to the cessionary.

The cedent shall deliver everything to the cessionary which may serve as evidence of the claim or which can facilitate the collection proceedings thereof, as well as everything he or she has received from the debtor even after the cession.

1807. The cession may not be to the detriment of the situation of the debtor, therefore if the cessionary personally holds any priority rights with respect to the debtor, he or she may not use them.

1808. The debtor may raise all their objections against the cessionary personally, as well as the objections he or she had against the cedent before the cession, and at the time of the cession. The debtor may also include the counterclaims against the cessionary, which he or she had against the cedent at the time when he or she was informed of the cession.

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1809. If a promissory note is ceded with a blank endorsement, then the debtor may raise not only his or her own objections against the cessionary, but also those objections he or she had before the cession and at the tune of the cession against the last cedent and the previous cedents, whose names appear on the promissory note.

1810. The cedent is liable to the cessionary for the authenticity of the ceded claim, but he or she is liable for its security only if he or she had knowledge of the debtor's insolvency and withheld this information in bad faith, or if he or she had assumed the risk of the claim.

CHAPTER 10
Termination of Obligations Rights

SUB-CHAPTER 1
Performance

I. General Provisions

1811. Each obligation right terminates in and of itself when the relevant obligation of the debtor has been performed, i.e., by settling the debt. If the subject-matter of the obligation is money, then the obligation is performed by payment.

1812. Performance of obligations is valid only if it has been performed and received by the proper person, at the proper place, at the proper time and in due time.

1. Persons who Provide and Receive Performance (Payment)

1813. Performance (payment) may be provided and received only with legal effect, i.e., terminating an obligation, only by the person who has the right of alienation.

1814. If performance is provided by a person lacking capacity to act, then that which has been done may be required to be returned by their legal representative.

1815. If the subject-matter of an obligation pertains only to the personal affairs of the obligor, then the obligor must perform the obligation personally. In all other cases, the obligation may be performed by a third person in lieu of the debtor, even without his or her knowledge and contrary to his or her intent.

1816. A performance is valid only if it has been provided to a creditor or to his or her legal substitute.

1817. A person who has provided performance to a person who did not have the right to receive it shall not thereby be released from his or her obligation to the creditor; but he or she may, nevertheless, request from the recipient of the performance the return of that which was received.

1818. If an authorisation for receiving performance is revoked without informing the debtor thereof, the performance provided to the authorised person by the debtor without knowledge of the revocation shall be valid.

1819. If performance is provided to a third person who does not have rights thereto, or to a creditor lacking capacity to act (Section 1813), then the payment shall nevertheless remain in effect, unless the payment has not been included in the property of the creditor and saved for him or her.

2. Place of Performance

1820. If nothing has been agreed to regarding the place of performance and it may not be determined from the nature of the transaction, then the performance may be requested or offered at any place where it can be provided without hardship or inconvenience to the other party.

1821. If a creditor has had to bring an action, then the payment shall be made at the place where the action was brought.

1822. A specifically described object must be given there where it is located at the time of performance. However, if the obligor has, in bad faith, removed the object from the place where it has heretofore been located, then he or she must provide it there where the creditor requests.

1823. Monetary debts, unless otherwise agreed, shall be paid to the creditor there where their place of residence is located at the time of performance of the contract.

1824. If a creditor wishes to receive a specifically described object (Section 1822) at such place as where it cannot be reasonably requested from the debtor, then the creditor must bear the delivery expenses and the risk.

1825. If the place of performance has been specified and the performance occurs at another place, then the creditor may claim compensation for all losses caused thereby. A creditor may also request performance at the place where the action for performance was brought, but in such case the difference between the value at the place specified and the place where the action was brought shall be taken into account.

1826. If several places have been specified for the performance and if the performance can take place in parts, then the creditor shall have the right to request at each place only a part of what is due him or her. If the creditor brings an action for the whole performance at one place, then the provisions of Paragraph two of the previous Section (Section 1825) shall be applied.

1827. If several alternative places have been specified for the performance, then the choice of the actual location is within the rights of the debtor. However, if due to the fault of the debtor, an action has already been brought against him or her, then the right to choose passes to the creditor.

3. Time of Performance

1828. If the time of performance has been specified, then the debtor must observe it without waiting for a special reminder from the creditor, but nevertheless the debtor also need not perform the obligation earlier than the expiration of the specified term.

1829. If a term has not been set for performance, then the creditor may request it at any time,

but the debtor may perform it at any reasonable time.

1830. In such a case (Section 1829), when the need to extend the term to a certain extent arises from the nature of the obligation itself, then a term for the debtor, if the debtor and the creditor can not reach agreement voluntarily, shall be set in the discretion of the court, which shall, moreover, take into account the distance to the place of performance, the amount of time required for performance, other obstacles inherent in the object itself, and the possible intent of the participants.

1831. If someone, with the consent of the creditor, pays an interest-bearing debt before the due date, then the creditor may request the interest up to the formerly agreed date for payment.

4. Manner of Performance

1832. For performance, it is necessary that the subject-matter of an obligation be performed in full. Therefore, a creditor may not be compelled to accept either part performance or other subject-matter in lieu of that to which he or she has rights.

1833. All payments shall be made in lats.

Note. Provisions on how calculations are to be done in foreign currency regarding transactions entered into in Latvia, as well as provisions on the settlement of prior contracts and debts, are found in the laws on credit.

1834. No one may be compelled to accept securities in lieu of money, even if though such securities have been issued by the State or State credit institutions.

1835. Creditors who voluntarily accept part performance, shall not lose, regarding the part not yet performed, any of their rights to the entire claim or to ancillary claims.

1836. When performance of the actual subject-matter of an obligation proves impossible, then the creditor, unless his or her claim fails in its entirely (Section 1774), shall be satisfied by receiving a monetary payment based on ordinary value, unless due to the fault of the obligor there is a basis for other claims (Section 1635 and subsequent Sections, Section 1652 and subsequent Sections).

1837. If a creditor refuses, without legal basis, to accept a properly offered performance from the debtor, or its receipt is impossible because the creditor can not be found, or because the creditor does not appear on the due date at the place specified for payment, or because the creditor's property has been pledged, or for any other reason, then the debt may be discharged by giving the subject-matter of the obligation to the court for safekeeping. If the subject-matter of an obligation can not be given to the court for safekeeping because of its characteristics, then in cases referred to in this Section, if the creditor does not appear pursuant to notice, the debtor shall have the right to sell the subject-matter at the expense of the creditor.

II. Proof of Payment

1838. The fact of payment must be proven by the person who claims such.

Payment may be proven by all permitted means of proof, but particularly with a written confirmation or a receipt; the recipient of the payment may not refuse to issue such to the debtor.

The receipt may be written directly on the debt document, if such exists, or separately.

1839. If someone presents receipts for term payments, which receipts have been issued for three consecutive terms without any reservations, it shall be presumed, until otherwise proven, that all prior term payments have been made.

1840. If a receipt has been issued regarding a general accounting between the creditor and the debtor with a notation that all accounts between themselves have been settled, then all the items for which the term has expired by that time shall be considered to have been performed. However, the effect of such a general receipt may not be applied to items regarding which it is proven that the issuer of the receipt did not know of them. Similarly, such a receipt may also not be an impediment to requesting the return of sums overpaid by mistake.

1841. The creditor, upon receiving payment, shall return the debt document, if such exists, to the debtor.

If the debt document has been returned to the debtor, or destroyed, or crossed out, or torn, or shredded it shall be presumed therefrom that the debt has been paid; this shall not, however, revoke the right to prove the contrary.

If the creditor cannot return the debt document because it has been lost, then he or she must, at his or her own expense, petition the court to declare the document as destroyed, however only after the amount of the debt has been, pursuant to the discretion of the debtor, either given to the court for safekeeping, or paid against security received.

III. Consequences of Payment

1842. Proper performance of an obligation not only shall release the debtor from any liability regarding such obligation, but also therewith terminate all ancillary claims established by a pledge and guarantee.

1843. If a person pays only part of his or her debt, then the payment shall be first credited against the outstanding interest and only thereafter the remainder shall be used to discharge the capital, unless the creditor has agreed to accept the payment as specifically pertaining to the capital only and has receipted this.

1844. If a person is in debt to a single creditor on several different bases, it shall depend solely on the debtor as to which debt he or she wishes to have a payment credited to. However, if the debtor has not specified which, then the choice is within the rights of the creditor, with the condition that he or she acts in the same way as he or she would have acted being the debtor. Consequently, he or she must credit the payment received towards the most burdensome debt, i.e., the one which carries interest, or is secured by a pledge or a guarantee, or whose term is already due (in contrast to conditional or terminated debts) or towards the principal debt (in contrast to guaranteed debts). If one or the other debt does not have such differentiating characteristics, the payment shall be credited against the longest outstanding debt, but if the debts were incurred concurrently, the payment shall be credited to each proportionately. In any case, the payment shall first be credited towards the interest the term of which is already due.

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1845. If a creditor has the right to sell pledges in order to settle a debt, then it shall be within his or her discretion as to which of several claims he or she want to discharge by selling them, but even in this case the sum received must first be credited towards the interest and only then towards the capital, commencing with the longest outstanding debt; but if the pledge secures several claims simultaneously, then the sum received from its sale shall be distributed proportionately to all the claims.

SUB-CHAPTER 2
Set-off

I. General Provisions

1846. Set-off means discharge of a debt by means of a counterclaim.

1847. A debtor may use a counterclaim against the wishes of the creditor only:
1) if the subject-matters of both claims are of the same class; or
2) if the terms for both claims have expired.

1848. In determining whether mutual claims are of the same class, the basis of their origin shall not be of any relevance.

1849. If a claim and a counterclaim are to be paid at various places, then this shall not prevent set-off, but the creditor (not the debtor who requests set-off) must be compensated for losses that may arise from receiving payment at another place.

1850. Set-off shall not be permitted against a claim to have returned property which the opposing party has taken illegally.

In addition, set-off shall not be permitted:

1) against claims for State or local government taxes or corvee; or

2) against State purchase payment claims regarding property that has been sold.

1851. A claim proposed for set-off must be belong to the debtor personally; a creditor is not required to set off the claims of third persons. In accordance therewith, neither guardians may set off the claims of their wards, nor may authorised persons set off the claims of the authorising person against their own debts. This provision, in addition to exceptions set out in Sections 1681, 1684 and 1808, has the following exceptions:

1) a guarantor may set off claims of a principal debtor;

2) in the cases where spouses have joint property, debts pertaining to the joint property may be set off in their claims;

3) an heir may set off debts of his or her creditor to the estate-leaver.

Note. Set-off pertaining to concursus proceedings is provided for in the Civil Procedure Law.

II. Due Course and Consequences of Set-off

1852. A counterclaim of a debtor shall not extinguish the debt in and of itself, but only if he or she has expressly presented it for such purpose.

1853. A debtor shall have the right to request set-off at any time, even after a judgment of a court, by performing it or paying off the claim, as long as he or she is able to prove that no obstacles exist for the performance of the counterclaim or payment.

1854. A claim together with all ancillary claims (Section 1842) may be extinguished in full or in part by a set-off presented and acknowledged in due course, in the same way as by payment and to wit, from the time when the counterclaim stood against it as a set-off.

1855. A person who delays in requesting a set-off or does not request it at all shall not lose the right of counterclaim. A debtor who has not requested a set-off due to mistake may request the return of his or her payment, unless he or she prefers to use his or her counterclaim independently.

1856. A person with more than one counterclaim may set off one or another of these pursuant to his or her discretion. Similarly, a person who must settle more than one debt claim may choose which of them to set off by counterclaim.

SUB-CHAPTER 3
Confusion of Claim and Debt

1857. Obligations rights shall terminate with a confusion, when the creditor and debtor merge into one person.

1858. When confusion of rights and duties occurs only in part, then the claim itself shall cease only with respect to the proportionate part.

1859. If the effect of altering the right, on the basis of which there has been confusion of the claim with the debt, terminates, then the claim that was extinguished by the confusion shall also be renewed.

1860. If the duties of a debtor pass to one of joint creditors (Section 1670) or the rights of a creditor pass to one of the joint debtors, then this shall not alter the legal relations of the other joint creditors and joint debtors.

1861. If there is confusion in one person of various rights to claims against one and the same subject-matter, then they shall all remain in effect independently of one another and the same shall also occur when the property of several joint creditors merges into one. Similarly, when the property of several joint debtors merges into one, this shall in no way alter their obligations.

SUB-CHAPTER 4
Revocation Contracts

1862. Every creditor has the right to waive his or her claim; if he or she fails to do so in last will instructions, then a mutual agreement between the creditor and the debtor, i.e., an obligations cancellation agreement, shall be necessary for such purpose. A unilateral notice by the obligee regarding waiver of a claim shall not be binding.

1863. A cancellation agreement may also be entered into by means of implicit intent of the participants to a transaction. It can not be concluded from the mere fact that a pledge has been returned to the debtor that the debt has been forgiven, unless such conclusion is justified on the basis of special reasons.

1864. A contract, which has been entered into simply on the basis of agreement, may also be revoked by a similar agreement. However, if a special form was required for the entering into of the contract, then the same form must also be used to revoke it.

1865. A contract that has not yet been performed either in full or in part, shall be annulled by revocation, as if it had never existed. The same provision shall be in effect even when, taken literally, one or the other party should be released from his or her obligations.

If a contract has been performed in full or in part, then the cancellation agreement, to the extent that it provides for the return of the performance, establishes a new claim.

1866. If, on the basis of a contract to be revoked, third persons have acquired certain rights, then the revocation of the aforementioned contract may not infringe on such rights without the consent of such persons.

SUB-CHAPTER 5
Novation

1867. Any obligation right may be revoked and transformed into a new one by means of a special contract between the parties, which is called a novation.

Note. Novation without a special contract between the parties is provided for in the laws on credit.

1868. Novation may be carried out either such that also in the new claim both parties, i.e., the obligee and the obligor, remain the same as in the revoked one and only the legal basis and essential provisions of the claim are altered; or the novation may affect the persons involved in the matter and the former creditor or the former debtor be replaced by a new one.

1869. The consequences of a novation are that the previous claim, with all the ancillary rights pertaining thereto (pledge, guarantee, interest, contractual penalties), shall terminate as if it had been performed, and in lieu of it a new claim shall be established which shall not be subject to the ancillary rights pertaining to the previous claim, unless the contrary has been specifically agreed to.

1870. A manager of another's property may make a novation only when he or she has been specifically authorised to do so, or when he or she has a universal power of attorney.

1871. Obligations rights may be renewed before the expiration of the term, as well as at the due date and after the expiration of the term. A novation may also revoke several such rights immediately.

1872. Conditional claims may also be renewed, and the novation itself may be made with a condition or a term.

1873. If the previous claim was not valid, then the novation shall also not be valid; but if the novation contract is not valid, then the previous rights to claim shall remain in effect. The same shall also apply in the case when the new claim does not come into effect due to its nature, for example, if it is dependant on a condition which later does not set in.

1874. It shall never be assumed that a novation has taken place, and the intent to enter into such a contract must be definitely stated by the parties, or it must at least be indisputably evident from the circumstances.

1875. In cases of doubt, a contract shall not be considered to be a novation and the previous claim shall remain valid in the following cases:

1) if only the terms of payment have been changed or specified in more detail;
2) if payment of interest is specified for a debt which was formerly interest-free;
3) if the interest rate has been changed;
4) if the debt is secured;
5) if the amount of the debt has been reduced; or
6) if a document has been issued regarding an existing debt.

1876. If, on the basis of a novation, a new debtor is to replace the former one (Section 1868), then this shall take place as follows:

1) the creditor agrees with the new debtor without the consent of the former debtor; or
2) the former debtor transfers the debt to another person, and the creditor accepts the latter in lieu of the former.

1877. In both types of novation specified in Section 1876 the former debtor shall be released from his or her obligation and shall not be liable for it even if the new debtor is discovered to be, or later becomes, insolvent, unless the creditor has, for such a case, specifically reserved a subrogation right against the former debtor, or if the insolvency of the new debtor has occurred before the condition whereby the novation was made has come into effect, or if the former debtor has acted in bad faith.

1878. The new debtor (Section 1876) does not have the right to raise those defences against the creditor which he or she had against the former debtor, nor those that the latter had against the creditor.

1879. As a result of novation, a former creditor shall be replaced by a new one, if the former transfers his or her claim to the latter and the debtor acknowledges the latter as the creditor of the debtor.

1880. When a debtor is not acceptable to the new creditor (Section 1879), the latter shall not have a subrogation right against the former creditor, unless such right has been specifically contracted for; similarly, the defences which a debtor might have raised against the former creditor may not be raised against the new creditor.

SUB-CHAPTER 6
Settlement

1881. A settlement is a contract whereby the contracting parties transform a disputed or otherwise dubious mutual legal relationship into one that is undisputed and undoubted

through mutual concessions.

1882. A substitute may enter into a settlement only when he or she has been specifically authorised to do so. A universal or a general power of attorney (Section 2291) is not sufficient for this purpose.

1883. A legal relationship which has been terminated by a judgment of a court which has come into effect may not be the subject-matter of a settlement; but a settlement is permitted regarding the manner of executing the judgment.

1884. The consequences of a settlement are that one of the parties to the settlement withdraws his or her claim and in its place obtains a claim arising from the settlement. This shall not, however, in and of itself establish a novation, if the required provisions are not complied with (Section 1867 and subsequent Sections).

1885. A settlement shall have the same effect as a judgment of a court which has come into legal effect, and therefore a settlement may not be unilaterally contested or revoked.

1886. If one of the parties to a settlement does not perform the settlement, then the other party shall have the right to claim only its performance, but not to use the former claim terminated by the settlement.

1887. If property which has been returned to someone as a result of a settlement is replevied, then this shall give only the right to claim liability, but not to withdraw from the settlement.

1888. The effect of a settlement shall not apply to third persons; but against ancillary obligors, if the settlement does not include a novation, it shall take effect only to the extent that their duties are reduced thereby; expanding these duties, however, is not permitted without their consent.

1889. A settlement that is intended, but has not yet occurred shall have no effect whatsoever, and a concession made in the hope of entering into it shall have no evidentiary effect against the person making the concession.

1890. A settlement may be revoked by mutual agreement.

1891. If a settlement has been made under the influence of fraud or duress, then it may be contested.

A settlement may be contested on the basis of mistake only when a fact which was the basis of the settlement but not its actual subject-matter, had been regarded as true, but subsequently turned out to be false.

SUB-CHAPTER 7
Judgment of a Court

1892. A claim of creditor which has been rejected by a judgment of a court or arbitral tribunal that has come into effect shall terminate together with all its ancillary claims.

SUB-CHAPTER 8
Prescription

I. General Provisions

1893. Obligations rights shall terminate if the obligee does not duly exercise them within the prescription period specified by law.

1894. A debtor who is requested to return specific property of another person may not plead prescription, if the opposing party proves that he or she or his or her predecessors have not, during the entire prescription period, been in possession of the property in good faith.

1895. All obligation rights which have not been expressly exempted from the impact of prescription and the use of which is not by law subject to shorter terms, shall terminate if the party entitled to them does not use them within a ten year time period.

II. Commencement of the Prescriptive Period

1896. A prescriptive period shall begin to run with the day when the claim is established such that an action may be brought immediately against a debtor who has not performed his or her duty, even though the debtor may not yet have refused to perform it, nor received a reminder from the creditor. In accordance therewith, for a prescriptive period to begin to run it is required: for conditional claims that the condition be already clarified, but for term debts that the term have already expired.

Note. Cases where a special time is set for a prescriptive period to begin to run are indicated in the applicable sections.

1897. If it has been expressly specified that a creditor's notice or reminder must be received before performing the obligation, then the prescriptive period shall begin not from the day of receipt of the notice, but from the time when the creditor was entitled to give such a notice and when the notice as such became possible.

1898. In a few cases, in calculating the prescriptive period, a certain time period may be deducted either to postpone the beginning date or to toll the running of the prescriptive period, that is, to generally extend the term. The following are such cases:

1) when the work of a court has been temporarily completely interrupted due to war conditions; in such case the running of the prescriptive period shall be tolled during the entire period of interruption;

2) claims of persons under guardianship or trusteeship; the running of the prescriptive period with respect to such claims shall be tolled during the entire time that the guardianship or trusteeship continues;

3) a claim made by one spouse regarding alienation by the other spouse of immovable property belonging to the former; with respect to such the prescriptive period shall begin to run only from the day when the marriage ceases to exist; and

4) claims made against heirs; with respect to such claims, the running of the prescriptive period shall be tolled during the period of taking inventory (Section 710).
[22 December 1992]

1899. Lack of knowledge by the person who has the right to claim shall not affect the

prescription.

1900. Except in the cases set out in Section 1898, absentees shall finally lose the right to claim after the expiration of a ten year period, beginning on the day when the right to claim arose.

1901. In periodic performances, a separate prescriptive period shall begin to run in regard to each specific performance, calculated from the day when the performance was due. However, if the right that established these periodic performances terminates through prescription, a single performance can no longer be claimed, even though its particular prescriptive period may not have elapsed.

III. Interruption of Prescription

1902. The use of a right by bringing an action in court or turning to an arbitral tribunal shall interrupt the prescriptive period; moreover, the elapsed time shall not be considered and a new prescriptive period shall begin.

1903. If a plaintiff does not continue the matter initiated by his or her action, the prescriptive period shall begin again from the day when the matter was to have proceeded, i.e., from the last date set for and missed by the plaintiff. The new prescriptive period shall always be ten years, notwithstanding that the previous period may have been shorter.

1904. The bringing of an action shall interrupt the prescription of all of the obligation rights, even though the action might have been first been brought regarding a specific part of such rights.

1905. A reminder to the debtor shall interrupt the prescriptive period.

1906. A prescriptive period shall be interrupted if during the time of its running the debtor in some manner acknowledges the claim of the creditor.

IV. Rights not Subject to Prescription

1907. Obligations rights registered in the Land Register shall not be subject to prescription, except ancillary rights arising from such rights for which the term has elapsed.

1908. Actions regarding verification of boundaries shall not be subject to prescription.

1909. State civil actions shall be subject to prescription in the same way as private actions.

V. Consequences of Prescription

1910. With the expiration of the prescriptive period not only the right to claim, but also the obligation rights themselves are terminated. Consequently, a prescribed claim may not be used as an objection to, for example, set-off.

1911. If, however, a debtor for some reason performs a prescribed claim, then the debtor does not have the right to request the return from the creditor of that which has been performed.

CHAPTER 11
Gifts

SUB-CHAPTER 1
Gifts in General

I. General Provisions

1912. A gift is a legal transaction whereby one person grants valuable property to another through generosity and without remuneration.

1913. Any person with the capacity to act may make a gift. A gift may be accepted by anyone who has the capacity to acquire in general.

1914. A gift may consist of the transfer of ownership or other property rights, as well as cession without remuneration of the right to claim, release of the donee from duties towards the donor or towards a third person, waiver of certain rights to the benefit of the donee, and administration of the donee's matters free of charge.

II. Consequences of Gifts

1915. In order for a gift to be valid, the prospective donee or his or her legal representative must accept it.

If a donee agrees to accept a gift at a tune when the donor no longer has the capacity to act, then the gift shall be considered as void.

By agreeing to accept a gift, the donee, as well as the heirs of the donee, shall have the right to claim the delivery of the gift from the donor, as well as from the heirs of the donor, by court action.

1916. The donor shall not pay late-payment interest, nor provide any fruits that accrued from the property which has been given as a gift.

1917. If a person makes gift of tangible property, then the ownership rights shall be transferred to the acquirer with its delivery.

A donor shall be liable for the destruction or deterioration of the property which is given as a gift, as well as for its replevin or its defects, only if he or she has specifically assumed liability or has acted in bad faith or with gross negligence. The compensation for replevin for the defects of the property shall be limited only to the restitution of the expenditure that the donee made from his or her own property. All charges and encumbrances on the property given as a gift shall be borne by the donee.

1918. If the subject-matter of the gift is the right to claim, then the rights are transferred to the donee pursuant to cession from the time when the gift is considered to have been given.

III. Revocation of Gifts

1919. A gift may be revoked due to the gross ingratitude of a donee.

Ingratitude of a donee shall be considered to consist of gross insults in abusive words or acts towards the donor, substantial financial loss deliberately inflicted upon the donor,

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endangerment of the donor's life, and abandonment of the donor in a helpless condition if it was possible to provide assistance.

1920. The right to revoke a gift due to ingratitude shall not devolve to the heirs of the donor, and also may not be invoked against the heirs of an ungrateful donee; the donor may only bring an action *in personam* against the donee to return the property itself along with all its appurtenances and fruits, but then only while the gift is still part of the donee's property or at least while the donee is still benefiting from the gift.

If in the meantime, but still before bringing the action, the donee encumbers the gift with certain property rights, then the donor who revokes the gift must consider them to be in effect.

1921. Previous waivers of rights regarding revocation of a gift due to ingratitude shall not be valid, but if an action has already been brought regarding such revocation, it may be withdrawn.

1922. If a gift is of such magnitude that it deprives forced heirs of their preferential shares (Section 422 and the following Sections), then the forced heirs may demand that the donee give them such shares.

The preferential shares shall be calculated based on the donor's financial state at the time of making the gift. However, if later such property has increased, then the increase shall be taken into account, as well as that which is bequeathed to forced heirs by instructions in contemplation of death.

1923. If a donor with no children later has children, then he or he may revoke the gift to the extent it is necessary to provide the preferential shares of the children born later.
[12 December 2002]

1924. A married donor may revoke a gift made after a betrothal or during a marriage:

1) if the donee's spouse dies without any descendants;

2) if the break down of the marriage with his or her actions was promoted only by the donee; or

3) if the marriage is declared annulled and the donor made a justifiable mistake of fact regarding the fact of marriage.

A donor has the right to revoke a gift within a year's time, calculated from the day of the donee's death under the circumstances noted in Clause 1, but, under the circumstances noted in Clauses 2 and 3, from the day when the judgment took effect whereby the marriage was dissolved or declared annulled. Conditions which restrict the right of a donor to revoke a gift shall not be in effect.
[12 December 2002]

SUB-CHAPTER 2
Special Types of Gifts

I. Gift of Entire Property

1925. The subject-matter of a gift may also be a donor's entire property.

1926. Such a gift (Section 1925) may include only the present property of the donor, not future property. A gift of future property, or a joint gift of present and future property, shall be

considered an inheritance contract, provided that the present property is not delivered immediately.

1927. Property is considered to be donated only insofar as the donor's debts have been deducted from it. In cases where a donor is unable to pay the debts outstanding at the time of making the gift, not only may the creditors demand satisfaction from the donor's gift, but also the donor may himself or herself demand from the donee the return of the portion of the gift necessary for the payment of these debts. An agreement between the donor and the donee that the latter is not liable for the debts of the former is only in effect as against the creditors if the creditors have consented to it

II. Gifts with Binding Directions

1928. A special binding direction may be imposed on any gift, either giving more specific instructions as to the manner in which, or the purpose for which, the donee shall use the gift received, or the duration of the rights may be limited in such a way that a duty is imposed on the donee to transfer the entire subject-matter at a later date, or part of it to another person.

A donor may also impose a counter-duty on the donee.

1929. The addition of a binding direction shall not make a gift a conditional one and a donee may demand immediate performance despite such. However, both the donor, as well as the third person for whose benefit the binding direction was intended, may demand security for its performance.

If a binding direction is added for the benefit of a third person, then such person may only bring an action for performance after the death of the donor.

1930. The provisions in Sections 1919-1924 regarding the revocation of gifts are also applicable to gifts with binding directions.

1931. A donor may bring an action regarding the performance of a binding direction, but if it was not performed due to the fault of the donee, then the donor may also demand that the donee return that which was received by the donee.

1932. If the performance of a binding direction is impossible due to natural impediments or is not permitted due to legal or moral considerations, then the binding direction shall fail, but the gift itself shall remain in effect.

III. Gifts as Remuneration

1933. Gifts as remuneration are such gifts as are granted as remuneration for services provided.

Such gifts may not be revoked due to ingratitude.

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CHAPTER 12
Claims regarding Contracts Requiring Return of Property

SUB-CHAPTER 1
Loan Agreements

I. General Provisions

1934. A loan agreement is a contract whereby ownership of a certain quantity of fungible property is transferred, with the duty to return property in the same quantity and of the same kind and quality as the property received.

1935. A contract whereby one party promises to grant a loan and the other party undertakes to accept it, shall take effect only from the time that the contracting parties mutually agree on the amount of the loan. If the promisor thereafter refuses to perform it, then he or she shall compensate the other party for all losses.

1936. The lender must be either the owner of the loaned property, or be acting pursuant to the instructions of the owner or with the consent of the owner.

1937. If the agent of a person grants a loan in the name of his or her principal, then the right to request its return shall in any event belong to the principal, regardless of whether the loan involves fungible property belonging to the principal or to the agent.

1938. If a loan is granted in the name of another person, without his or her knowledge and consent, then later, if such person confirms the loan, he or she shall also acquire the right to claim. However, if he or she does not confirm the loan, the person who granted it shall be deemed to be the creditor.

1939. The borrower must be a person with capacity to act; consequently, a loan entered into by a person under guardianship or trusteeship without the consent of the guardian or trustee shall not be valid. The lender may, nevertheless, request the return of everything that has been actually expended for the benefit of the borrower.

1940. The contracting parties must have the intent to enter into a loan agreement. If the intent has been to repay only part of the loan, then only this part shall be considered to have been loaned, whereas the remainder shall, in cases of doubt, be considered to be a gift.

1941. A loan may be valid also without the property itself being transferred, if the contracting parties agree that the borrower retains as a loan other fungible property which he or she owes the lender on another basis.

1942. If a person gives non-fungible property to another person in order for the other person to sell such and thereafter keep as a loan the sum of money received, then the recipient shall accept the risk regarding this property from the day when it was transferred; but the loan arises only from the time when the recipient receives the sum obtained from the sale.

II. Repayment of Loans

1943. The borrower shall repay a sum equal or return an amount equal to that which was

received.

1944. If fungible property that was loaned, excepting money, must be returned as money, then it shall not be valued at the market price in effect at the time of repayment, but at that price which was in effect at the time of the loan. If securities are loaned, then their value shall be calculated in accordance with the rate in effect at the time of the loan.

1945. If a loan must be returned after a notice of termination, then the term of payment shall be calculated from the day when the notice was presented to the debtor; but if the term for the notice of termination is not specified, then it shall be deemed to be six months.

1946. Interest shall be paid on loans only if this has been expressly agreed upon or if the debtor has defaulted.

If nothing has been specified regarding the term of interest it shall be paid annually, on the anniversary date of the loan for the elapsed year, but for loans with a term less than a year it shall be paid together with the principal sum.

If a creditor has received interest for a certain time period in advance, he or she has the right to give notice of termination of the principal before this term has expired; however, he or she may not request repayment of the loan before this time.

SUB-CHAPTER 2
Lending Contracts

I. General provisions

1947. A lending contract (a loan for use) is a contract by which a person transfers to another person property without compensation and for a specific use, with the condition that the same property is returned.

1948. The subject-matter of a lending contract may be either movable or immovable property.

The subject-matter of a lending contract may also be the property of another person, but not the property of the borrower.

1949. Participation in the use of property without it being transferred to the user shall be regarded not as a lending contract, but as a gift.

1950. With a lending contract the owner of the property shall not lose ownership rights to the property and shall remain the possessor thereof; the borrower shall be only its holder.

1951. If a person lends property without limiting the type of use and the time period regarding its use, then he or she may reclaim the property at any time.

II. Legal Relationship Arising from Lending Contract

1. Duties of the Borrower

1952. The borrower may use the lent property only in accordance with the agreement, but if none exists, he or she may use it only in the way that most closely corresponds to its nature and the circumstances involved. The borrower may not transfer the lent property to another

person.

1953. The borrower shall take due care of the maintenance and safekeeping of the lent property and, therefore, he or she shall be liable for any damage to the property that he or she could have prevented.

1954. If, under perilous circumstances, the borrower saves his or her own property but allows the lent property to be destroyed although he or she might have saved it, then he or she shall be liable therefor to the lender.

1955. If the borrower has taken due care while using, maintaining and safekeeping the lent property, he or she shall not be liable for a third person's wrongful actions which he or she could not prevent, nor for accidental loss or destruction of the property.

1956. If the lent property is damaged or destroyed due to its unauthorised use or delayed return, then the borrower shall be liable for such, even though there is no reason to hold him or her at fault, and therefore in such case the borrower is also liable for risk. The same shall also apply when the borrower has expressly undertaken liability for all losses.

1957. If the lending contract has been entered into for the benefit of both parties, then the liability of the borrower shall be commensurate with such degree of care as the borrower would exercise over his or her own property; but if the benefit of the lender is the sole purpose of the transaction, then the borrower shall be liable only for malicious intent and gross negligence.

1958. If one and the same thing has been lent to more than one person jointly, then they shall be liable for it solidarity.

1959. Heirs of the borrower shall be liable for the lent property if it comes into their hands in the same way as the estate-leaver, but otherwise they shall be liable only if the estate-leaver acted with malicious intent.

1960. After the use of the lent property, the borrower must return it in as good condition as possible.

The borrower must return to the lender not only the property itself, but also all the appurtenances lent therewith, as well as the fruits and any other profits obtained from it.

1961. The borrower may not withhold the property or refuse to return it on the basis of a counterclaim, unless such counterclaim arises from the lending contract itself.

1962. If the borrower claims ownership rights to the lent property, which right was obtained after entering into the contract, and not from the lender, but from a third person, then the borrower must, nevertheless, return the property to the lender, and prior to that the latter need not answer in an ownership action. Furthermore, the borrower shall not have the right to withhold the property from the lender on the basis of an ownership action brought by a third party.

2. Duties of a Lender

1963. The lender does not have the right to hinder the use of the property in accordance with

the contract, nor to request that it be returned before the end of the use or before the expiration of the agreed term, unless the borrower exercises his or her right improperly.

1964. If, due to unexpected circumstances, it becomes necessary for the lender to have the property, the borrower does not have the right to withhold it, unless the borrower would suffer especially significant losses from returning it before the due date.

1965. The lender shall compensate the borrower for the expenditures incurred by the borrower for the lent property to the extent that such have been necessary or incurred with the specific consent of the lender.

The borrower may not claim any compensation for the expenses incurred for the use of the property.

1966. The lender shall be liable to the borrower for all losses inflicted through acts in bad faith, such as deliberate concealment of the uselessness of the property, reclaiming the property before due time, or similar conduct, but shall not be liable for mere negligence.

1967. The lender may be compelled to perform his or her duties not only by bringing an action, but also by detaining the property.

SUB-CHAPTER 3
Contract of Bailment

I. General Provisions

1968. By a contract of bailment a bailee undertakes to keep movable property transferred to them by a bailor.

1969. Compensation of the bailee shall be regarded as implicitly agreed to, if free bailment could not have been expected under the circumstances.

1970. A contract of bailment shall be considered to have been entered into as soon as the bailor has deposited the object for bailment with the bailee. However, a prior agreement whereby someone promises to accept an object for bailment shall be binding; and therefore, if the bailee revokes it without good cause, compensation may be claimed from the bailee for all losses inflicted thereby.

1971. A bailee shall be only the holder, but not the possessor of the property.

II. Lawful Relationship Arising from Contract of Bailment

1. Duties of Bailees

1972. Bailees shall take good care of the property entrusted to them and shall be liable for any negligence on their part.

If bailees undertake to keep the property without compensation, they shall be liable only for malicious intent or gross negligence.

1973. Bailees do not have the right to use the bailed property, unless such a right has been

expressly or implicitly granted to them.

1974. Bailees shall also be liable for casualty risk:

1) if they have expressly undertaken it;
2) if, contrary to the contract, they use the bailed property or alienate it;
3) if they do not return the bailed property on tune; or
4) if the contract has been entered into on the basis indicated in Section **1978.**

1975. Bailees of property shall return the property undamaged upon demand, notwithstanding that this may be prior to the expiration of the previously set term.

1976. In returning the property, it shall be of no significance whether the bailor who claims it (Section 1975) is or is not the owner of it, and whether the bailor's right to act is in some way restricted by the rights of a third person.

1977. A protest by the owner or other persons who have a right to the property may not be the basis for refusal to return the property, unless a court has distrained it.

1978. The bailee shall return the same property as has been received for bailment. But if fungible property has been entrusted to someone specifically with the condition that only the same quantity or an equal sum must be returned, or also if without such a condition, the fungible property has been counted, measured or weighed, and delivered to the bailee in an unlocked and unsealed form, then in all such cases the bailee shall return the bailed property only in the same quantity and of the same quality.

1979. Bailees shall return the bailed property together with its appurtenances, as well as augmentations and fruits to the extent they still have them or in the quantity lost through their lack of due care.

If bailees use money deposited with them for bailment for their own benefit, or do not return it when due, then they shall pay the bailor interest on it.

1980. Bailed property must be returned at the location where it is kept. If a bailor requires that the property be returned at another location, then the bailor shall bear the delivery expenses. However, if the bailee wrongfully moves the property to another location, while the bailor wishes to receive it at the former location, then it shall delivered there at the expense of the bailee.

1981. The duties of bailees regarding bailed property shall devolve to their heirs.

1982. The liability of an estate-leaver, if he or she has undertaken to bail property without compensation, shall pass to his or her heirs when such liability arises from malicious intent, but not when it arises from any other fault of him or her.

1983. If an heir, due to justifiable lack of knowledge of circumstances, sells property that had been entrusted for bailment to the estate-leaver, then the heir shall return only that which he or she has received for the property or shall return the right to receive that which is due. However, if the heir repurchases such property or reacquires it anew by other means, then the heir shall return it to the bailor or, if the heir refuse to do so, compensate all losses.

2. Duties of Bailors

1984. A bailor shall take back the bailed property when the agreed term has expired, but if such was not specified, then immediately after the demand of the bailee. The bailee may request that the bailor release him or her from the duty of bailment of the property also before the expiration of the specified term, if the bailee becomes subject to a situation wherein bailment of the property would be unsafe or might harm the bailee. However, if the bailor refuses to take the property back, the bailee shall have the right to deposit it with a court for safekeeping at the expense of the bailor.

1985. After the expiration of the bailment, a bailor must pay the bailee the agreed remuneration. Such remuneration shall also be paid if the bailor takes back the bailed property before the expiration of the agreed time period. However, if the bailor has not yet taken the property back after the expiration of this period, then the bailor must pay remuneration for further bailment at the previously agreed rate.

1986. A bailor must compensate the bailee for the expenditures of bailment of the property to the extent that such expenditures were necessary or incurred with the consent of the bailor.

1987. A bailor must compensate the bailee for losses incurred as a result of the bailment, as well as those the bailee has suffered through no fault of his or her own or has not been able to prevent, and those which have arisen as a result of the bailor's own negligence.

1988. If the property deposited for bailment has been lost or damaged through acts in bad faith of the bailee and he or she compensates the bailor for it, then the latter shall refrain from bringing all actions that might have brought against the party directly responsible for the loss suffered.

3. Mutual Relationship of Several Joint Bailors and Bailees.

1989. If several persons jointly deposit property for bailment or if a bailor leaves several heirs, then each joint participant may, regarding divisible objects, claim his or her share separately, unless agreed otherwise.

The person who has received his or her share in such case need not compensate the other for losses which might later arise to his or her respective shares by chance or through the fault of the bailee.

If it is not possible to return the bailed property in parts, then each joint participant shall have the right to claim it as a whole, but only after securing the bailee against the claims of the other; without such security each joint participant may only claim in his or her own name and in the name of the other that the property be deposited with a court for safekeeping.

1990. Several joint bailees shall answer solidarity; however, if one returns the entire property, then the other shall be released from their liability. However, if only one of them has acted in bad faith, then the other shall not be liable for it.

1991. If after the death of a bailee, several heirs are left then they shall be liable in lieu of the estate-leaver only proportionate to their own shares; but for their own fault they shall be liable as if the property had been deposited for bailment to them jointly.

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III. Conversion of Bailment into a Loan Agreement

1992. If the object of bailment is fungible property and the bailee is later granted the right to use it pursuant to his or her discretion, then the contract of bailment shall be converted into a loan from the moment when such right is granted.

However, if, on depositing fungible property under a bailment, it has been agreed that the bailee may use such property if he or she later so desires, then the contract of bailment is converted into a loan only from the time when the property actually begins to be used.

1993. From the time when a bailment is converted into a loan (Section 1992) the debtor shall also be liable for casualty risk.

1994. In converting the bailment of money into a loan, interest may also be provided by contract. If interest is not provided by contract, then the bailee of the money and future debtors must pay only late-payment interest if the payment is in default.

SUB-CHAPTER 4
Innkeeper's Bailment

1995. Innkeepers whose trade is to provide accommodation to travellers shall be liable to them for returning property brought in by them.

1996. Such duty on the part of the innkeeper shall arise in and of itself, even without an express agreement, when the traveller's property is brought into the inn with the knowledge of the innkeeper; a detailed description of such property and instructions to care for them are not necessary.

1997. It shall not matter whether the innkeeper or servants charged to do so receive the travellers and their property or the travellers carry their property into the inn themselves.

1998. Innkeepers shall be liable for property carried in by travellers, unless they prove that the loss occurred through the fault of the travellers, their visitors or attendants, or through *force majeure*, or because of the characteristics of the property itself. Similarly, innkeepers shall also be liable for property that travellers have entrusted to them or to their servants prior to arriving at the inn.

Nevertheless, regarding money, securities and jewellery brought into the inn by travellers, the aforementioned liability, unless otherwise agreed, shall be limited to one thousand lats, except in cases when the innkeeper has accepted in person the traveller's money, securities and jewellery under bailment, or when the innkeeper or his or her servants are at fault for the destruction of such property.

An announcement displayed at the inn that the innkeeper is not liable shall not have any legal effect.

1999. In regard to property left at an inn by a departing guest with the consent of the innkeeper until the time of the guest's return, the innkeeper shall be liable the same as any other bailee.

2000. If someone who is not an innkeeper by profession receives a traveller at their home for money, or if an innkeeper provides a dwelling at his or her place not as an innkeeper, but as a

landlord, he or she shall be liable only in accordance with the general provisions regarding rental contracts.

2001. Liability equivalent to that of innkeepers shall apply to shipowners who receive passengers with their property on board their ships, as well as holders of livery stables who agree to shelter horses or other animals of other persons therein; however, such liability shall not pertain to restaurant and cafe keepers who have no rooms to accommodate travellers.

CHAPTER 13
Claims Arising from Alienation Contracts

SUB-CHAPTER 1
Purchase Contracts

I. General Provisions

1. Definition of the Contract and Personal Capacity of Contracting Parties

2002. A purchase contract is a contract whereby one party promises to convey to the other certain property or rights for an agreed sum of money.

2003. A seller may be anyone who has the right to alienate freely the subject-matter to be sold; a purchaser may be anyone who is not barred by the law to acquire it.

2004. A purchase contract shall be considered to have been entered into when both parties have agreed on the subject-matter of the purchase and the purchase price.

Note. Transfer of commercial and industrial undertakings are subject to special provisions.

2. Subject-matter of Purchase Contracts

2005. The subject-matter of a purchase contract may be all property that it is permitted and possible to alienate, meaning thereby not only tangible property, but also property rights and obligations rights.

2006. If both parties, or even only the purchaser, knew that it was not permitted to alienate the property that was sold, then the contract shall be void. However, if only the seller had knowledge thereof, then the contract shall remain in effect and the seller must compensate the purchaser for losses. Finally, if neither party had knowledge thereof, then the contract shall be void.

2007. The subject-matter of a purchase contract must actually exist (Section 2009) and be described in sufficient detail so as to leave no valid doubt; otherwise, the contract shall be deemed to not have been entered into.

2008. If, at the time of entering into the contract, the subject-matter of sale has been partly destroyed but both parties had no knowledge thereof, then the purchaser may withdraw from the contract, if more than half of the subject-matter, or precisely that part which the purchaser most desired to acquire, has been destroyed. However, if half of the subject-matter or more

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remains intact, the purchaser must perform the contract, with a proportionate reduction of the purchase price. In case of doubt, the matter shall be resolved pursuant to the discretion of a court.

2009. An exception from the provisions of Section 2007 shall be the so-called speculative purchase where the subject-matter is not yet known and the contract may be entered into in two ways:

1) in such a manner that the purchaser remains bound even though the subject-matter of the purchase might not arise at all or not come within the property of the seller; or

2) in such a manner that the actual existence of the subject-matter of sale is a necessary condition for the validity of the purchase contract.

2010. When the property of another person has been sold without the knowledge and consent of its owner and both parties had knowledge thereof, then the contract shall be void. If, on the contrary, the purchaser did not know that the seller did not have the right to alienate the property, then the purchaser may claim compensation for losses. Finally, if only the purchaser had knowledge thereof, then the seller shall have no duty towards the purchaser.

Exceptions to this provision are the cases provided for in Section 1065, where the sale of another person's property is in effect and its owner may have recourse only against the seller.

2011. A contract for purchase of another person's property, entered into in the event that the property might be transferred into the possession of the seller, shall take effect and actions may be brought regarding such only from the time when the aforementioned precondition has come into effect.

3. Purchase Price

2012. The purchase price shall be expressed in money.

If the purchase price is expressed not in terms of money but in terms of other property, the contract shall be not of purchase, but of barter.

2013. If the purchase price has initially been expressed in money, a subsequent agreement by the contracting parties to pay for it with other property shall not alter the substance of the contract

Similarly, the substance of a contract shall not be altered by the purchaser undertaking to perform something else in addition to the purchase price.

2014. Where the money used for the purchase price is not that of the purchaser himself or herself, but that of another person, this does not alter its meaning, and the purchased property shall pass into the property of the purchaser, and not into the property of the creditor.

2015. The purchase price need not necessarily be exactly equal to the value of the subject-matter of the purchase, and the contract shall be valid even if the subject-matter is sold below its actual value (friendship purchase) or above it. However, if the purchase price has been set only for the sake of formality, the contract shall be not of purchase, but of gift.

2016. If the sum indicated in the purchase document is higher or lower than agreed, the contract shall not for that reason be invalidated, and the orally agreed price shall remain in effect.

2017. The purchase price must be set and it shall not be dependent on the volition of one party. However, if the seller delivers property or goods to the purchaser which have been ordered without specifying a price, the transaction shall be valid, and it shall be assumed that both parties have agreed on the market price (Section 2018).

2018. If a purchase has been made for the market price, it shall be assumed that the average price at the time and place that the contract was entered into was intended. However, if at such place there is no market price, the market prices at the nearest trade centres shall be taken as the basis. Where price lists are available, the price shall be set in accordance with them.

2019. The setting of a purchase price may also be entrusted to a specified third person or, if none has been specified, to the just discretion of an impartial expert.

The decision by a third person shall be binding to both parties provided the third person has not set an unjust price.

2020. When the purchase price has been set depending on some subsequent event or on the stating thereof by a third person, then the purchase shall be considered to be conditional, and therefore it shall fail if the expected event does not occur or produces no result, or if the third person is not able to or does not wish to set a price.

II. Lawful Relations Arising from Purchase Contract

1. General Provisions

2021. Mutual rights for both parties to claim performance of the contract, as well as compensation for losses arise from a purchase contract.

2022. Both parties must strictly observe their mutual duties; the seller must, in particular, keep the sold property with greatest care until the delivery of the property and be liable for the consequences of any negligence in this respect However, if the purchaser delays in accepting the purchased property, then the seller shall be liable only for acts in bad faith and gross negligence.

2023. After entering into a purchase contract, even though the purchased property might not yet have been delivered, the purchaser shall be liable for any casualty risk in connection with which the property is destroyed or damaged.

2024. The provisions of the preceding Section (2023) shall not apply in the following cases:

1) where the subject-matter of the purchase has not been individually specified and becomes definite only upon its actual delivery, the seller shall bear the risk until delivery;

2) where fungible property or other types of property are sold by piece, measure or weight, then the risk shall pass to the purchaser only after the property has been counted, measured or weighed;

3) where the purchase contract has been entered into with a suspensive condition, then the risk of destruction shall pass to the purchaser only after the occurrence of this condition, but the risk of damage shall pass to the purchaser from the time when the contract is entered into, even though the outcome of the condition may not yet be known;

4) where the destruction or damage of the property is the fault of the seller or where

the seller has delayed the delivery, the seller shall be liable for the risk;

5) where the property is purchased with the condition of a prior examination or inspection, then the seller shall be liable for all risks until the purchaser has agreed to accept it; and

6) where the seller has expressly assumed the risk without setting a term, the risk shall pass to the purchaser only from the time of delivery of the property.

2025. In all cases when the purchaser is liable for the risk, the purchaser shall also be entitled to all benefits arising from the purchased property, such as its augmentations, increase of the price and any fruits not yet collected at the time the purchase contract was entered into.

2026. Civil fruits (Section 585, Paragraph two) which are due not within certain terms, but each year on a continuous basis, shall be subject to the provisions of Section 958, and on this basis shall be divided between the seller and the purchaser proportionate to the time each has borne the risk

2. Duties of the Seller

2027. The sold property shall be delivered to the purchaser at the proper time and proper place with all its appurtenances and also with everything that can secure the rights to this property.

2028. When selling a unit of rural land or a commercial, industrial or any other type of undertaking "as is", everything, that at the time of entering into the purchase, was located there for the benefit and convenience of the farm or the undertaking or was necessary for the seller, or was used or stored by the seller, and owned by the seller, shall be considered as sold.

2029. Where selling a parcel of land, the seller must show the purchaser its boundaries if these are not apparent from the description or the plan of the parcel of land.

2030. If the purchased property is not delivered at all or is not delivered in the proper manner, the purchaser may claim compensation for all losses, especially if the delivery has become impossible through the fault of the seller. If the seller unjustifiably refuses to deliver the property, court enforcement procedures may be exercised against the seller.

2031. If one and the same movable property is sold to two purchasers, then priority shall be given to the one to whom the property has been delivered, but if neither of them as yet has possession of it, the priority right shall be given to the one who first entered into a purchase contract.

In the sale of immovable property, the purchaser whose contract has been registered in the Land Register has priority.

A seller shall compensate an excluded purchaser for the losses incurred.

2032. The seller shall deliver the property and all its appurtenances in such form as promised or assumed.

3. Duties of the Purchaser

2033. The purchaser must first of all pay the purchase price, which must be done immediately upon delivery of the property, that is, at the same time and the same place, unless the purchase contract has been entered into on a credit basis or specific terms have been set for payments.

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The seller need not deliver the property before receiving the payment.

2034. Prior to the payment, the purchaser shall not obtain ownership rights to the purchased property, unless the seller has extended the payment. If the seller delivers the property to the purchaser without any reservations, the extension of the payment period shall be regarded as implicitly agreed.

2035. The purchaser must pay purchase price interest to the seller from the time the purchaser has taken possession of and started to use the purchased property.

2036. When a sold property is in danger of replevin, the purchaser has the right to withhold the purchase price, if the seller is not able to or does not wish to offer sufficient security against the replevin.

2037. If the purchaser delays in paying, the seller may request that the property be sold by way of auction at the expense of the purchaser.

2038. The purchaser shall compensate the seller for the expenditures the latter has made in regard to the property after entering into the contract, including both necessary and useful expenditures, if the latter have been made in good faith, or if it is likely that the purchaser would have made them.

III. Setting Aside of Purchase Contracts

1. General Provisions

2039. Unilateral withdrawal from a purchase contract shall not be permitted even if the other party does not perform his or her obligations.

2040. As an exception, a purchase contract may be set aside pursuant to the claim of one party:

1) where one party has been compelled to enter into the contract through the acts of bad faith of the other party, or by fraud or duress;

2) due to the defects in the purchased property;

3) on the basis of ancillary agreements by means of which the right of withdrawal has been retained;

4) due to excessive loss suffered by one or the other party; or

5) in the circumstances specified in Section 1663, also on account of default.

2041. Any purchase contract may be revoked, before or after its performance, by mutual consent of both parties, except in cases where this might violate the rights obtained by third persons. Where a contract that has already been performed is revoked, each party shall return to the other party that which such party has performed, or shall compensate such party therefor.

2. Setting Aside of Purchase Contracts Due to Excessive Loss

2042. In a case of excessive loss, that is, where the purchase price does not amount to even half of the normal value of the property, the seller may request the setting aside of the contract. However, the purchaser may prevent the setting aside by paying a sum which, added

to the prior purchase price, would constitute the true value of the property. Similarly, the purchaser has the right to request the setting aside of the contract, if the purchase price paid by him or her exceeds more than twice the true value of the property; but the seller may prevent the setting aside by reducing the aforementioned price to the normal value of the property to be sold.

2043. The right to request the setting aside of a purchase contract due to excessive loss shall apply only to those cases where acts of bad faith of the party who inflicted the losses has been proven. An exception to this provision is provided for in Section **2056.**

2044. The amount of compensation due to the injured party, shall be determined, where that is necessary, by a court which shall base it on the value of the property at the time when the contract was entered into.

2045. If a contract is set aside, the purchaser shall return not only the property itself, but also the fruits gathered from it since the time the purchase was carried out, but the seller shall repay the purchase price with interest, and compensate for the necessary and useful expenditures to the extent such expenditures are justified.

2046. The right to request setting aside due to excessive loss shall cease if an action is not brought within one year from the entering into of the contract.

IV. Ancillary Contracts in regard to a Purchase

1. Right of Withdrawal for Reason of Non-payment of the Purchase Price

2047. A seller may provide by contract for the right to withdraw from a purchase contract if the purchaser does not pay the purchase price on the due date.

2048. A condition included in such a contract shall be regarded as resolutory, except in cases where it is specifically stated or obvious from the circumstances that the condition can only be suspensive.

2049. If a certain term has been set for payment, the right of the purchaser shall terminate when this term has expired; but if a term has not been set, then it shall be necessary to first receive a reminder from the seller. However, the seller must not hinder timely payment of the purchase price.

2050. If the purchaser defaults in payment, the seller may use or not use his or her right; but the seller must give notice thereof immediately after the due date has passed, and once the seller has requested setting aside of the contract, the seller may no longer require its performance.

2051. If the seller demands or receives payment after the term has expired, it shall be assumed that the seller has implicitly waived the rights contracted for.

2052. When a contract is revoked, the property shall be returned to the seller together with its augmentations and income; moreover, the purchaser shall forfeit the earnest money if such has been paid, and shall compensate for the losses inflicted through his or her fault.

2053. If the purchaser has already paid a part of the purchase price, the purchaser may, in the case indicated in Section 2052, require the return of what has been paid, but without interest.

2. Repurchase and Resale

2054. By a repurchase contract, a purchaser undertakes to sell the purchased property back to the seller at the request of the seller.

2055. If the right to repurchase is restricted to a certain term, the right shall terminate upon its elapse. In the contrary situation, prescription shall not apply to such right.

2056. If the conditions of repurchase, in particular the price, have not been specified in the contract and subsequently there is no voluntary agreement thereon, then the purchase price shall be determined by a court in accordance with the value of the property at the time of repurchase. However, if the price has been set in the contract itself, then it shall remain in effect regardless of whether the value has increased or decreased, and such a purchase may be disputed only where it would cause excessive loss.

2057. If a purchaser has alienated a property to a third person, the party who has the repurchase right may claim compensation from the purchaser only for losses; but a repurchase action against a third person who has obtained the property itself or a property right to it may be brought only if the third person knew about this relationship when acquiring the property, or when the subject-matter of the repurchase right is immovable property and this right has been registered in the Land Register.

2058. If a repurchase right belongs to several persons jointly, then they may use it only if all jointly agree.

2059. A contract, whereby a purchaser retains the right to require repurchase from the seller, shall be subject to the provisions of Sections 2055-**2058.**

3. Right of First Refusal

2060. By right of first refusal, a seller contracts for a priority right to purchase a property if the purchaser should resell it.

The right of first refusal may not be used where a purchaser alienates a property not by selling it, but otherwise.

2061. If a purchaser wants to resell a property purchased with a contractual right of first refusal, the purchaser shall offer it to the holder of this right immediately after entering into the new contract; but the latter shall give notice as to whether he or she intends to use this right: immediately - for movable property, but for immovable property - in two months time.

If the holder of the right of first refusal does not reply within the specified time period, the right of first refusal shall terminate.

2062. If the holder of the right of first refusal wants to use such right, then he or she shall, unless otherwise agreed, fulfil the same conditions that are offered by the new purchaser.

2063. If the property has been resold without notifying the person entitled to the right of first refusal, then this person may claim compensation for the losses incurred thereby only from his

or her purchaser; but he or she may bring an action against the new acquirer or generally against any third person only where such person has acted in bad faith, or where the subject-matter of the right of first refusal is immovable property and this right has been registered in the Land Register.

4. Purchase with Examination or Inspection

2064. If someone buys a property with the right of prior examination or inspection, then the purchase shall depend, unless mutually agreed otherwise by the parties, on the suspensive condition that the purchaser accepts the property as suitable.

2065. Such a contract (Section 2064) shall bind the seller from the moment that it has been entered into, but the purchaser may either keep it in effect or withdraw from it; moreover, in the latter case the purchaser need not state the reasons for withdrawal.

2066. If the contract includes a specified time period for the purchaser to respond and the purchaser allows it to pass, but has not yet received the sold property or goods, then it shall be assumed that the purchaser has withdrawn from the purchase. The same consequences shall result where a time period has not been specified or where it has not been provided that the response may be given at any time, and the purchaser does not respond within two months.

2067. If goods sold with a right of prior examination or inspection has already been delivered to a purchaser, then the purchaser's keeping silent until the expiration of the term shall be considered to be consent.

2068. If a purchaser, after receiving the property, pays the contractual price for it, fully or in part, without any reservations, it shall be assumed that the purchaser has thereby given consent implicitly.

5. Instalments Purchase

2069. A seller may keep the ownership rights to the sold property either by keeping this right while full payment of the purchase price has not been received, or by having the ownership rights revert back if the purchaser does not pay. If doubts should arise regarding the intent of the contracting parties, then it shall be assumed agreed that it has been contracted for the ownership rights to be retained by the seller so long as full purchase price has not been received.

2070. If the right of payment of a purchase price by instalments has been contracted for, and the purchaser has defaulted with respect to two payments, but the seller does not wish to burden himself or herself with the collection of late payments, or if the purchaser alienates the purchased property, or loses it, or so damages it that its value no longer covers the outstanding payments, then the seller may request setting aside of the contract and return of the sold property together with compensation for the use, during the period from the delivery of the property to the purchaser until the return of the property to the seller, and for the losses caused for the latter. Against the amount, that the seller is entitled to from the purchaser on such basis shall be set off all the payments made by the purchaser, and if they exceed such amount, then the remainder shall be paid back to the purchaser. Agreements contrary to these regulations shall be void.

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2071. If a purchaser does not engage in trade with the property acquired subject to conditions as referred to in Section 2069 or 2070, he or she may not alienate or pledge such property before payment; otherwise he or she shall be held liable pursuant to the Penal Law and the alienation or the pledging shall not be in effect, if the acquirer or the pledgee knew, or should have known, that the property was acquired subject to a condition referred to in Section 2069 or 2070.

6. Other Ancillary Contracts.

2072. The contracting parties may additionally conclude various ancillary contracts, thereby modifying the provisions of the law -for example, regarding the risk or the amount of compensation, or securing their rights.

V. Sale at Auction

2073. Sale at auction is an offer regarding property intended for open sale, to enter into a purchase contract with the person who bids the highest price for such property.

Note: Auctions may also be arranged, without purchase contracts, for lease, rental, employment and supply contracts.

2074. Sale at auction may be, from the point of view of the owner of the property to be sold, either voluntary or compulsory. The former may be performed, pursuant to the discretion of the seller, by judicial process (Section 2076) or privately, but the latter shall be performed only by judicial process.

2075. Upon voluntary sale at auction, whether performed by judicial process or privately, the mutual rights and duties of the contracting parties shall be determined according to the provisions agreed upon between them, and in large part by such provisions as have been proposed by the seller.

2076. Sale of movable or immovable property by compulsory auction, as well as sale of immovable property by voluntary auction by judicial process, shall be performed pursuant to the provisions of the Civil Procedure Law.

2077. Bidders, as well as the persons who are present at an auction due to their office, may not be purchasers either for themselves or pursuant to the instructions of other persons.

2078. Creditors of the owner of the property sold by compulsory auction may take part in the bidding, but the owner himself or herself shall not bid either in person or through an authorised representative.

2079. The general provisions of Section 2005 shall apply to the property sold at auction.

2080. If indivisible movable property that is in joint ownership is offered for sale at auction for the satisfaction of the creditors of one joint owner, then the others shall have only the right either to satisfy the creditors by purchasing their claims, or to obtain the movable property at auction on equal terms with the others. All the income shall be distributed in proportion to the shares of the joint owners, and the share that is due to the debtor shall be used to satisfy his or her creditors and to cover expenditures.

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2081. Sale at auction of movable property by private procedure shall be considered to have occurred even though at the auction no one has bid higher.

2082. Each bidder or higher bidder shall be bound by his or her bid until there is a higher bid by another person. When a higher bid is made, the bidder of the previous price shall be released from his or her obligations.

2083. If none of the bidders, upon being invited to do so, makes a higher bid, then the property shall be conferred, by the fall of the hammer, to the person who has bid the last price; he or she may be denied the acceptance of the bid by the fall of the hammer only if the conditions of the auction contain specific reservations regarding it. If there are no such reservations, the auctioneer shall not have the right to pass from the highest bidder to the previous bidder. However, if several persons simultaneously bid the same price and none makes a higher bid, then the auctioneer may choose from among such persons the one he or she wants.

2084. If, pursuant to the conditions of the auction, the auctioneer retains the right to decide on the acceptance of the highest bid, the acceptance of the bid by the fall of the hammer shall be made only after he or she has announced his or her decision either within the time period specified by himself or herself, or, if he or she has not specified such time period, within a time period determined by a court upon the request of the highest bidder. Until that time such bidder shall be bound by his or her bid.

2085. Acceptance of the bid by the fall of the hammer shall replace an auctioneer's announcement that he or she has accepted the highest bid, and such acceptance of the bid by the fall of the hammer shall close the sale even in such cases when, in addition to compliance with general procedures, the property must be adjudged to the highest bidder by a special judgment of a court.

2086. Sale at auction shall have, with respect to its consequences, the same effect as ordinary sale; from the moment of acceptance of the bid by the fall of the hammer the risk is transferred to the highest bidder, but from the same moment such bidder shall receive, even before the transfer of the property, all the fruits and benefits from such property.

2087. After the acceptance of the bid by the fall of the hammer, the highest bidder shall pay the purchase price either immediately, or in accordance with the terms of the conditions of the auction, at the same place where the acceptance of the bid by the fall of the hammer occurred if another place has not been specified therefor, and in general shall perform everything that is specified in the conditions; or the procedures of the performance shall be specially agreed upon with the auctioneer or other interested persons.

2088. After the highest bidder has fulfilled the conditions of the auction, all the pledge rights of the sold immovable property, which the bidder does not assume himself or herself, shall terminate. Real charges shall pass to the purchaser.

2089. If, in a voluntary auction, the highest bidder delays fulfilment of the conditions, or if he or she does not have the personal characteristics necessary for the acquisition of the property on sale, the property shall be set for a repeated auction, pursuant to the request of the seller, at the expense and risk of the highest bidder referred to. Until that time, his or her rights and

duties shall remain valid, and before the time of the new auction, he or she may prevent it by fulfilling the duties referred to, i.e., by paying the amount due from him or her and the late-payment interest, as well as the expenses of the new auction.

2090. A purchase contract that has been entered into by acceptance of the bid by the fall of the hammer at a voluntary auction, may be revoked on account of the same reasons as a contract entered into through private procedures.

SUB-CHAPTER 2
Barter Contracts

2091. A barter contract is the mutual promise of two persons to provide a certain subject-matter in exchange for another, except for money.

The subject of a barter contract may be not only tangible property, but also claims and other rights.

2092. The provisions regarding purchase contracts are applicable *mutatis mutandis,* to the mutual rights and duties of the contracting parties in barter contracts.

2093. Rights of third persons, as may be provided for in a purchase contract, such as rights of first refusal and pre-emptive rights, may not be exercised pursuant to a barter contract.

2094. In the barter of tangible property, it is the responsibility of each party to ensure that the other party becomes the owner of the transferred property. Ownership rights shall pass to the recipient of the property immediately after delivery, regardless of whether or not the recipient has fulfilled his or her counter-duty.

2095. Each party has the right to require from the other party fulfilment of his or her contractual and legal duties, but a contracting party which has already fulfilled his or her obligations, may require the return of the transferred property where the other party delays in fulfilling them.

SUB-CHAPTER 3
Maintenance Contracts

I. General Provisions

2096. Pursuant to a maintenance contract, one party provides the other party, whether in cash or in kind, with some financial benefit, for which the other party shall provide maintenance to the first-mentioned party during the life of the recipient of maintenance, unless otherwise agreed regarding the duration of such duty.

2097. Maintenance may be contracted for oneself as well as for another person who shall thereupon obtain the right, by joining in the contract (Section 1521), to apply pursuant to his or her claim directly to the provider of maintenance.

If maintenance is contracted for the benefit of more than one person, it shall be divided equally among such persons; if one of such persons dies, his or her share shall be retained by the provider of maintenance, unless it is has been agreed that in such case the

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share of the deceased person shall devolve to the survivors.

2098. Maintenance shall include, unless otherwise agreed, food, housing, clothing and care, but if the recipient of maintenance is a minor, also upbringing and education in compulsory schools.

If the exact amount of maintenance has not been specifically agreed upon, it shall be determined by a court, taking into account the circumstances in which the recipient of maintenance is living and the nature of the financial benefit (Section 2096) received by the provider of maintenance.

II. Legal Relations Arising from Maintenance Contracts

2099. If the recipient of maintenance is unable to pay the debts he or she had upon entering into the contract, his or her creditors may request satisfaction from the financial benefit transferred to the provider of maintenance. Claims, which have arisen after entering into contract, may be applied against the maintenance, if other property does not suffice.

2100. If immovable property is transferred to the provider of maintenance, then pledge rights in the amount of the value of the maintenance, shall be registered in the Land Register for the benefit of the recipient of maintenance.

The periodic value of the maintenance shall be calculated by capitalising the value of gains of one year pursuant to interest set by law (Section 1765).

2101. Maintenance shall be provided, unless otherwise specified, for a quarter in advance, but if the maintenance also is to be provided in kind, then for six months in advance. The received amount is not required to be returned even if the recipient of maintenance does not survive until the next term.

The place of performance shall be where housing was contracted for (Section 2098).

2102. The right of the recipient of maintenance to the maintenance shall not be ceded.

III. Termination of Maintenance Contracts

2103. The contract shall terminate automatically upon the death of the recipient of maintenance, but not upon the death of the provider of maintenance.

2104. Both parties may unilaterally withdraw from the contract on the basis of the reasons set out in Section 2193.

2105. If a contract is breached by the provider of maintenance, the recipient of maintenance or his or her successor in interest may reclaim the transferred financial benefit (Section 2096), and he or she shall not be required to return the value of the maintenance received.

In other cases of termination of the contract, the provider of maintenance shall return the financial benefit received to the recipient of maintenance or to his or her successor in interest, while the provider of maintenance shall recover everything he or she has transferred to the recipient of maintenance above the amount of the interest set by law.

2106. Maintenance contracts shall not be set aside:

1) because excessive losses have been incurred; or

2) because children were born later to the recipient of maintenance.

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SUB-CHAPTER 4
Supply Contracts

2107. Pursuant to a supply contract, one party (the supplier) undertakes to deliver to the other party (commissioning party) a particular thing for a certain price.

2108. The supplier shall not have the right to withdraw from the obligation he or she has undertaken, even though the supply may be hindered by circumstances that arise later.

The commissioning party may, however, withdraw from the contract on account of a change of circumstances, but in such case, he or she shall compensate the supplier for all losses.

2109. When the supplier has delivered the thing ordered, the legal relations of the contracting parties shall be determined in compliance with the provisions regarding purchase contracts.

2110. If the subject-matter of a supply contract is a certain activity, the provisions regarding work-performance contracts are applicable.

2111. Government procurement contracts shall be subject to the above provisions (Sections 2108-2110), as well as to laws regarding public works and supply.

CHAPTER 14
Lease and Rental Contracts

2112. A lease or rental contract is a contract pursuant to which one party grants or promises the other party the use of some property for a certain lease or rent payment. A contract, which grants the use of a fruit-bearing property in order to gain fruit thereof is a lease, but any other contract granting use, is a rental contract.

Note: Specific provisions regarding residential rental premises are included in the Law On Rental of Residential Premises.

SUB-CHAPTER 1
Provisions of Lease and Rental Contract

2113. The subject-matter of a lease and rental contract may be such tangible property as alienation of it is not prohibited, as well as rights. Real servitudes may be leased only together with the dominant immovable property.

Property that can be used only for consumption may not be rented.

2114. If anyone leases or rents his or her own property believing that it belongs to someone else, a contract regarding such property shall not be valid. If the property is, however, joint property, or someone else has other rights to the property which grant him or her possession or use of such property, the lease or rental of such property to its owner shall be valid.

2115. The lessor or renter of property does not have to be its owner; moreover, any person who has the right of use may lease or rent. In addition, the lessee or tenant may assign the leased or rented property to another person, but only upon express consent of the lessor or

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renter of the property.

2116. Upon assignment of property to a third person (Section 2115), the lessor or tenant may not act fraudulently or to the disadvantage of the first lessor or renter, and he or she may not assign it for different use than for which he or she received it, or assign it for a longer time than his or her own period of lease or rental.

2117. Upon further lease or rental of property to a sub-lessee or a sub-tenant, the relationships arising from the first contract shall not transfer in full to the subsequent contract, and each contract shall be completely independent. However, a sub-lessee or a sub-tenant have the right to pay the lease or rent payment directly to the first lessor or renter to the extent of the debt of the first lessee or tenant.

2118. If a whole unit of rural land is leased, it shall include all its appurtenances, unless agreed otherwise.

2119. The lease or rental payment may be provided in cash, as well as in other fungible property.

2120. The lease or rental payment must be actual compensation for the use of property, and therefore it may not be set fictitiously. A transaction concluded contrary to this provision, with the purpose of evading the law or deceiving a third person, shall not be valid; but if the purpose of a transaction is to show goodwill to an apparent lessee or tenant, it shall be deemed to be a gift.

2121. A transaction upon the conclusion of which an adequate lease or rental payment was initially agreed upon, shall retain the character of a lease or rental contract, even though such payment might later be cancelled altogether.

2122. Both lease and rental payments shall be specifically set, and the same provisions shall thereupon be complied with as provided for regarding purchase price in Section 2017 and subsequent Sections.

2123. If lease or rental payment has not been specifically agreed upon, but the same subject-matter has been previously leased or rented by the same person, then it shall be presumed that the previous provisions have not been changed. However, if such standard does not exist, and the parties have expressed only general statements that the payment shall be agreed upon between them, the amount of the payment shall be determined by a court pursuant to its discretion.

2124. As soon as both parties have agreed upon the essential elements of a lease or rental contract, that is, the subject-matter and the payment, it shall be considered that the contract has been entered into.

2125. Mutual agreement may also be implicit, if the amount is presumed to be already known by the contracting parties.

2126. Upon registering a lease or rental contract in the Land Register, the lessee or a tenant shall acquire property rights, which are valid also with respect to third persons.

2127. The contracting parties may also attach various ancillary provisions to the principal contract, to which the provisions regarding ancillary contracts of a purchase contract shall apply (Section 2047 and subsequent Sections).

SUB-CHAPTER 2
Legal Relations Arising from Leases and Rental Contracts

I. General Provisions

2128. Both parties shall treat the obligations arising from the contract with such care as may be fairly expected from them, especially regarding maintenance of the property. Therefore, they shall be held liable to each other for each loss that has occurred due to their acts in bad faith or negligence, and only accidental losses need not be compensated.

2129. In regard to losses caused by third persons, one party shall be held liable to the other only if contrary to the contract, such party itself made it possible for such loss to be caused, or had the means to prevent such loss.

II. Duties of a Lessor or Renter

2130. The lessor or renter of property shall transfer the property to the lessee or tenant; the lessor or renter shall ensure that the property can be used, and, fruits can be gathered from it by the lessee.

A lessee or a tenant is the holder of property, but not the possessor of it.

2131. The lessor or renter may not disturb the use of the property or of its fruits or allow others to disturb or eject the lessee or tenant; in either case it shall be his or her duty to compensate for the losses caused to the lessee or tenant.

2132. If a third person brings an action that is contrary to what a lessor or renter has regarded as his or her right, and the lessee or the tenant is therefore evicted, the lessor or renter shall compensate for the losses caused to the lessee or tenant, even though he or she may have acted in good faith. However, if the lessee or tenant himself or herself has acted in bad faith, he or she does not have the right to compensation.

2133. The right of the lessee or tenant to compensation for losses (Section 2132) shall cease, if the lessor or renter provides him or her with similar and not less useful property in place of the previous property; it shall be assumed, however, that the lessor or the renter of the property acted in good faith when entering into the contract.

2134. The lessor or renter shall transfer the property to the lessee or tenant together with all its appurtenances and in such state that the latter can obtain from it all the benefits that he or she had the right to expect.

2135. If such defects are discovered in the property that should have been noticed by a careful lessor or renter, then he or she shall fully compensate the lessee or tenant for the losses caused thereby.

2136. If a restriction or hindrance regarding the use of property has occurred accidentally,

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through no fault of the lessor or renter, he or she shall not be required to compensate the other party for losses caused, however, the lease or rental payments shall be commensurately reduced (Section 2147 and subsequent Sections). However, if the restrictions or hindrances regarding the use of property are short-term and were caused by making necessary repairs to the property, the lessor or renter shall be released even from the aforementioned reduction of the lease or rental payments.

2137. If a person rents out only a few premises in a warehouse, but the whole warehouse is kept under his or her lock and key, then the renter shall be liable to the tenant for providing security.

2138. The charges and encumbrances to which the leased or rented property is subject shall be borne by the lessor or renter, unless otherwise agreed; therefore, he or she shall also reimburse the expenditures as have been made for such purpose by the lessee or tenant.

2139. If the lessee or tenant has undertaken all the current charges, then such shall be understood to mean only such charges as the subject-matter of lease or rental contract or its fruits were currently subject to as of the entering into of the contract.

2140. Necessary and useful expenditures that a lessee or tenant has made for a property, shall be reimbursed by the lessor or renter in accordance with the general provisions regarding reimbursement of expenditures (Section 866 and subsequent Sections).

III. Duties of Lessees or Tenants

2141. A lessee or tenant shall pay the lease or rental payment by the term specified in the contract; if payments are delayed, he or she shall pay late-payment interest.

2142. If a term for payment is not specified in the contract, the lessee or tenant shall pay the lease or rental payment only after the expiration of the period of use. However, if the contract has been entered into for a year or for a longer period, the payment referred to shall be paid for every six months in advance.

2143. Where urban immovable property is rented by the month, the rental payment shall be paid, unless otherwise agreed, for the whole month in advance, but where the rental is for a short indefinite time only, earnest money shall be given.

2144. If the lessee or tenant arbitrarily withdraws from the lease or rental contract before the time specified in the contract, he or she may be required to immediately pay the whole amount of the lease or rental payment. However, if early termination of the lease or rent has a legal basis, the lease or rental payment, although it also must be paid immediately, is required to be paid only for the actual time that the premises were occupied.

2145. A lessee or tenant shall not be required to pay more than the agreed amount of the lease or rent payment notwithstanding that he or she may have gained an unexpectedly large profit from the leased or rented property.

2146. The lease or rental payment shall be paid in full, even if the lessee or the tenant has not utilised, through his or her own fault, all the benefits from the leased or rented property, unless the lessor or renter has leased or rented such property to another person; in such case

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the lessee or the tenant shall cover only such shortfalls as might exist.

2147. The duty to pay the lease or rental payment shall cease and the payments that have been made shall be returned - fully or partly - if the property to be leased or rented has not been used due to such event as was not caused by the lessee or tenant and as occurred without the fault of the lessee or tenant. Such events shall include the following cases:

1) where the property is accidentally destroyed;

2) where the lessee or tenant become unable to use the property due to *force majeure;*

3) where the use of most important parts of the property becomes restricted; or

4) where leasing land, the lessor loses the fruits, fully or at least to a considerable extent, due to *force majeure.*

2148. In order to reduce the lease or rental payment as a result of the events indicated in Section 2147, it is necessary:

1) that the loss was inevitable and was not caused by inherently bad characteristics of the property;

2) that regarding leases entered into for several years, the income not received for one year is not covered by abundant excess yields in other years; or

3) that the lessee or tenant has not expressly assumed the risk.

2149. If the property is leased or rented by several owners jointly, the reduction of lease or rental payment made by one of them contrary to the contract and without lawful basis (Section 2147) shall not be binding upon the others.

2150. The lessee or tenant shall use the subject-matter of the lease or rental contract properly and as a good manager. If this has been observed, the lessee or tenant shall not be liable for the natural wear and tear of the property.

2151. The lessee or tenant does not have the right to use what has not been granted to him or her by the contract, and generally may use or utilise the property only for such purpose as was intended in leasing or renting it.

2152. After the termination of lease or rental a lessee or tenant shall return the leased or rented property with all its appurtenances, in as good a condition as possible. A person who obtains ownership of property from a third person during the term of the contract has the same duty. However, if he or she was already the owner prior to the entering into of the contract or acquires ownership from the lessor or the renter during the term of the contract, then he or she shall not be required to return it.

2153. If the leased or rented property is destroyed or damaged through no fault of the lessee or tenant, then his or her liability to return it (Section 2152) ceases, unless he or she has specifically agreed to assume risk.

2154. If certain property or auxiliary property has been transferred to a lessee or tenant at a set price, then upon termination of the lease or rental contract, he or she shall compensate for the destroyed objects according to the price referred to but, additionally, he or she shall pay for the damaged items to an extent commensurate to the decrease of their value.

2155. If a lessee or tenant has made legally justified expenditures for the benefit of the property (Section 2140), then he or she may retain the property until he or she receives

compensation for such expenditures.

2156. If there is a duty imposed pursuant to the contract upon the lessee or tenant to make an improvement to the property, then he or she may be required to perform such duty even before the termination of the lease or rental contract.

IV. Specific Duties of Lessees of Rural Farms

2157. A lessee shall ensure that the boundaries of the farm are not infringed and the rights of the farm are not restricted in any way. He or she shall notify the lessor of the farm of each infringement of boundaries and rights.

2158. A lessee shall maintain the leased farm in a condition suitable for use, and the lessor shall have the right to annually examine the administration of the lessee.

2159. If a specific system of management is specified in the contract, the lessee shall closely comply with it. Moreover, he or she does not have the right to introduce, without the consent of the lessor, any substantial alterations in the previously established management system, which may also have an effect on the farm after the termination of his or her lease.

Fields of perennial plants shall not be utilised in such a way as to have adverse effect upon the yield of subsequent years. A lessee may use fallow fields for crops only with the consent of the lessor.

A lessee is not required to participate in melioration of land. If the land is drained, the lessee shall be responsible for maintenance of the outlets of drain-pipes. The lessee shall thoroughly clear all the ditches alongside and across the fallow fields.

2160. A lessee may sell firewood from the forests of the farm only if it is expressly permitted by the contract. Otherwise, he or she may cut only such timber and firewood as is necessary for the current domestic use.

2161. A lessee shall not move straw, hay and any other material useful for supplementing fertilisers, as well as manure, from the farm, unless prior to leasing the lessor of the farm himself or herself has sold the hay regularly due to its excess. Such prohibition shall not apply to the amount of fodder, litter and manure that the lessee has brought to the farm with the knowledge of the lessor. The lessee may manure fields of summer crops only if that has been specifically agreed.

A lessee shall acquire such number of animals as is necessary for proper consumption of forage.

2162. If premises and facilities are provided to the lessee in proper order for use, he or she shall also maintain them in such order and do minor repairs at his or her expense. The lessee shall maintain the roofs of buildings in such condition that they do not leak. New roofs shall be put on and major repairs of buildings shall be done by the lessor.

Materials necessary for repair of buildings shall be purchased by the lessor; all the materials shall be delivered by the lessee, calculating by one cartload per two hectares of the leased plough land; the lessee shall also cut and trim the timber materials to be supplied.

2163. Unless otherwise agreed, corvee required by the State and local governments shall be performed by the lessee.

2164. If a lessee returns more planted fields than he or she received upon entering into the lease, and the lessor has given consent to expansion of the planted areas, the lessee shall receive remuneration for his or her work and for the seed.

A lessee who returns fewer planted fields than he or she received upon entering into the lease shall compensate for the decreased planted area according to the market price, commensurate with the average yield of the previous six years, and additionally he or she shall pay for the missing straw and forage.

A lessee shall be liable for neglected fields commensurate with the average yield of the previous six years.

SUB-CHAPTER 3
Termination of Leases and Rental Contracts

2165. A lease or rental contract limited only to a goal to be reached or a specified term shall terminate when the goal has been reached or the term has expired.

2166. A lease or a rental contract regarding immovable property, entered into for an indefinite period of time, shall terminate, unless otherwise agreed, only after six months prior notice that may be given by either party of its own volition. If the subject-matter of the contract is a rural farm, such notice shall be given six months prior to the end of the farming year. A farming year shall begin and end on 23 April. A notice for a rental contract entered into for an indefinite period of time, with a monthly or weekly lease payment, shall be given one month or one week in advance.

2167. If a third person has provided a guarantee or pledge regarding the lessee or tenant, then the consent of such person shall be required to extend the guarantee or pledge to the extended term.

2168. Lease and rental contracts shall also terminate automatically, before the expiration of the term:

1) upon the leased or rented property being destroyed;

2) upon termination of the right the lessor or renter had to the subject-matter of the lease, but if he or she has concealed the fact that he or she had the right to act with the property only for a certain period, he or she shall be liable to the lessee or tenant, who has acted in good faith, for fraud; or

3) where confusion of rights takes place, i.e., if a lessee or tenant obtains the ownership of the leased or rented property.

2169. [12 December 2002]

2170. Each contracting party may unilaterally withdraw from a contract, if excessive losses have been incurred; in such case, the same provisions shall apply as for a purchase contract.

2171. A lessor or renter may require revocation of a contract without the consent of the other party if:

1) the lease or rental payment has not been paid within the term in the contract, or, if such term has not been specified, within the term set by law; the consequences of such delay, however, can be prevented by offering the payment before an action for setting aside the contract has been made;

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2) the lessor or renter has an unforeseen need to use the property himself or herself;

3) the lessee or tenant damages the property by using it improperly or contrary to the contract;

4) the leased or rented property requires immediate and such extensive repairs that render it impossible to continue the contract; moreover, the lessee or tenant may not in such case claim any compensation for losses; but if the repairs were not necessary, the lessee or tenant has the right to claim compensation for all the losses; or

5) the lessee has sub-leased the leased immovable property without the consent of the lessor (Section 2115).

2172. A lessee or tenant may require revocation of the contract without the consent of the other party if:

1) the lessor or renter delays the transfer of the property for so long that the lessee or tenant is no more interested in acquiring it for use;

2) if the lessor or renter does not make the necessary repairs to the property, or if the property is discovered to have such faults or defects as prevent from its full use or at least to a significant extent hinder its use, and as cannot be remedied;

3) in the residential building in which a dwelling is rented it is necessary for construction work to be done, in the course of which a substantial part of the dwelling is rendered unfit for living, or it is even necessary to move to another dwelling for some time; or

4) characteristics of the subject-matter of the contract are harmful to health.

2173. In all cases where one party has the right to withdraw from the contract, such party shall notify the other party of its intention so as to provide the necessary time for the lessor or renter to accept the property, or for the lessee or tenant to return or vacate the property. In no case, however, shall the lessor or renter arbitrarily evict the lessee or tenant, even though such right may have been agreed to in the contract. A person who fails to comply with these provisions shall compensate for all the losses.

2174. When a lessor or renter alienates the subject-matter of a lease or rental contract, the acquirer must comply with the lease or rental contract only if it has been registered in the Land Register (Section 2126). If the acquirer cancels a contract which has not been registered in the Land Register, the lessor or renter shall compensate the lessee or tenant for all the losses caused by early termination of the contract; in such case the acquirer shall give the lessee or tenant sufficient time for the return of the subject-matter of the lease or rental contract.

2175. If the new acquirer wishes to keep the contract in effect, the alienation (Section 2174) does not give the lessee or tenant the right to withdraw from it.

2176. If concursus proceedings are initiated with respect to the property of a lessor or renter, the creditors shall recognise the lease or rental contract as valid. However, if the leased or rented property is put up for sale for the benefit of the creditors, the provisions of Sections 2174 and 2175 are applicable.

2177. If concursus proceedings are initiated with respect to the property of a lessee or tenant, the contract does not have to be continued either by the creditors or by the lessor or renter, and they shall not be mutually bound by any time period regarding the notice of termination.

CHAPTER 15
Claims Arising from Employment Relations

SUB-CHAPTER 1
Employment Contracts

I. General Provisions

2178. Pursuant to an employment contract, one party undertakes to perform work for the other party for remuneration.

2179. Work may either be the kind that requires primarily physical exertion, or the kind that requires special expertise, skill or scientific education.

If the purpose of a contract is not work itself, but rather a specific result of work, then a contract for such shall not be considered to be an employment contract, but rather a work-performance contract.

Note. The provisions of this sub-chapter apply to all employment contracts, insofar as it is not provided otherwise in the Employment Law Code of Latvia or other laws that regulate employment.
[22 December 1992]

2180. Remuneration for work may be in the form of money, any property other than money, as well as both.

2181. Even if no payment was agreed upon for the work, an employee may nevertheless demand payment when, based on the circumstances of the work, the performance of the work could be reasonably expected only for remuneration, and especially when the work is the employee's trade. In such cases, the amount of the remuneration shall be determined by a court in its discretion.

II. Lawful Relations in Employment Contracts

2182. An employee shall be prepared to perform the work within a certain time period and to perform it with all due care in accordance with the contract. Furthermore, if it has not been otherwise agreed, the employee shall be bound by the employer's instructions.

2183. An employee who is provided premises in which to live and sleep by an employer shall observe the rules of the house as established by the employer.

2184. An employee shall perform the work personally if it has not been agreed otherwise or circumstances permit that it be otherwise.

2185. If an employee fails to perform the work undertaken, or if he or she does not exercise due care, he or she shall compensate for losses, unless the employer with his or her instructions was at fault for the loss.

Note. The liability of an employer for losses caused by an employee is provided for in Sections 1639 and 1782.

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2186. The expenditures required for work shall be borne by the employer, unless it has been otherwise agreed or local custom so requires.

2187. The employer shall pay the employee commensurate remuneration for the work (Section 2180). If an employer provides food and premises in which to live and sleep for an employee, the food shall be suitable and of sufficient quantity, and the premises shall be in a sanitary condition.

2188. If remuneration is contracted for periods of one month or longer, then it shall be paid at the end of each month; if remuneration is contracted for weekly periods, it shall be paid after the expiration of this time period; but in other cases, it shall be paid after the expiration of the contracted period of work.

Farm-labourers may request the payment of half their earnings before the expiration of the contracted period of work.

2189. If one or the other party unilaterally withdraws from the contract, then the employee shall receive wages commensurate with the time they worked or the work they performed, and in addition the party at fault shall pay the other party compensation equal to the wages for the period of time which is provided for in Section 2192, Clause 3.

The party at fault shall compensate the injured party for losses incurred as a result of the withdrawal to the extent such exceeded the remuneration mentioned in Paragraph one of this Section in accordance with general principles.

2190. An employer may deduct their losses from payments to which the employees are entitled.

2191. An employer need not provide compensation for any casualty loss suffered by employees while performing their work.

Note. The liability of an employer in cases of an employee's illness or accident is provided for in the regulations on group health insurance, in the Law on Insurance for Accidents and Occupational Diseases and in the Law on Insurance for Rural Residents in Case of Illness.

III. Termination of Employment Contracts

2192. An employment contract expires when the time period for which it was entered into has ended.

If nothing has been agreed regarding the time period, and if its duration is not determined by the very nature or purpose of the work, then either party may terminate the contract by giving notice.

If it is not otherwise provided for in the contract, in giving notice the following terms of notice shall be observed:

1) one day - if an hourly or daily wage was contracted for,

2) three days - if weekly wages were contracted for,

3) two weeks - if a monthly salary or wages for piecework were contracted for, and

4) one month - in all other cases.

2193. Either party may unilaterally withdraw from the contract before the expiration of the time period agreed upon, if there is good cause.

Good cause shall primarily be considered to be such circumstance as prevent the continuation of contractual relations due to considerations of a moral nature or a mutual sense of fairness.

Issues regarding the existence of such circumstances shall be decided by a court in its discretion.

2194. An excessive loss shall not give either party the right to withdraw from an employment contract.

2195. An employment contract shall expire of its own accord with the death of the employee, but not with the death of the employer.

SUB-CHAPTER 2
Sharecropping Contracts

I. General Provisions

2196. Pursuant to a sharecropping contract, one party, the sharecropper, undertakes for remuneration to perform for the other party, the landowner, all the general usual work on the landowner's farm, with the sharecropper's own horse and manpower, and own tools.

2197. The provisions regarding employment contracts (Sub-chapter 1) are applicable to sharecropping contracts, insofar as such provisions are not in conflict with the provisions of this Sub-chapter (2).

2198. The substance of the contract is not altered by agreement that the landowner will assist with a horse or human work power or tools.

Where a farm has a herdsman, the sharecropper and the landowner will jointly provide the herdsman's wages and subsistence, unless otherwise agreed.

2199. If the contract is entered into regarding the entire farm and it is not otherwise agreed, then it does not apply to forests, orchards and fishponds, but does apply to any remaining land utilised for farming in the previous year.

2200. Seed shall be furnished by the landowner and must be clean and able to germinate well. The landowner shall receive back the same type of seed from the harvest before it is divided (Section 2201).

If there is an agreement to return the seed to the landowner in the form of cash, then the sharecropper shall repay half the value of the seed, based on prices prevailing at the time of sowing.

If there is a crop that the landowner and the sharecropper are not growing jointly, but each on their own separate parcel of land, then each of them shall furnish their own seed.

2201. If not otherwise agreed, the sharecropper shall receive half the harvest remaining after the deduction of the sown seed (Section 2200) as remuneration, as well as half the fodder and litter and the right to use half the pasture. The sharecropper may put out to the common pasture the same number of cattle and small livestock as is kept by the landowner.

2202. The rights provided for in Section 1735 to a lessor and in Section 1123 and in Annex V

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(to Section 1936), Section 83, Paragraph four of the Civil Procedure Law to an owner against a lessee also pertains to a landowner against a sharecropper.

Against the claims of a third person a sharecropper may use the defences provided for in Section 1120, Paragraph nine and Section 1122 of the Civil Procedure Law.

2203. Sharecroppers do not have the rights provided for in the note to Section 876.

II. Lawful Relations Arising from Sharecropping Contracts

2204. Sharecroppers shall adhere to the established crop system and farming methods. The landowner's instructions shall be binding on the sharecropper.

Sharecroppers shall comply with the provisions of Section 2159, Paragraphs two and three; Section 2161, Paragraph two; Sections 2162 and 2163.

2205. The sharecropper shall, if unable to perform the work in a timely and proper manner, hire additional help and shall be liable for losses which have been caused by delays in or improper performance of the work.

2206. If the farm has adopted the use of artificial fertiliser on its planted fields, then the sharecropper shall cover half the expenditures for artificial fertiliser.

2207. Landowners shall provide sharecroppers with suitable premises for housing their family, and labourers, and keeping domestic animals and produce. The sharecropper shall maintain the premises provided in useable condition; the heating installations and the well shall be maintained in especially good repair.

The sharecropper shall repair fences and keep the yard of the house in clean condition.

2208. The sharecropper shall transport the share of the harvest received by the landowner, and domestic animals to be sold, to the nearest railway station or the usual place of sale. However, in such cases the sharecropper may require that he or she be given, for each trip, a load of weight equal to at least one average horse-load, provided the load allows such division.

2209. If not otherwise agreed, the landowner shall share the expenditures of threshing the harvest, by paying for half of the use of the threshing machine and by providing half of the fuel, which the sharecropper shall bring to the farm and process.

III. Termination of Sharecropping Contracts

2210. A contract for sharecropping terminates when the time period for which it was entered into expires. If the time period is not agreed upon, then the contract expires at the end of the farming year.

2211. The death of one party or the other does not terminate of the contract.

SUB-CHAPTER 3
Contracts for Work-performance

2212. Pursuant to a contract for work-performance, one party undertakes, using the party's tools and equipment and for a certain remuneration, to perform for another party an order, the

production of some product or the conducting to its completion of some activity.

The provisions regarding employment contracts (Sub-chapter 1) are applicable to contracts for work-performance, insofar as such provisions are not in conflict with the provisions of the following sections.

The Laws regarding procurement for State works and supplies are applicable to works and supplies provided to meet the requirements of the State.

II. Lawful Relations Arising from Contracts for Work-performance

1. Duties of the Contractor

2213. The contractor shall perform an order in accordance with the contract and provide it to the commissioning party.

2214. If it is agreed that materials are to be processed, then the commissioning party shall furnish these materials. However, if the materials are furnished by the contractor, and the commissioning party pays only in money for the product produced for him or her, then the contract shall be considered a purchase, rather than a contract for work-performance.

A contract for work-performance is not altered if the contractor makes some additions to the materials provided for processing. Similarly, in construction work, the nature of the contract, as a contract for work-performance, remains if a contractor supplies materials but a commissioning party provides the land for the construction site.

2215. If a contractor is permitted to replace the materials given to him or her with other materials of the same kind and quality, then the contract shall be considered a contract for work-performance, and the contractor, by replacing the materials he or she was given, shall become the owner thereof.

2216. It is not required in regard to a contract for work-performance that the materials belong to the commissioning party, nor that the product manufactured from these materials be ordered for the commissioning party himself or herself; accordingly, the commissioning party may provide another person's materials to be processed for a third party.

2217. If it is not a condition of the contract that the contractor shall perform the job personally, and if such condition can not be considered to have been implicitly agreed to, as, for example, in such an order as the specific expertise and skills of the contractor are contemplated in the performance of, then the contractor, at his or her own risk, may entrust the performance of the job to a third person.

If there is a complete failure to perform the order or it is at least uncompleted, or it is poorly performed or otherwise than as instructed by the commissioning party, or is not completed on time, or if the thing provided for processing is not returned after the completion of the work, then the contractor shall compensate the commissioning party for losses occasioned.

The contractor shall also compensate for losses where the contractor is at fault as a result of his or her own incompetence or in the situation where he or she employs incompetent or careless help or help that acts in bad faith.

2218. A contractor shall compensate for losses regardless of whether they arose due to the contractor's fault in performing the order, or prior or subsequently thereto.

2219. If two or more persons have undertaken the work jointly, then they shall be solidarity liable to the commissioning party.

2220. If a thing provided to a contractor is destroyed, lost, or damaged due to *force majeure*, then the contractor shall not be liable, except in the case when the contractor has expressly assumed the risk and in the case as set out in Section 2215.

2221. If there is a failure to perform the order or the results are poor due to the poor quality of materials furnished by the commissioning party, then the contractor shall not be liable therefor, except where the contractor knew of the poor quality of the materials but did not draw this to the attention of the commissioning party.

A contractor's duty to compensate for losses even when they were caused due to the erroneous instructions of the commissioning party, shall be adjudged in accordance with these same provisions.

2. Duties of the Commissioning Party

2222. It is required that the order performed by the contractor be accepted from him or her by the commissioning party; otherwise the commissioning party shall be liable for all consequences of default.

If a commissioning party has contracted for the right for himself or herself or another person to examine the order beforehand, then such examination must be carried out. However, if the commissioning party delays the examination of the order, then a court may set a term for this purpose, after the expiration of which it shall be presumed that the commissioning party has accepted the order as performed.

2223. As soon as the order has been performed and accepted, the commissioning party shall pay the contractor the sum agreed on. Where there are standard prices for certain work, the amount to be paid shall be set pursuant thereto.

The amount to be paid may be agreed upon in regard to all of the work together, to parts of the work or to periods of time, provided that the contractor undertakes to perform the entire order. In the second case, a contractor may, after the completion of each part, demand acceptance and payment thereof, but in the third case, he or she may demand to be paid in instalments, unless otherwise agreed. A contractor may only demand payment in advance where this has been specifically contracted for.

2224. If the thing received for processing or the product produced from the thing is destroyed, without there being fault on the part of the contractor, after the work is finished but before it is delivered, the payment agreed to shall nevertheless be paid, provided that the order was not performed in such manner that sufficient grounds exist for refusing to accept the work.

2225. If work has not yet been commenced or at least is not yet completed, and the contractor is willing to do the work, but an obstacle to doing so has been created on the part of the commissioning party, then the contractor shall nonetheless receive full payment. However, this payment shall be reduced if the contractor has, to his or her own benefit, otherwise utilised the time gained in not doing the contracted work.

2226. If performance of the work becomes impossible because the relevant object of the work is destroyed without fault of either contracting party, the duty to pay for the work ceases. However, if the work has already been commenced, the contractor shall receive compensation

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for his or her efforts and expenditures.

2227. If a contractor is delayed in performance of the work by illness or the occurrence of another contingency to him or her, then the contractor may demand payment only for that which he or she has already completed and only to the extent it is of benefit to the commissioning party.

2228. In addition to payment of the amount contracted, the contractor shall also be reimbursed for expenditures required to be made in performing the order, unless such expenditures were already included in the contracted amount.

II. Termination of Contracts for Work-performance

2229. A commissioning party may unilaterally withdraw from a contract for work-performance, if the preliminary estimate drawn up by the contractor proves to be too low.

The commissioning party has the same right if the contractor arbitrarily changes the work plan. In addition, the contractor shall fully compensate the commissioning party for his or her losses in such case.

II. SUB-CHAPTER 4
Carriage Contracts

2230. Pursuant to a carriage contract, a carrier undertakes to transport goods delivered by a sender for a sum due from one point to another designated point and to deliver them there to an addressee.

As carriage contracts are a form of contract for work-performance, the provisions provided for the latter (Sub-chapter 3) are applicable to carriage contracts, insofar as they are not in conflict with the provisions of this Sub-chapter (4).

Note. The provisions for carriage for individual modes of transport are set out in other laws.
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2231. The carrier may demand, from the sender, the issue of a bill of lading, which, apart from the names of the carrier, sender and addressee, shall also record the goods according to their nature, quantity and attributes, the delivery point, the agreed cost of freight, and finally the place and date of issue of the bill of lading. Additionally, other conditions mutually agreed to by the contracting parties may be recorded in the bill of lading.

2232. If, after the contracting parties have agreed on the contract, a delay in the delivery and sending of the goods takes place without fault of the carrier, or if carriage completely fails to take place, the sender shall compensate the carrier for his or her expenditures.

2233. The carrier is liable for all losses arising from loss of the goods or their being damaged from the time of their acceptance until the time of delivery, provided that the cause of the loss or damage was not *force majeure*, the natural attributes of the goods themselves or, finally, poor packaging on the part of the sender.

2234. The carrier is liable for loss caused by a delay in delivery of the goods, unless the reasons for the delay were circumstances or events which the carrier could not have avoided

or prevented, regardless of his or her or its efforts.

2235. The carrier is also liable for his or her employees and other persons hired by him or her in regard to the carriage.

2236. If a carrier entrusts the completion or continuation of the entire carriage, or a part thereof, to another person, then the carrier is personally liable both for the latter and for all possible subsequent carriers, up to the point of delivery of the goods itself. However, a subsequent carrier, even without a special power of attorney, shall be considered the authorised person of the previous carrier.

2237. Upon the goods being transported to the place specified, the carrier shall deliver them to the addressee, who shall accept the goods from the carrier and shall pay the carrier, if the addressee has undertaken that, the costs of freight and any necessary extraordinary expenditures, if incurred.

2238. If an addressee can not be found or refuses to accept the goods, then the carrier shall provide for storage, in a secure location, of the goods. The carrier may also petition the court for the sale at auction of the goods or a commensurate part thereof, in order that the freight costs and the carrier's other claims be covered.

2239. Carriers may retain the goods as long as they have not received all that is due to them pursuant to the carriage contract. However, if carriers deliver the goods without receiving payment, then they, although they remain the creditors of the addressee, may no longer, without special cause, bring any action against the sender in connection with their claim

2240. Upon the goods being received and the freight costs paid, all claims against the carrier are terminated, unless the recipient, misled by the good outer appearance of the goods, later, when opening the packages, discovers that they are damaged and is able to prove that the damage took place during the period of time from when the goods were accepted until their delivery to the addressee.

CHAPTER 16
Partnership Contracts

SUB-CHAPTER 1
General Provisions

2241. A partnership is an association of two or more persons based on a partnership contract for the attaining of a common goal through united efforts or resources.

Note: The provisions of this Chapter apply to all forms of partnerships, except in those cases where other norms regarding partnerships are provided for by law.

2242. The duration of a partnership contract may be limited to a transient goal or a specific period of time; a contract may also be entered into for an indefinite period of time. If a contract is entered into for a specific period of time and after such period expires contractual relations are continued, the contract shall be deemed to have been implicitly extended for an indefinite period of time.

SUB-CHAPTER 2
Mutual Relations between Partnership Members

2243. Each member of a partnership shall participate in a partnership with his or her contribution. Money, property, claims or work may be contributed.

A person who, pursuant to agreement, may share in the profit without any contribution on his or her part, shall not be considered a partnership member. Unless otherwise stipulated in the contract, a member may not be asked to increase the contribution agreed upon, or to supplement it if it is diminished due to losses.

2244. Unless otherwise determined by the contract, fungible and consumable property shall be regarded as transferred to the joint ownership of the members, but non-fungible and inconsumable property – as transferred for use.

If property has been transferred for use, the risk and liability regarding court proceedings for replevin of the property, and regarding the defects and characteristics thereof, shall be determined in compliance with the provisions of a lease or rental contract, but if ownership of the property has been transferred – in compliance with the provisions of a purchase contract.

Valuable property acquired through joint work shall be the joint property of the members.

2245. A member may not act independently with his or her share in the joint property or with separate items of property as belong together with such property; the member may not require a division while he or she is a member of the partnership.

Rights regarding claims that the members may have against one another on the basis of relations arising out of the partnership contract shall not be ceded. Claims of the members as arise from accounting are excepted, insofar as their satisfaction may be requested prior to the final settlement of accounts, as are claims regarding shares of profit or claims of the members arising out of settlement of accounts. Cession of such claims does not, however, confer upon the cessionary the rights of a member.

2246. Each member shall share with other members such profit as is due, pursuant to its character, to the members of a partnership.

2247. An agreement, in accordance with which a member alone or together with others shall only bear losses without sharing in profit, shall be invalid as a partnership contract.

A contract may provide, however, that a member who participates in the partnership, for the acquisition of a common goal, only with individual work, shall share in profit but not in losses.

2248. If a contract does not determine in what proportions the members shall share in profits and losses, then where all contributions have been paid or evaluated in terms of money, the profits and losses shall be divided among the members in proportion to the amount of the contribution of each member, but otherwise - in equal shares. However, if it is specified in what proportions the members shall share only in profits or only in losses, such condition shall apply, in case of doubt, to profits as well as to losses.

2249. Unless the contract stipulates otherwise, the accounts shall be settled, and the profits

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and losses distributed only after termination of the partnership, or if a partnership subsists for more than a year, at the end of each year of operation.

2250. In performing his or her assigned duties, each member shall act, with respect to the partnership, with such care and industriousness as can be expected from a worthy and careful manager.

A member may bring an action, in his or her own name, against any co-partner with respect to performance of the duties assumed under the partnership contract.

2251. No member may conduct any business for his or her own benefit that could harm the goals of the partnership.

In cases of violation of this prohibition, the provisions regarding combating of unfair competition are applicable.

2252. For decisions of members with respect to partnership issues, consent of all the members shall be required. If a majority vote is recognised by the contract as adequate, it shall be determined in accordance with the number of members, unless the contract stipulates otherwise.

2253. Partnership issues shall be managed by all the members jointly, except in cases where management is assigned, pursuant to agreement, to one or more members or to third persons.

If the management of a partnership is assigned to several persons, the provisions of Section 2252 shall be accordingly applied.

2254. The rights and duties of those members to whom the management of the partnership has been assigned shall be adjudged in compliance with the provisions of an authorisation contract and, in relevant cases, with the provisions of an employment contract. Other members may only deprive a member of the authorisation granted to him or her regarding management and representation of the partnership for good cause (Section 2263, Clauses 2 and 3).

2255. Rights and duties of a member who is not authorised to conduct partnership matters, but has made expenditures or entered into lawful transactions on behalf of the goals of the partnership, shall be adjudged, unless otherwise stipulated in a contract, in accordance with the provisions regarding unauthorised management.

2256. Each member may satisfy himself or herself regarding the course of partnership matters, see the accounting books and documents regarding the partnership business and prepare an account for himself or herself regarding the financial state of the partnership. Provisions to the contrary in a contract are not binding on a member.

SUB-CHAPTER 3
Relations with Third Persons

2257. Unless otherwise stipulated in a contract, the manager of a partnership may represent the partnership with respect to third persons. The manager is authorised to enter into all manner of transactions, as required by the goals of the partnership.

Transactions in regard to partnership matters, entered into by all members jointly or by managers within the limits of their authority (Section 2254), shall be binding without

limitation and solidarily with respect to third persons, except in cases where otherwise agreed with such third persons.

2258. If a contract with a third person is entered into by only one member or several members in the name of all the members, but without authorisation by the other members, only such members who have entered into the contract shall be liable to the third person, except in cases where 1) the other members have subsequently confirmed the transaction and thereby assumed solidary liability, or 2) the partnership has enriched itself by such transaction (Section 2391 and subsequent Sections).

2259. Where a member of a partnership enters into a transaction with a third person in his or her own name, he or she alone shall be liable to such third person.

2260. Joint partnership property is liable to be executed against only in regard to such claims of third persons as are directed against all the members jointly.

A debtor may not set off such claim as he or she has against an individual member of a partnership, against a claim belonging jointly to all the members of the partnership.

2261. In regard to claims of a third person against an individual member of a partnership, such claims of the member are liable to be executed against as the member may cede (Section 2245, Paragraph two). The rights of a creditor in respect of the contribution of a member of a partnership shall be determined in Section 2265.

SUB-CHAPTER 4
Termination of a Partnership

2262. A partnership shall terminate:

1) if all the members agree thereto;

2) upon expiration of the time period of the partnership contract, except in cases when a contract entered into for a specific period of time is regarded as implicitly extended for an indefinite period of time (Section 2242);

3) if the goal set for the partnership is achieved, or if its achievement has become impossible;

4) if a member has lost the capacity to act, or concursus proceedings are initiated or administration is established with respect to his or her property, or if a member gives notice with respect to the partnership contract (2263 - 2265), or dies, except, however, in cases referred to in Section 2268, when the association must continue its existence among other members; or

5) if further existence of the partnership is prohibited by the government.

2263. Each member may, for good cause, request termination of the partnership without prior notice.

Primarily, any such circumstance as does not permit, due to considerations of morality and mutual honesty, continuation of the contractual relationship shall be considered good cause.

Issues regarding the existence of such circumstance shall be adjudged by a court in its discretion.

2264. If a partnership contract has been entered into for an indefinite period of time or until

such time as a member dies, or if a contract is implicitly extended after the expiration of the time period stipulated in it, any member may give notice with respect to such contract, notifying individually each of the other members of the notice three months in advance. If it is contractually agreed that the accounts of the partnership shall be closed annually, a notice with respect to the contract shall be given three months prior to the close of the relevant year of operation. However, a member shall not give notice in bad faith, otherwise such member shall be held liable for losses caused due to such notice, and the member shall not share in the profit the partnership acquires after such notice.

A provision of a contract whereby the right to give notice is not allowed shall not be valid.

2265. A creditor of a partner, in executing a court judgment which has come into force, may distrain the contribution of the member only if he or she has given notice with respect to the partnership contract on behalf of the indebted partner, which the creditor may also do prior to the time notification may take place, as provided for by the contract Other members may prevent the consequences of the notice and the collection by paying to the enforcer of the debt, within a month from the day of issuance of the notice regarding execution, such amount as the indebted member would be entitled to in withdrawing from the partnership at the time when the notice of execution is issued, whereby such member shall be regarded as withdrawn from the partnership.

2266. If a partnership terminates otherwise than through giving notice, the right of management of a member shall nonetheless be regarded as still subsisting until the time when he or she comes to know of the termination of the partnership, or when he or she, exercising due care, should have known of such termination.

If a partnership terminates upon the death of a member, the heirs of the deceased person shall immediately notify other members of the death and continue the estate-leaver's affairs which can be conducted, with due care, pending the provision of further instructions by the partnership or the liquidator. Similarly, other members shall also continue their activity. In such respect, the partnership shall be regarded as continuing to exist.

The provisions of Paragraph two of this Section are also applicable, *mutatis mutandis*, if the partnership terminates pursuant to the initiation of concursus proceedings or establishment of administration with respect to the property of a member.

2267. No change is effected in regard to obligations as against third persons by termination of the partnership.

2268. If a partnership contract stipulates that in the event a member loses the capacity to act, or concursus proceedings are initiated or administration is established with respect to his or her property, or a member gives notice with respect to the partnership contract (Sections 2263 -2265) or dies, the partnership shall continue to subsist among the other members, the member referred to shall be regarded, upon the occurrence of any of such circumstances, as withdrawn.

SUB-CHAPTER 5
Liquidation of a Partnership

2269. After the termination of a partnership, liquidation shall take place, if another form of final settlement of accounts has not been agreed upon.

2270. All members shall be participants in the liquidation. The heirs of a deceased member shall choose a mutual representative. Instead of a member subject to concursus proceedings, a participant in liquidation shall be the relevant concursus administrative body. A creditor who has given notice to the partnership (Section 2265) may also participate in liquidation together with the members.

Participants in the liquidation may also choose as liquidators one or more persons from among themselves, as well as third persons.

2271. Unless otherwise stipulated by the contract, several liquidators shall only deal with partnership matters and represent the partnership jointly.

The liquidators shall comply with such instructions regarding administration as the members have adopted by unanimous decision. The liquidators may be dismissed on the basis of a unanimous decision by the members.

2272. During liquidation, a partnership shall be regarded as continuing to exist, in particular for the completion of current transactions and the entering into of new transactions required for such purpose, as well as for maintenance and management of the property of the partnership.

The liquidators shall firstly prepare a balance sheet, collect claims and settle debts. Thereafter, the contributions shall be paid back and property transferred for joint use shall be returned; accidental loss and the loss of value that has occurred through proper use and ordinary wear and tear, is not required to be compensated. Property transferred into ownership shall not be given back; but the value of it, at which it was accepted, shall be reimbursed, or, if its value has not been determined, than its value shall be the value that such item had at the time it was contributed, and the same shall apply to other contributions, except money. Compensation may not be claimed for contributions of individual work. In order to settle debts and repay contributions, the joint property shall be converted, insofar as necessary, into money.

2273. After completion of liquidation, the liquidators shall prepare a closing balance sheet. The closing balance sheet together with books and documents shall be given for preservation to a member or to a third person.

2274. If, after the settlement of debts and repayment of contributions, a surplus is left, it shall be distributed to the members in proportion to their share in the joint property.

If the joint property is not sufficient for the settlement of debts and repayment of contributions, the shortage shall be covered by the members in proportion to their share of loss; if the due amount cannot be collected from a member, the other members shall cover the shortfall in the same proportion.

2275. If no specific agreement has been made and the provisions of this Chapter regarding final settlement of accounts between members do not suffice, the provisions of Section 1075 are correspondingly applicable.

2276. If a partnership contract applies only to certain specific transactions that were to be carried out by a member in his or her name but on joint account, he or she shall also conduct such transactions alone after the termination of the partnership, and shall provide to the other members an account thereof.

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2277. If the liquidation is performed by the persons referred to in Section 2270, they shall account to the members of the partnership.

2278. If a member withdraws from the partnership, his or her share in the joint property shall accrue to the shares of the other members.

The remaining members shall return to the withdrawing member his or her contributions in accordance with the provisions of Section 2272; he or she shall also be released from joint debts, and shall be paid everything that would be due to him or her upon final settlement of accounts in the event of termination of the partnership. If the term for payment of joint debts has not yet expired, the other members need not exempt the withdrawing partner, if he or she does not provide security as necessary.

The value of the joint property, insofar as necessary, shall be determined by evaluation.

2279. If the joint property cannot cover debts and contributions, the withdrawing member shall cover the shortfall in proportion with his or her share in losses.

2280. A member shall share the profits and losses arising from transactions that were not completed at the time of his or her withdrawal. The other members may complete such transactions in a way that seems to them most advantageous.

A member who has withdrawn may request, at the end of each year of operation, an account regarding matters completed during the relevant period of time, as well as payment of amounts due to him or her, and information regarding the state of the matters not yet completed.

CHAPTER 17
Contracts regarding Games of Chance

SUB-CHAPTER 1
Gambling and Wagers

2281. A gambling contract is a contract by which profit to one party and loss to the other party are made contingent on an unknown future event.

2282. A wager is a contract by which the parties agree, with respect to a disputable assertion, that the party whose assertion is shown to be wrong shall perform something for the benefit of the other party or a third person (Section 1521 and subsequent Sections).

2283. Neither gambling nor wager shall give rise to obligations. What has been lost and voluntarily paid in gambling or wager may not be reclaimed, unless the winning party has acted in bad faith.

2284. A loan willingly provided by someone for purposes of gambling or wager may not be recovered by judicial process. However, if such debt has been settled, the amount received may not be reclaimed.

SUB-CHAPTER 2
Lottery

2285. Lottery is a contract by which the owner of an object obtains the object according to a definite plan, but the participants in the lottery acquire, for a certain price or free of charge, the chance of winning it.

2286. A lottery may be conducted only in compliance with the provisions of the Law on Lotteries.

2287. The operator of a lottery shall be liable not only for the existence of the object of lottery, but shall also assume risk for any accident with respect to such object until the lottery. If the object is destroyed prior to the lottery, the operator of the lottery shall return his or her contributions to the participants in the lottery.

2288. After the lottery has been completed, the operator of the lottery shall transfer the object to the full ownership of the person who has won it, and shall be liable therefor.

CHAPTER 18
Claims arising from Management of the Property of Other Persons

SUB-CHAPTER 1
Authorisation Contracts

I. General Provisions

2289. Pursuant to an authorisation contract one party (authorised person, assignee) undertakes to perform a certain assignment for the other party (person granting the authorisation, authorising person, assignor), and the person granting the authorisation undertakes to recognise the activity of the authorised person as binding on him or her.

2290. An authorisation contract shall be based on the agreement of the contracting parties, which may also occur implicitly if a person knowingly allows a third person to conduct his or her affairs. Notwithstanding, the silence of the person to whom the assignment was given shall not be considered sufficient and, in case of doubt, shall be interpreted as a sign of disagreement.

2291. An authorised person may be assigned not only the conducting of separate and specific affairs - with a special power of attorney - but also management of all the affairs of the authorising person - with a universal power of attorney - or only affairs of a particular category only - with a general power of attorney

2292. Not only may the conducting of a person's own affairs be assigned, but also the management of another person's affairs.

2293. If solely the assignee is interested in the relevant activity, it shall not be recognised as an assignment, but as advice or recommendation (Section 2318 and subsequent Sections).

2294. Relationships of the contracting parties with third persons shall be determined in

compliance with the general regulations regarding representation.

II. Legal Relations Arising from an Authorisation Contract

1. Duties of an Authorised Person

2295. In performing the assignment given to him or her, the authorised person shall act with utmost care and he or she shall be liable to the authorising person for any negligence.

2296. If an authorised person has not performed the assignment, but no losses have been caused thereby to the authorising person, the failure to perform such duties shall not give the latter the right to any claims.

2297. An authorised person shall be liable for the consequences of accidental events only if he or she has expressly assumed risk.

2298. An authorised person, who gives false information to the authorising person regarding his or her assignment, shall be liable for the losses caused thereby.

2299. If an authorised person is, for reasons arising from himself or herself, hindered in the personal performance of the assignment undertaken, but moreover the nature of the matter does not permit it to be delayed, then he or she shall perform his or her duties through a third person, provided that he or she are not directly prohibited from further assignment of the authorisation to another person (substitution), pursuant to the contract.

Except in the urgent cases referred to above, an authorised person may replace himself or herself with another person only if the authorising person has expressly granted such right to him or her.

Substitution shall not release the initially authorised person from liability to the authorising person, including, therewith, from liability regarding the choice of a substitute; but the latter shall not enter into any contractual relationship with the authorising person on the basis of substitution, and shall be liable to him or her only as an unauthorised manager.

2300. An authorised person shall not exceed the limits of the assignment given to him or her, and firstly shall act in compliance with the instructions of the authorising person.

2301. If there are no specific instructions, an authorised person, notwithstanding that he or she may have a universal power of attorney (Section 2291), shall act not solely according to his or her will, but in such a way as it could be expected the authorising person would act in the relevant situation in order to complete the matter in the most advantageous way; authorised persons acting under general or special powers of attorney may commence only such activities as are required by the nature of the assignment given to them and necessary in connection with such assignment.

A person authorised under a universal power of attorney may perform alienation, pledge or encumbering of immovable property with property rights, conduct court proceedings, make novations, as well as make and receive payments, if he or she does not have a special power of attorney regarding such acts, only where necessary and in order to protect his or her authorising person from potential losses.

A person who has only a general or a special power of attorney, while he or she is permitted to complete the assignment entrusted to him or her on more advantageous conditions than those determined by the authorising person, does not have the right, however,

to complete it under more onerous conditions or to perform another assignment instead of the one assigned to him or her, notwithstanding that he or she may regard it as more advantageous for the authorising person.

2302. If an authorised person has exceeded the limits of his or her authorisation, actions performed by him or her shall be valid only insofar as they are performed in accordance with the assignment.

In such case the authorised person may also claim remuneration only to the extent that he or she has acted within the limits of his or her authority, provided generally that it is possible to separate out the authorised person's activity conforming to such authorisation.

2303. If an authorised person has performed, apart from the assignment given to him or her, another assignment, he or she shall be subject, with respect to it, to the provisions regarding unauthorised management.

2304. It is not permissible for an authorised person to gain profit for himself or herself from the assignment, and he or she shall transfer everything he or she has gained or obtained through the authorisation to the assignor, including all property, rights and claims he or she has obtained on the basis of the assignment, also including excess profits he or she have gained as a result of mistake or by exceeding the scope of his or her authority, excepting only what the authorising person has granted to him or her from such gains.

An authorised person shall also transfer to his or her authorising person the profit received or to be received fruits, interest and everything that was entrusted to him or her for the performance of the assignment.

2305. An authorised person shall provide an accounting to his or her authorising person regarding the performance of the assignment and particularly regarding all related income and expenditures in connection therewith.

2306. If the conducting of affairs has been assigned to several persons jointly, they shall be liable to their authorising person as joint debtors; but if one of them satisfies the authorising person, the other or others shall be released from any further liability.

2. Duties of an Authorising Person

2307. An authorising person shall compensate the authorised person for everything that the authorised person was obliged to expend in performing the assignment given him or her; apart therefrom, the authorising person shall pay interest regarding amounts that the authorised person has advanced from his or her own money. An authorised person may nevertheless require that the resources necessary for the conducting of the assignment be given to him or her by the authorising person, and in no event is he or she required to wait until the assignment is completed in order to recover the money he or she has expended.

If the assignment was given by several persons jointly, they shall be solidarity liable for the money spent by the authorised person, as well as for the obligations he or she has undertaken; but if losses have been occasioned by any of such persons, only the persons at fault shall be liable.

2308. Unless otherwise agreed, the duty of an authorising person to compensate for expenditures shall not depend on whether or not the authorised person, in conducting the affairs of the authorising person, has attained desirable results.

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2309. An authorising person shall either release the authorised person from all charges, guarantees, pledges of the authorised person's own property etc., that the assignee has undertaken in conducting the affairs of the authorising person, or provide the authorised person with adequate security.

The authorising person shall recognise and fulfil the obligations assumed by the authorised person as the authorising person's own obligations, provided that the authorised person has not exceeded the limits of his or her assignment.

2310. The authorising person shall compensate for all losses that the authorised person has suffered, in performing the assignment as are due to the negligence of the authorising person; however, the authorising person is not required to compensate for accidental losses.

2311. If it is not otherwise contractually agreed, or the contrary may not be construed from the duration of the assignment or other circumstances, remuneration shall be paid to the authorised person only after completion of the assignment and submission of a requested account.

III. Termination of an Authorisation Contract

2312. An authorisation contract shall terminate:

1) by mutual agreement;
2) upon completion of the particular assignment given;
3) when the authorising person withdraws his or her authorisation;
4) when the authorised person gives notice regarding authorisation;
5) upon the death of either party; and
6) upon expiration of the period of authorisation.

2313. An authorising person has the right to, at any time, unilaterally revoke his or her authorisation; but if the authorised person has already commenced the performance of the assignment, the authorising person shall compensate the authorised person for all expenditures he or she has incurred with respect to it.

2314. After the authorised person has knowledge of the revocation of the authorisation, his or her actions thereafter shall not be valid, except in cases where a third person has not known of the revocation of authorisation and together therewith has participated without fault on his or her part.

2315. An authorised person may give notice regarding authorisation but, in order that the authorising person might take other measures regarding management of the transactions, the authorised person shall not give it in bad faith or in untimely fashion. An authorised person may withdraw from the performing of an assignment at any given time only for good cause, but in such case he or she shall notify the authorising person thereof, without delay. If the authorised person fails to comply with these provisions, he or she shall compensate the authorising person for all losses caused the authorising person thereby.

A court shall decide whether or not the reasons given for withdrawal constitute good cause.

2316. The death of the authorising person shall determine contractual relations in the same way as revocation (Section 2314).

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Excepted from this provision shall be cases where the authorising person has given such assignment as was to be performed, or could be performed, only after his or her death.

If, when coming to know of the death of the authorising person, the authorised person has already started to conduct the matter assigned to him or her, the authorised person has not only the right, but also a duty to take care of it as long as the heirs have not given their instructions.

2317. Authorisation shall also terminate upon the death of the authorised person, and it shall not devolve to his or her heirs.

If the performance of the assignment was already commenced before the death of the authorised person, and threat of loss would be posed to the authorising person by discontinuation of performance, the heirs of the authorised person have the right and the duty, after immediate notification of the death of the authorised person to the authorising person, to continue the assigned matter pending further instruction.

The heirs of the authorised person may claim remuneration for the activity of the estate-leaver and compensation for his or her expenditures; however, together therewith they also assume liability as against the authorising person with respect to the activity of their estate-leaver to the extent of the inheritance received from him or her.

SUB-CHAPTER 2
Advice and Recommendation

2318. Advice given by one person to another shall not, by itself, establish any legal relations between the parties, and as the recipient of advice is not required to follow it so also the provider of advice is not required to compensate for any losses, if the advice is unsuccessful.

2319. By way of exception, a provider of advice shall be liable for the losses caused by the advice, if he or she has given harmful advice in bad faith.

2320. Recommendation alone, by which someone praises the good characteristics of a person or property to another person, with the purpose of making the latter act in a certain way, shall not, by itself, establish any obligation, except in a case where the recommendation was made in bad faith.

SUB-CHAPTER 3
Commission Contracts

2321. A commission contract shall be understood to mean such contract as by which one party entrusts to the other movable property in order that it be sold at a certain price, upon the condition that the recipient shall, after a certain period of time or, if no time has been specified, pursuant to the requirement of the owner, either pay the price referred to or return the property.

Note: Provisions regarding commercial commission contracts are to be found in the laws regulating commerce.

2322. Right of ownership in regard to the property, after it has been delivered to the recipient for the sale thereof, shall still remain with the owner, on whom the risk of loss therefore also

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falls, provided that the recipient has not expressly assumed it.

2323. The recipient of the property has the right, at his or her discretion, either to pay the owner the price for the property or to return the property unimpaired; but the owner may, so long as the property has not been sold, at any time require its return.

2324. If the recipient of the property sells it at a higher price than the price earlier set by the owner, the surplus shall belong to him or her. Additionally, the recipient may claim remuneration for his or her efforts, if such has been contracted for. If the recipient of the property had an opportunity to sell it at the set price, but did not do so, he or she shall not in any manner be liable therefor to the owner.

SUB-CHAPTER 4
Unauthorised Management

I. General Provisions

2325. If a person undertakes, without being invited to do so, to manage another person's affairs in accordance with the true interests of such person and under such circumstances as where it could be accepted that such person, if he or she had been given an opportunity to express his or her volition, would have consented to this agency, then with such management legal relations are established, similar to those regarding a contract, between the manager and the represented person.

2326. If management of another person's affairs is undertaken by a person lacking the capacity to act, his or her obligations to the represented person shall be in effect only to the extent that he or she has been enriched thereby; but if such person himself or herself brings an action on account of the management, his or her liability shall be unlimited.

2327. If the represented person also lacks capacity to enter into obligations by stating his or her consent, he or she shall be liable for the activities of his or her manager to the extent that he or she is still enriched as of the time when action is brought against him or her.

2328. Unauthorised management also takes place where the given assignment is not valid, it was not given by the represented person or it was not given to the manager, and also in cases where the management relates to such matter as several persons are interested in, but the assignment has been given by only one of them. It is of no significance whether the manager knew that the assignment was not given to him or her, or mistakenly presumed that it was assigned to him or her.

2329. If someone later confirms the management of his or her matters that has been commenced or has already been completed without his or her assignment, the legal status of the manager shall not be altered thereby, but with respect to a person confirming management of matters, the provisions regarding authorisation contracts are applicable.

2330. Persons who interfere with another person's matters only in their own interests and for their own benefit, shall be fully liable to the represented person, but may bring an action against such represented person only to the extent that he or she has been enriched from such management, provided it was not possible for them to recover their expenditures by retaining

the property of the represented person.

2331. Where persons conduct matters they are expressly prohibited from conducting, such persons may not claim the expenditures they may have incurred thereby, notwithstanding that they may have accomplished what they had undertaken.

II. Legal Relations Arising from Unauthorised Management

1. Duties of a Manager

2332. Managers are not required to oversee all the affairs of a represented person. Their liability primarily is related only to such matters as they have commenced the managing of; however, they shall also take account of all related ancillary matters. For not conducting matters that are not related to their management, managers shall be held liable only to the extent that their interference has hindered other persons in managing such matters.

Managers shall complete matters they have commenced, and even the death of the represented person shall not give them the right to discontinue their management.

2333. A manager shall supervise the transactions he or she has started, with utmost care; consequently, he or she shall be held liable for any losses caused to the represented person by negligence.

If management was started under very pressing circumstances, the manager shall be liable only for acting with malicious intent or with gross negligence.

A manager shall be held liable even for accidental losses that he or she has caused through his or her management:

1) if he or she has acted contrary to an express prohibition by the represented person;

2) if he or she starts a new transaction contrary to the nature of the activity of the represented person; or

3) if he or she expressly assumes risk pursuant to a contract with a third person.

2334. If a manager commences a new matter contrary to the nature of the activity of the represented person, the manager may not claim compensation for the expenditures he or she has made with respect to such matter, and all the profit gained by it shall accrue to the benefit of the represented person. Only if among several new matters commenced by a manager, some have a successful outcome, but others fail, shall the manager be permitted to set off respectively profit and losses arising from such transactions.

2335. If a manager assigns management to another person, he or she shall be held liable for negligence in the selection thereof.

2336. If several persons participate in management, each shall be liable only for his or her own part.

2337. A manager shall provide an accounting of what he or she has received or gained for the represented person, as well as for his or her activity in its entirety, and on the basis of such accounting shall deliver everything he or she is in possession of, even though among the items of property received by the manager might be included items that actually do not belong to the represented person.

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2338. Duties arising from management shall also devolve to heirs, but only to the extent of the inheritance. However, if the heirs continue the management, their liability for their own actions shall be determined on a general basis (Section 2332 and subsequent sections).

2. Duties of the Represented Person

2339. A represented person shall compensate the manager for expenditures incurred in managing the represented person's matters, to the extent such expenditures were necessary, together with interest; in any case he or she shall permit the manager, if the manager does not have the right to reclaim such expenditures, to take back everything the manager has expended, to the extent that it is possible without causing loss to the represented person.

If a manager has undertaken any duties or charges on behalf of the represented person, the manager may require that he or she be released therefrom.

2340. The duties of a represented person (Section 2339) do not cease for reason that no benefit has accrued to him or her as a result of the management, where at the beginning a favourable outcome was expected therefrom but the manager cannot be faulted for non-fulfilment of the results hoped for.

2341. A person who, believing that it is the person's own debt, pays the debt of another person, may, pursuant to his or her discretion, either reclaim the non-existent debt from the recipient, or submit a claim to the actual debtor as his or her manager.

2342. Relations of the represented person with third persons with whom the manager has had dealings shall be subject to the general provisions regarding agents.

SUB-CHAPTER 5
Duty to Account

2343. A person who manages another person's affairs, with or without an invitation to do so, or alienates another person's property, or administers joint property as a shareholder, or manages property on any other legal basis, or is required to transfer another person's property together with fruits, shall provide an accounting, regarding his or her management, to the represented person, the other joint owners, the other members in a partnership, or any other person who has a right thereto.

2344. The person who has a duty to provide an accounting shall prepare a detailed list regarding all income and expenditures, attaching substantiating documentation, and shall account for the balance.

2345. If a person who must provide an accounting has been relieved of such duty altogether, this shall still not result in extinguishment of claims as may be based on his or her acts in bad faith in the course of administration.

2346. An accepted and adequately receipted accounting shall protect the submitter of the accounting from any further claims.

If a calculation error is subsequently found in a receipted account, and if the matter has not yet been decided by a judgment of a court that has come into effect or by a settlement,

correction of the error referred to may still be demanded.

CHAPTER 19
Claims on Various Grounds

SUB-CHAPTER 1
Claims Due to Private Delicts

I. Compensation for Bodily Injuries

2347. If a person inflicts a bodily injury upon another person through an action for which he or she is at fault and which is illegal, the first-mentioned person shall compensate the other person for medical treatment expenses and, apart therefrom and pursuant to the discretion of a court, also for potential lost income.

A person whose activity is associated with increased risk for other persons (transport, undertakings, construction, dangerous substances, etc.) shall compensate for losses caused by the source of increased risk, unless he or she proves that the damages have occurred due to *force majeure*, or through the victim's own intentional act or gross negligence. If a source of increased risk has gone out of the possession of an owner, holder or user, through no fault of theirs, but as a result of unlawful actions of another person, such other person shall be liable for the losses caused. If the possessor (owner, bailee, user) has also acted without justification, both the person who used the source of increased risk and its possessor may be held liable for the losses caused, having regard to what extent each person is at fault.
[22 December 1992]

2348. If such bodily injury renders the victim permanently unable to continue his or her occupation and deprives him or her of a possibility to earn income in other ways, the person at fault shall also compensate him or her for the income he or she would be subsequently deprived of. However, if there are other persons who are dependants of the victim, the provisions of Section 2351 shall also apply, in addition to what is set out above.

2349. If the consequences of a bodily injury are mutilation or disfigurement, compensation shall also be determined therefor, in accordance with the discretion of a court.
[26 January 2006]

2350. If someone is at fault for the death of a person, he or she shall compensate the heirs of the deceased for medical treatment and burial expenses.

2351. If the deceased had a duty to maintain someone, such duty shall pass over to the person who is at fault for his or her death. The amount of such compensation shall be determined pursuant to the discretion of a court; the age of the deceased, his or her ability to earn a living at the time of death, and, finally, the needs of the person for whom compensation is to be determined. If the latter has adequate means of livelihood, the duty to provide compensation shall cease.

II. Right to Compensation for Offences against Personal Freedom, Reputation, Dignity and Chastity of Women

2352. If a person unlawfully deprives another person of his or her personal freedom, the first-

mentioned person shall restore the other person's freedom and provide, in accordance with the discretion of a court, full compensation also for moral injury.
[22 December 1992]

2352.[1] Each person has the right to bring court action for the retraction of information that injures his or her reputation and dignity, if the disseminator of the information does not prove that such information is true.

If information, which injures a person's reputation and dignity, is published in the press, then where such information is not true, it shall also be retracted in the press. If information, which injures a person's reputation and dignity, is included in a document, such document shall be replaced. In other cases, a court shall determine the procedures for retraction.

If someone unlawfully injures a person's reputation and dignity orally, in writing or by acts, he or she shall provide compensation (financial compensation). A court shall determine the amount of the compensation.
[22 December 1992; 26 January 2006]

2353. If someone has raped a woman or copulated with her while she was unconscious, he shall also provide her full compensation also for moral injury.
[22 December 1992]

SUB-CHAPTER 2
Claims Due to Illegal Damage of Property

2354. The provisions of Sections 1776 -1792 shall be applied to claims regarding illegal damage of property.

2355. The same provisions (Section 2354) are in force regarding compensation for damage caused by the arbitrary taking of another person's property; additionally, the provisions of the subsequent Sections (Sections 2356 and 2357) shall also be complied with regarding it.

2356. If stolen property does not exist any more, or is damaged, the victim may claim from the offender the highest price the property had from the time of the arbitrary taking.

2357. A person who takes property arbitrarily does not have the right to claim compensation for the expenditures he or she has made with regard to it, and he or she shall return the property in such form and with such good qualities as it has acquired through his or her acts.

SUB-CHAPTER 3
Compensation for Losses Caused by Throwing, Pouring or Falling

2358. If loss is caused by something being thrown or poured out into the street or another place where people walk or stay, or by inadequately fastened objects falling from a house onto the street, etc., a person suffering such loss may claim compensation for the loss from a person indicated in Section **2359.**

2359. Compensation for losses shall not be claimed from the owner of the building, but from the person living in it or having, for whatever reason, possession of the building or that part of

the building from which something was poured or thrown.

2360. The person who occupies the dwelling or building shall have the right to reclaim the amount of compensation paid for the loss from the person who was actually at fault for causing the loss.

If the same dwelling or building is occupied by several persons, they shall be held liable for losses as joint debtors; but any of such persons who has paid more than his or her share may claim recovery of the overpaid amount from the others.

2361. Compensation for damages shall be determined pursuant to the provisions of Sections 2347- 2352 and 2354, depending on whether the injury has been caused to persons or property.

2362. The right to bring action for compensation of losses caused by pouring, etc. is prescribed after one year.

SUB-CHAPTER 4
Compensation for Losses Caused by Animals

2363. The keeper of a domestic or wild animal shall be liable for losses caused by such animal, unless the keeper can prove that he or she took all safety measures required by the circumstances, or that the damages would have occurred notwithstanding all of the safety measures.

2364. It makes no difference whether the damages were caused through speed, fright or sudden wildness of an animal, and whether an animal caused it directly or indirectly.

2365. If an animal belongs to several owners, they shall be liable as joint debtors for the losses it has caused.

2366. If its owner entrusted the animal that caused the damages to a keeper or guard, the latter shall be liable for all damages, and the owner shall be liable only where the guard is insolvent.

2367. If the damages were caused by the fact that a third person teased the animal, or due to lack of attention by the attendant of the animal, the duty to compensate for the losses shall fall upon such person.

2368. If someone, while defending himself or herself, kills or injures another person's animal which is attacking him or her or damaging his or her property, when he or she has no other means of defence, he or she is not required to compensate the owner for losses. However, a person who arbitrarily kills or injures an animal shall compensate for losses.

SUB-CHAPTER 5
Claims Arising from Unjust Enrichment

I. Reclaim of Satisfaction of Non-existent Debt

2369. A person who does something, or promises to do something, for the benefit of another

person, without lawful basis and mistakenly considering it to be his or her duty, may request either that what has been done be returned or that he be relieved from a promise given.

It makes no difference, whether there was no legal basis from the start for the mistakenly paid debt or it subsequently became void.

2370. If such non-existent debt obligation is performed, as a legal basis subsequently comes into existence regarding, the right to reclaim becomes void.

2371. The right to reclaim shall also be allowed in a case where a debt has actually existed, but a mistake has taken place either regarding the substance of the debt obligation, or regarding the obligee or the obligor.

2372. A person who was only to perform something in exchange for the providing of security, but has mistakenly performed it without exercising such right of his or hers, also has a right to reclaim.

2373. It is required that a mistake due to which something has been performed (Section 2369) be excusable.

The right to reclaim may also be exercised if performance has not been under mistake, if this has been done by a person lacking capacity to act.

Mistake gives rise to the rights associated with it only in a case where the recipient of the performance was also, together with the performer, acting under mistake. However, if the former acted in bad faith, the provisions regarding compensation for the arbitrary taking of property are applicable (Sections 2355 - 2357).

2374. A guarantor, who has guaranteed the performance of a non-existent debt and paid it, has the right to reclaim.

2375. If joint debtors have paid more than what is due from them, each of them may reclaim the overpaid amount in proportion to his or her share.

2376. The subject-matter of the right to reclaim is either recovery of that which has been performed without relevant obligation therefor or, if such performance no longer subsists, compensation for its value.

2377. The purpose of the right to reclaim shall be the following: 1) when a promise has been given, to relieve from such promise and therewith return the debt document, if such has been issued; 2) if work has been performed - to compensate for the value thereof; and 3) where a servitude has been established or revoked - to restore the former situation.

2378. If fungible property has been given, property of the same kind and the same quality shall be returned.

2379. Non-fungible property shall be returned together with augmentations thereto and the fruits thereof, those already collected as well as those not collected due to negligence after action is brought against the defendant; therewith, however, the defendant shall be compensated for expenditures made for such purpose.

2380. If a recipient in good faith has already alienated property, he or she shall return only the payment received for it; but if the property has been destroyed or damaged during his or her

possession, then in the former case such recipient is not required to compensate for it, but in the latter case shall return the property in its present state.

2381. A plaintiff must prove that the performance was done without lawful basis.

2382. By way of exception, the recipient shall prove that the debt actually existed, in the following cases:

1) where he or she, in bad faith, denies the receipt of payment; or

2) where such debt document is reclaimed, as the lawful basis of the obligation is not recorded in.

2383. If the right to reclaim has a legal basis, it shall not be terminated by prior renunciation thereof.

II. Reclaiming of Performance in Anticipation of a Future Event

2384. If someone has given something, assuming on grounds as are directly expressed or arise with certainty from the circumstances that a certain future event shall take place, he or she may reclaim that which has been given from the recipient, if the event does not take place.

It is of no consequence whether the anticipated event does not take place at all or takes place otherwise than anticipated, or whether the anticipated goal remains completely unachieved or was not achieved in such manner as was expected.

2385. With respect to the subject matter of reclaim, the provisions of Sections 2376 - 2380 are applicable.

2386. If the anticipated event (Section 2384) was impossible from the very beginning and the provider was aware of this, he or she does not have the right to reclaim what has been given.

If the provider himself or herself hinders the taking place of the anticipated event, he or she shall lose the right to reclaim.

If the anticipated event does not take place due to an accident and through no fault of the recipient, the provider does not have the right to reclaim.

III. Reclaim on Grounds of Immorality or Unlawfulness

2387. That which a person has received for an immoral or unlawful purpose may be reclaimed by the provider from the recipient or his or her heirs, provided that the provision itself was not immoral or unlawful, irrespective of whether or not the intended aim was achieved.

2388. With respect to the subject-matter of reclaim, the provisions of Sections 2376 - 2380 shall apply, with the exception that in this instance interest shall not, in any event, be required.

IV. Reclaim on the Grounds of Absence of Any Basis

2389. If a person, without any basis therefor, is in possession of some item of another person's property, it may be reclaimed from the first-mentioned person.

It shall not matter, with respect to such reclaim, whether there did not from the beginning exist any basis for the acquisition of such item of property or the basis initially existing later ceased.

2390. With respect to the subject-matter of reclaim, the provisions of Sections 2376 - 2380 shall apply.

V. A General Reclaim on Grounds of Enrichment

2391. No one has the right to unjustly enrich himself or herself, harming and at the expense of another person.

If a person has suffered losses therefrom, he or she may demand the return of that which and the amount the other person has been enriched by.

2392. As enrichment shall be considered only that which is still part of the property of the defendant at the time when an action to reclaim is brought against him or her, whether or not it exists naturally or in the form of objects that the person has acquired in exchange for what was alienated or consumed in good faith. The right to reclaim shall not be applicable to all that which the defendant, prior to that time and without acting in bad faith, has given away as a gift, consumed or accidentally lost.

CHAPTER 20
Right to Request Showing of Property

2393. A person who intends to exercise a right regarding certain movable property and therefore wishes first to see it, may request from each holder of this property that such holder show it to him or her.

2394. Showing of property may be requested not only by a person who claims ownership rights to it, but also by a person who wishes to exercise other property rights, recover possession of property or exercise his or her right to choose, or also by a person who proves that he or she has some legal interest in having the property shown to him or her.

2395. An action for the showing of property may be conducted not only against the possessor, but also against any holder of the property, and against a person who has had possession of the property but has intentionally given the property to another person or destroyed it. Such action shall also be allowed where the defendant may not even know whether the property is actually in his or her possession.

2396. The defendant shall be held liable for any negligence on his or her part from the time when he or she is notified of the action. If the possessor acts in bad faith, he shall also bear the risk for destruction and deterioration, it being assumed that it would not have happened if the property had been given to the plaintiff in due time.

2397. The property shall be shown at the location where it is situated at the time when action is brought against the defendant; but if the defendant has removed it in bad faith, he or she shall return it to that location at his or her expense.

2398. If a defendant fails, without cause therefor, to show the property, or intentionally makes showing impossible, he or she shall compensate the plaintiff for all losses.

2399. A defendant may claim from the plaintiff compensation for showing of the property expenses and accidental losses suffered thereby.

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2400. An heir of the defendant shall be liable only to the extent that he or she or it is able to show the property and has not eliminated such possibility by his or her own illegal action, and to the extent that through the illegal acts of the estate-leaver profits accrued to his or her property and such profits have passed to the heir.

Informative Reference to European Union Directives

This Law contains legal norms arising from:

1) Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit;

2) Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit;

3) Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit;

4) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

5) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'); and

6) Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions.

[26 January 2006]

Annex to The Civil Law

Annex I (to Section 1102)

List of Public Lakes and Rivers

1. List of Public Lakes

No.	Name of lake	Parish, city/town	Area (ha)
		Aizkraukle district	
1.	Odzes ezers	Aiviekste parish	268.7
2	Taurkalnes Aklezers	Valle parish	20.0
3.	Znotiņu ezers (Aklais ezers)	Daudzese parish	24.6
		Alūksne district	
4.	Alūksnes ezers	Alūksne, Jaunalūksnes parish	1543.7
5.	Ilgāja ezers (Latvian part)	Veclaicenes parish	8.7
6.	Indzera ezers	Alsviķu parish	145.3
7.	Muratu ezers (Latvian part)	Ziemera parish	11.2
8.	Sudalezers (part Gulbene district)	Zeltiņu parish	182.3
9.	Vaidavas ezers	Ziemera parish	23.3
10.	Zvārtavas ezers	Gaujienas parish	33.9
		Balvi district	
11.	Balvu ezers	Kubuļu parish	167.9
12.	Pērkonu ezers	Kubuļu parish	229.7
13.	Svētaunes ezers (Jorzavas ezers)	Baltinavas parish	36.0
14.	Viļakas ezers	Viļaka	137.6
		Cēsis district	
15.	Alauksta ezers	Vecpiebalgas parish	774.8
16.	Āraišu ezers	Drabešu parish	32.6
17.	Ineša ezers	Inešu parish	519.5
18.	Juvera ezers	Dzērbenes parish	77.5
19.	Mazuma ezers	Vaives parish	25.9
20.	Ratnieku ezers	Līgatnes parish	44.1
21.	Riebiņu ezers	Straupes parish	75.5
22.	Rustēga ezers (Unguru ezers)	Raiskuma parish	393.6
23.	Skolas ezers (Drustu ezers)	Drustu parish	34.3
24.	Taurenes ezers	Taurenes parish	31.6

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No.	Name of lake	Parish, city/town	Area (ha)
		Daugavpils	
25.	Lielais Stropu ezers	Daugavpils	417.9
26.	Šuņezers	Daugavpils	74.8
		Daugavpils district	
27.	Baltezers	Vaboles parish	48.5
28.	Beļānu ezers (Baltais ezers)	Skrudalienas parish	55.4
29.	Briģenes ezers	Demenes parish	136.4
30.	Demenes ezers	Demenes parish	30.2
31.	Galiņu ezers (Latvian part)	šēderes parish	20.0
32.	Kamenkas ezers	Salienas parish	11.0
33.	Kāša ezers (Koša ezers)	Līksnas parish	59.2
34.	Kurcuma ezers	Medumu parish	12.1
35.	Laucesas ezers (Smelīnes ezers)	Medumu parish	94.8
36.	Lielais Kalupes ezers (Salenieku ezers) (part Preiļi district)	Kalupes parish	175.0
37.	Lielais Kumpinišķu ezers (Latvian part)	Medumu parish	44.1
38.	Lielais Kumpoša ezers (Latvian part)	Medumu parish	7.4
39.	Lielais Subates ezers	Subates town (with rural territory)	51.0
40.	Luknas ezers	Višķu parish	409.0
41.	Marijas ezers	šēderes parish	19.3
42.	Mazais Kalupes ezers (Keišu ezers)	Kalupes parish	110.0
43.	Mazais Kumpinišķu ezers	Medumu parish	3.6
44.	Mazais Subates ezers (Latvian part)	Subates town (with rural territory)	22.0
45.	Riču ezers (Latvian part)	Līdumnieku parish	587.7
46.	Robežas ezers (Latvian part)	Medumu parish	12.0
47.	Samaņkas ezers (Latvian part)	Medumu parish	18.0
48.	Sasaļu ezers	Sventes parish	27.4
49.	Sila ezers	Skrudalienas parish	262.0
50.	Sitas ezers (Latvian part)	Skrudalienas parish	43.1
51.	Skirnas ezers (Latvian part)	Demenes parish	31.8
52.	Sventes ezers	Sventes parish	734.8
53.	Sķirnates ezers (Kimbarcišķu ezers) (Latvian part)	Demenes parish	10.0

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No.	Name of lake	Parish, city/town	Area (ha)
54.	Višķu ezers	Višķu parish	360.1
	Dobele district		
55.	Lielauces ezers	Lielauces parish	376.0
56.	Zebrus ezers	Bikstu parish	443.0
	Gulbene district		
57.	Ādmiņi ezers	Lejasciema parish	28.2
58.	Kalmodu ezers	Rankas parish	23.0
59.	Lielais Virānes ezers	Tirzas parish	60.9
60.	Ludzas ezers	Stāmerienas parish	280.9
	Sudalezers (part Alūksne district, see No. 8)	Lejasciema parish	182.3
61.	Ušura ezers	Jaungulbene parish	160.8
	Jēkabpils district		
62.	Baļotes ezers	Kūku parish	149.2
63.	Garais ezers (Akmeņu ezers, Ilzes ezers) (Latvian part)	Rites parish	39.0
64.	Pieslaista ezers	Atašienes parish	54.7
65.	Saukas ezers	Saukas parish	718.2
66.	Vārzgūnes ezers	Kalna parish	43.0
67.	Viesītes ezers	Viesīte	232 2
	Jūrmala		
68.	Slokas ezers	Jūrmala	250.0
	Krāslava district		
69.	Baltais ezers (Belojes ezers) (Latvian part)	Robežnieku parish	35.3
70.	Cērmenes ezers (Cārmaņa ezers)	Aulejas parish	221.8
71.	Dagdas ezers	Asūnes parish	484.1
72.	Dolgojes ezers (Latvian part)	Indras parish	15.0
73.	Drīdža ezers	Kombuļu parish, Skaistas parish	753.2
74.	Ežezers (Ješa ezers)	Ezernieku parish	987.9
75.	Lielais Gusena ezers	Robežnieku parish	120.5
76.	Maksimovas ezers (Latvian part)	Indras parish	16.1
77.	Melnais ezers (Čornojes ezers)	Robešnieku parish	8.0
78.	Osvas ezers	Bērziņu parish	51.8
79.	Rušona ezers (Cīruļu ezers) (part	Kastuļinas parish	2373.0

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No.	Name of lake	Parish, city/town	Area (ha)
	Rēzekne district, Preiļi district)		
80.	Sīvera ezers	Aulejas parish, Skaistas parish	1759.0
	Kuldīga district		
81.	Ķikuru ezers	Turlavas parish	21.6
82.	Lielais Nabas ezers	Padures parish	70.5
83.	Mazais Nabas ezers	Padures parish	66.8
84.	Slujas ezers	Rendas parish	57.3
85.	Vilgāles ezers	Kurmāles parish	242.5
86.	Zvirgzdu ezers	Alsungas parish, Gudenieku parish	74.7
	Liepāja		
87.	Liepājas ezers (part Liepāja district)	Liepāja	3715.0
88.	Tosmares ezers	Liepāja	405.0
	Liepāja district		
89.	Durbes ezers	Dunalkas parish, Tadaiķu parish, Durbe town (with rural territory)	670.0
90.	Kalšu ezers (Latvian part)	Vaiņodes parish	21.0
	Liepājas ezers (part Liepāja, see No. 87)	Grobiņas parish, Nīcas parish, Otaņķu parish	3715.0
91.	Papes ezers	Nīcas parish, Rucavas parish	1205.0
92.	Tāšu ezers	Medzes parish	94.9
	Limbaži district		
93.	Aijažu ezers	Lēdurgas parish	311.4
94.	Augstrozes Lielezers	Umurgas parish	400.0
95.	Dūņezers	Limbaži, Limbažu parish	135.6
96.	Katvaru ezers	Katvaru parish	64.7
97.	Lādes ezers	Limbažu parish	246.0
98.	Limbažu Lielezers	Limbaži, Limbažu parish	256.4
	Ludza district		
99.	Cirma ezers	Cirmas parish	1261.2
100.	Čornojes ezers (Latvian part)	Briģu parish	7.4
101.	Dziļezers	Istras parish	150.9
102.	Idzipoles ezers (part Rēzekne district)	Pildas parish	48.0
103.	Istras ezers	Istras parish	155.3
104.	Kurjanovas ezers	Līdumnieku parish	127.8

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No.	Name of lake	Parish, city/town	Area (ha)
105.	Laudera ezers	Lauderu parish	55.3
106.	Lielais Ludzas ezers	Zvirgzdenes parish	846.4
107.	Mazais Ludzas ezers	Ludza	36.5
108.	Nirzas ezers (Nierzas ezers)	Nirzas parish	551.6
109.	Nūmērnes ezers	Salnavas parish	73.8
110.	Pildas ezers	Nukšas parish	294.6
111.	Pīteļa ezers (Latvian part)	Līdumnieku parish	138.5
112.	Plisūna ezers (Plusons, Dunduru ezers)	Istras parish	480.0
113.	Zilezers (Latvian part)	Līdumnieku parish	57.0
114.	Zvirgzdenes ezers	Zvirgzdenes parish	134.2
	Madona district		
115.	Dreimaņa ezers (Svētes ezers)	Mārcienas parish	49.0
116.	Gulbēra ezers	Liezēres parish	87.2
117.	Jumurdas ezers	Jumurdas parish	173.7
118.	Kalsnavas ezers	Kalsnavas parish	23.4
119.	Kālezers	Vestienas parish	407.1
120.	Kurtavas ezers	Mētrienas parish	74.0
121.	Lielais Līdēra ezers	Aronas parish	125.2
122.	Liezēra ezers	Liezēres parish	105.9
123.	Lubāna ezers (part Rēzekne district)	Ošupes parish, Barkavas parish	8210.0
124.	Mazais Virānes ezers	Cesvaine town (with rural territory)	47.2
125.	Odzienas ezers	Mētrienas parish	47.0
126.	Rāceņu ezers	Lazdonas parish	34.9
127.	Salas ezers	Praulienas parish	31.8
128.	Viešūra ezers (Kaķīšu ezers)	Vestienas parish	176.0
	Ogre district		
129.	Lobes ezers	Krapes parish	533.5
130.	Pečora ezers	Ķeipenes parish	102.6
131.	Plaužu ezers	Ķeipenes parish, Taurupes parish	95.6
	Preiļi district		
132.	Bicānu ezers	Rušonas parish	149.4
133.	Biršgaļa ezers (Birškalnu ezers, Kapiņu ezers)	Aglonas parish	272 2

No.	Name of lake	Parish, city/town	Area (ha)
134.	Ciriša ezers	Aglonas parish	630.6
135.	Deguma ezers (Pelēčāres ezers)	Rudzātu parish	59.0
136.	Feimaņu ezers (part Rēzekne district)	Gailīšu parish, Rušonas parish	625.7
137.	Jersikas ezers	Jersikas parish	41.0
	Lielais Kalupes ezers (Salenieku ezers) (part Daugavpils district, see No. 36)	Rožkalnu parish	175.0
138.	Pelēča ezers	Aizkalnes parish	82.0
	Rušona ezers (Cīruļu ezers) (part Rēzekne district, Krāslava district, see No. 79)	Rušonas parish	2373.0
	Rēzekne		
139.	Rēzeknes ezers	Rēzekne	22.0
	Rēzekne district		
140.	Černostes ezers	Maltas parish	213.3
141.	Dziļūta ezers	Stoļerovas parish	33.1
	Feimaņu ezers (part Preiļi district, see No. 136)	Feimaņu parish	625.7
	Idzipoles ezers (part Ludza district, see No. 102)	Kaunatas parish	48.0
142.	Kaunatas ezers	Kaunatas parish	54.5
	Lubāna ezers (part Madona district, see No. 123	Nagļu parish, Gaigalavas parish	8210.0
143.	Meirānu ezers	Bērzgales parish	114.7
144.	Pušas ezers	Pušas parish	241.4
145.	Rāznas ezers (Rēznas ezers)	Kaunatas parish, Čornajas parish, Mākoņkalna parish	5756.4
	Rušona ezers (Cīruļu ezers) (part Krāslava district, Preiļi district, see No. 79)	Feimaņu parish	2373.0
146.	Salāja ezers (Lakstīgalu ezers, Solovju ezers)	Mākoņkalna parish	174.7
147.	Tiskādu ezers (Ciskada ezers)	Silmalas parish	179.5
148.	Viraudas ezers	Lendžu parish	95.4
149.	Virtūkšņa ezers (Vertūkšņas ezers)	Lūznavas parish	52.8
150.	Zosnas ezers	Lūznavas parish	156.5
	Rīga		
151.	Juglas ezers	Rīga	570.0

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No.	Name of lake	Parish, city/town	Area (ha)
152.	Ķīšezers	Rīga	1730.0
	Rīga dīstrict		
153.	Babītes ezers	Salas parish, Babītes parish	2555.7
154.	Dūņezers	Carnikavas parish	274.1
155.	Dzirnezers	Carnikavas parish	173.0
156.	Garezeri	Carnikavas parish	24.4
157.	Jūdažu ezers	Siguldas parish	32.7
158.	Langstiņu ezers	Garkalnes parish	35.7
159.	Lielais Baltezers	Ādažu parish, Garkalnes parish	597.5
160.	Lielais Jūgezers	Garkalnes parish	35.5
161.	Līlastes ezers	Ādažu parish	183.6
162.	Mazais Baltezers	Ādažu parish, Garkalnes parish	198.7
163.	Pabažu ezers	Sējas parish	38.2
	Saldus district		
164.	Brocēnu ezers	Brocēni town (with rural territory)	43.6
165.	Cieceres ezers	Brocēni town (with rural territory)	276.8
166.	Remtes ezers	Remtes parish	75.5
167.	Saldus ezers	Saldus, Brocēni town (with rural territory)	22.0
	Talsi district		
168.	Engures ezers (part Tukuma district)	Mērsraga parish, Ķūļciema parish	4130.7
169.	Sasmakas ezers (Valdemārpils ezers, Ārlavas ezers)	Valdemārpils (with rural territory)	252.0
	Tukums district		
170.	Dūņiera ezers	Lapmežciema parish	25.3
171.	Dzirciema ezers	Zentenes parish	27.1
	Engures ezers (part Talsi district, see No. 168)	Zentenes parish, Engures parish	4130.7
172.	Kaņiera ezers	Lapmežciema parish	1122.1
173.	Lielapsauju ezers (Apšauju ezers)	Jaunpils parish	20.0
174.	Pālansu ezers (Lestenes ezers)	Lestenes parish	36.0
175.	Sēmes ezers	Sēmes parish	48.6
176.	Valguma ezers	Smārdes parish	60.3

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No.	Name of lake	Parish, city/town	Area (ha)
		Valka district	
177.	Cepšu ezers	Kārķu parish	25.3
178.	Lizdoles ezers	Launkalnes parish	53.9
179.	Valda ezers	Ērģemes parish	24.8
		Valmiera district	
180.	Burtnieku ezers	Burtnieku parish, Matīšu parish, Vecates parish	4006.0
181.	Dauguļu Mazezers	Dikļu parish	62.5
182.	Ķiruma ezers	Vecates parish	53.5
183.	Ramatas Lielezers	Ramatas parish	162.0
184.	Rāķa ezers	Dikļu parish	67.0
185.	Vaidavas ezers	Vaidavas parish	87.2
		Ventspils	
186.	Būšnieku ezers	Ventspils	330.0
		Ventspils district	
187.	Klāņezers	Tārgales parish, Popes parish	67.0
188.	Puzes ezers	Puzes parish	520.5
189.	Usmas ezers	Usmas parish	3469.2

[14 May 1998; 17 September 1998; 12 December 2002]

2. List of Public Rivers

1. Abava — from the junction with the (the River) Viesata to its junction with (the River) Venta.
2. Aiviekste (with forking canals) — full length;
3. Aktica — section along the Latvia-Belarus border;
4. Asūnīca — section along the Latvia-Belarus border;
5. Bārta - from the Latvia-Lithuanian border to its junction with (the Lake) Liepājas ezers;
6. Brasla - from the Brasla reservoir dam to its junction with (the River) Gauja;
7. Buļļupe ((the River) Lielupe branch in the territory of Rīga) - full length;
8. Daugava (its branches un Pļaviņi, ķegums un Rīga HES reservoirs) - from the Latvia-Russia border to its outfall in the Gulf of Rīga (including the section along the Latvia-Belarus border);
9. Dienvidsusēja (Susēja) - section along the Latvia-Lithuanian border;
10. Dubna — from its junction with (the Lake) Sīvera ezers to its junction with (the River) Daugava;
11. Gauja — from its junction with (the River) Tirza to its outfall in the Gulf of Rīga (including the section along the border) and the Gauja-Baltezers canal;
12. Iecava — from its junction with (the River) Dzērvīte to its junction with (the River) Lielupe;

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13. Irbe - full length;
14. Jugla canal between (the Lakes) Juglas ezers, Ķīšezers un Lielo Baltezers — full length;
15. Lielā Jugla - from the confluence of (the River) Mergupe un Suda to its juction with (the Lake) Juglas ezers;
16. Mazā Jugla - from its junction with (the River) Abza to its juction with (the Lake) Juglas ezers;
17. Lielupe and its branches - full length;
18. Ludza - from the outlet from (the Lake) Lielā Ludzas ezers to the Latvia-Russian border, including the section along the border;
19. Melnupe — section along the Latvia-Estonia border;
20. Mēmele — from the Latvia-Lithuania border (including the section along the border) to its junction with (the River) Lielupe;
21. Mērsraga canal ((the Lake) Engures ezers outlet) — full length;
22. Mīlgrāvis — full length;
23. Misa - from its junction with (the River) Zvirgzde to its junction with (the River) Iecava;
24. Mūsa - from the Latvia-Lithuania border (including the section along the border) to its junction with (the River) Lielupe;
25. Ogre - from its juction with (the River) Valola to its junction with (the River) Daugava;
26. Pededze - from its junction with (the River) Aliksne to its junction with (the River) Aiviekste;
27. Pernovka - section along the Latvia-Russian border;
28. Rēzekne - full length;
29. Roja — from the Lube windmill to its outfall in the Gulf of Riga;
30. Saka - full length;
31. Salaca - full length;
32. Sarjanka — section along the Latvia-Belarus border;
33. Sventāja - section along the Latvia-Lithuania border;
34. Svēte - from the Latvia-Lithuania border (including the section along the border) to its junction with (the River) Lielupe;
35. Užava - from its junction with (the River) Kauliņa to its outfall in the Baltic Sea;
36. Vadakste (with artificial reservoir) - from the Latvia-Lithuania border (including the section along the border) to its junction with (the River) Venta;
37. Vaidava - section along the Latvia-Estonia border;
38. Venta - from the Latvia-Lithuania border (including the section along the border) to its outfall in the Baltic Sea; and
39. Zilupe - sections along the Latvia-Russian border.

[14 May 1998]

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Annex II (to Section 1115)

List of Lakes in which Fishing Rights Belong to the State

No.	Name of lake	Parish, city/town	Area (ha)
	Alūksne district		
1.	Garais ezers	Trapenes parish	19.2
2.	Grundu ezers	Mālupes parish	48.9
3.	Ķiploku ezers	Zeltiņu parish	25 2
4.	Lūkumīša ezers	Mārkalnes parish	51.9
5.	Pātraža ezers	Zeltiņu parish	31.0
6.	Pullanu ezers	Alsviķu parish	17.8
7.	Raipala ezers	Veclaicenes parish	36.1
	Balvi district		
8.	Kaiņa ezers (part Gulbene district)	Rugāju parish	119.5
9.	Lazdaga ezers (part Gulbene district)	Rugāju parish	148.1
10.	Lielais Pokuļevas ezers	Vīksnas parish	21.3
11.	Plaskines ezers	Lazdulejas parish	68.2
12.	Sprūgu ezers	Vīksnas parish	47.9
13.	Tepenīcas ezers	Susāju parish	30.9
	Cēsis district		
14.	Āraiša ezers	Dzērbenes parish	16.6
15.	Auciema ezers	Raiskuma parish	41.4
16.	Bānūžu ezers	Taurenes parish	42.6
17.	Lielais Bauža ezers (part Valmiera district)	Raiskuma parish	57.6
18.	Mazais Bauža ezers (part Valmiera district)	Raiskuma parish	32.0
19.	Nedža ezers	Inešu parish	82.8
20.	Pūricu ezers	Straupes parish	32.1
21.	Raiskuma ezers	Raiskuma parish	78.5
22.	Ruckas ezers	Stalbes parish	41.0
23.	Sārumezers (part Limbaži district)	Straupes parish	189.1
24.	Tauna ezers	Vecpiebalgas parish	71.9
25.	Zobola ezers	Vecpiebalgas parish	82.5

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No.	Name of lake	Parish, city/town	Area (ha)
		Daugavpils district	
26.	Bruņu ezers	Skrudalienas parish	37.0
27.	Černavas ezers (Drisvjates ezers)	Līdumnieku parish	86.2
28.	Dārza ezers	Demenes parish, Līdumnieku parish	51.1
29.	Dervanišķu ezers (Ustaukas ezers)	Demenes parish, Medumu parish	68.7
30.	Kaminčas ezers	Bebrenes parish, Eglaines parish	27.6
31.	Kirjanišķu ezers	Salienas parish	40.4
32.	Kumbuļu ezers	Līdumnieku parish	41.4
33.	Ļūbasta ezers	Līksnas parish	59.0
34.	Šēnheidas ezers	Skrudalienas parish	59.8
35	Sitas ezers (Latvian part)	Skrudalienas parish	43.1
36.	Smiļģinu ezers	Skrudalienas parish	49.0
37.	Vīragnas ezers (part Preiļi district)	Dubnas parish	128.4
		Dobele district	
38.	Apguldes ezers	Naudītes parish	38.7
39.	Gauratas ezers	Dobeles parish	13.8
40.	[Delated 17 September 1998]		
41.	Lielais Vipēda ezers	Zebrenes parish	20,1
42.	Spārņa ezers	Īles parish	14.0
43.	Svētes ezers	Zebrenes parish	55.0
		Gulbene district	
44.	Augulienas ezers	Beļavas parish	78.3
45.	Galgauskas ezers	Galgauskas parish	30.5
	Kalņa ezers (part Balvi district, see No. 8)	Litenes parish	119.5
	Lazdaga ezers (part Balvi district, see No. 9)	Stradu parish	148.1
46.	Mezīša ezers	Stradu parish	69.2
47.	Pinteļa ezers	Beļavas parish	65.7
48.	Pogas ezers	Stāmerienas parish	27.9
49.	Sprīvuļu ezers	Beļavas parish	52.3
50.	Stāmerienas ezers	Stāmerienas parish	92.6
		Jēkabpils district	
51.	Aizdumbles ezers		

No.	Name of lake	Parish, city/town	Area (ha)
	(Dumbļa ezers, Dutvulu ezers)	Elkšņu parish	100.0
52.	Baltezers	Variešu parish	45.0
53.	Baltiņu ezers	Sēlpils parish	32.8
54.	Ildzenieku ezers	Kūku parish	26.8
55.	Krīgānu ezers	Rites parish	61.5
56.	Laukezers	Kūku parish	50.4
57.	Piksteres ezers	Viesītes town (with rural territory)	255.0
58.	Sūpes ezers	Viesītes town (with rural territory)	37.9
59.	Vīķu ezers	Sēlpils parish	85.4
	Krāslava district		
60.	Aksenavas ezers	Šķeltovas parish	118.0
61.	Alksnas ezers (Volksnas ezers, Olksnas ezers)	Krāslavas parish	54.1
62.	Ārdavas ezers	Kombuļu parish	229.8
63.	Arla ezers (Rokuļu ezers)	Andzeļu parish	27.0
64.	Ata ezers (Ota ezers)	Kombuļu parish	122.8
65.	Aulejas ezers	Aulejas parish	190.4
66.	Balta ezers (Baltais ezers)	Krāslavas parish	58.2
67.	Baltais ezers (Belojes ezers)	Indras parish	34.0
68.	Birža ezers	Aulejas parish	107.1
69.	Bižas ezers	Andrupenes parish	173.6
70.	Cērpa ezers (Tērpes ezers)	Aulejas parish	134.9
71.	Dorotpoles ezers	Kalniešu parish	37.8
72.	Dubuļu ezers	Kastuļinas parish	72.4
73.	Galšūna ezers (Rapšu ezers)	Dagdas parish	65.3
74.	Garais ezers	Piedrujas parish	71.2
75.	Garais ezers	Robežnieku parish	103.1
76.	Geraņimovas Ilzas ezers	Kastuļinas parish	327.8
77.	Gordovas ezers (Gordoja ezers)	Šķaunes parish	45.3
78.	Ildzas ezers	Skaistas parish	26.0
79.	Indras ezers	Skaistas parish	202.3
80.	Indricas ezers (Iļdža ezers)	Robežnieku parish	24.9
81.	Isakovas ezers (Rokoļu ezers, Lielais ezers)	Andzeļu parish	47.9
82.	Ižūna ezers	Skaistas parish	101.4

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No.	Name of lake	Parish, city/town	Area (ha)
83.	Janovas ezers (Beitānu ezers, Puteņu ezers)	Dagdas parish	23.7
84.	Jezinakas ezers (Jazinkas ezers)	Grāveru parish	263.9
85.	Jidausa ezers (Idaņas ezers, Kurlais ezers)	Kastuļinas parish	37.6
86.	Jolzas ezers	Asūnes parish	52.2
87.	Kaitras ezers	Svariņi parish	51.4
88.	Kalvīšu ezers	Grāveru parish	33.5
89.	Karašu ezers (Karpa ezers)	šķeltovas parish	61.4
90.	Koškina ezers	Kastuļinas parish	91.5
91.	Kuļa ezers	Skaistas parish	35.8
92.	Kustaru ezers	Kastuļinas parish	144.2
93.	Lejas ezers	Kombuļu parish	177.4
94.	Lielais Āžukņa ezers (Lielais Ožukna ezers)	Skaistas parish	88.5
95.	Lielais Gaušļa ezers	Aulejas parish	72 2
96.	Mazais Gaušļa ezers	Aulejas parish	20.5
97.	Nauļānu ezers	Robešnieku parish	53.0
98.	Ojatu ezers (Ojatnieku ezers)	Konstantinovas parish	30.9
99.	Okras ezers	Kastuļinas parish	63.5
100.	Olovecas ezers (Volovecas ezers)	Andrupenes parish	164.9
101.	Ormijas ezers	Robešnieku parish	67.6
102.	Ostrovnas ezers	Indras parish	31.5
103.	Patmalnieku ezers	Ezernieku parish	36.5
104.	Rešetnieku ezers (Gubena ezers)	Andzeļu parish	48.2
105.	Sama ezers (Soma ezers)	Skaistas parish	33.6
106.	Saviņu ezers (Saveļu ezers)	Grāveru parish	55.3
107.	Seklais ezers (Sekļa ezers)	Kombuļu parish	26.9
108.	Šilovkas ezers	Kaplavas parish	81.5
109.	Skaistas ezers	Skaistas parish	46.7
110.	Stirnu ezers	Skaistas parish	148.0
111.	Ūdrāju ezers (Ūdriņu ezers)	Ezernieku parish	53.5
112.	Užuņu ezers	Kastuļinas parish	265.2
113.	Varnaviču ezers	Kaplavas parish	55.3
114.	Vilnīšu ezers (Krivojes ezers)	Kaplavas parish	45.0

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No.	Name of lake	Parish, city/town	Area (ha)
115.	Visaldas ezers (Viraudas ezers, Kazimirovas ezers)	Andrupenes parish	96.4
116.	Zirga ezers	Krāslavas parish	38.0
	Kuldīga district		
117.	Gulbja ezers	Rendas parish	24.6
118.	Kukšu ezers	Alsungas parish	42.0
119.	Pinku ezers	Ēdoles parish	29.0
	Liepāja district		
120.	Reiņu ezers	Priekules parish, Bunkas parish	23.0
121.	Sepenes ezers	Embūtes parish	67.0
122.	Tīdu ezers	Kalvenes parish	30.5
	Limbaži district		
123.	Aģes ezers	Lēdurgas parish	111.9
124.	Āsteres ezers	Viļķenes parish	84.9
125.	Auziņu ezers	Limbažu parish	56.5
126.	Riebezers	Limbažu parish	82.2
	Sārumezers (part Cēsis district, see No. 23)	Umurgas parish	189.1
	Ludza district		
127.	Apaļais Sniedziņa ezers (Augšsniedziņu ezers)	Nuksas parish	46.9
128.	Audeļu ezers	Istras parish	64.9
129.	Bižas ezers	Rundēnu parish	166.3
130.	Briģu ezers	Briģu parish	28.0
131.	Dukānu ezers	Cirmas parish, Pureņu parish	143.8
132.	Dūnākļu ezers	Zvirgzdenes parish, Ludza	82.7
133.	Franapoles ezers	Zvirgzdenes parish	70.4
134.	Ilza ezers	Istras parish	68.6
135.	Križutu ezers	Cirmas parish	67.1
136.	Lielais Kivdalovas ezers	Pureņu parish	40.7
137.	Lielais Kurmas ezers	Pildas parish	83.8
138.	Līdūkšņas ezers	Pildas parish, Nirzas parish	95.5
139.	Mazais Kurmas ezers	Pildas parish	59.8
140.	Pintu ezers	Pasienes parish	39.4
141	Pujatu ezers	Nautrēnu parish	36.6

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No.	Name of lake	Parish, city/town	Area (ha)
142.	Rajevkas ezers	Blontu parish	42.9
143.	Rogaižu ezers	Pildas parish	58.0
144.	Šķaunes ezers	Istras parish	254.9
145.	Soidu ezers	Cirmas parish	30.0
146.	Sološu ezers	Lauderu parish, Zaļesjes parish	88.5
147.	Zeiļu ezers	Isnaudas parish	44.8
	Madona district		
148.	Driksņa ezers	Ļaudonas parish	40.5
149.	Dūku ezers	Mārcienas parish	39.7
150.	Dziļūkstes ezers	Liezēres parish	28.3
151.	Ilzēnu ezers	Sausnējas parish	21.6
152.	Labones ezers	Mārcienas parish	26.0
153.	Lazdonas ezers	Lazdonas parish	30.2
154.	Pakšēnu ezers	Jumurdas parish	41.6
155.	Pulgosņa ezers	Ērgļu parish	93.3
156.	Salāja ezers	Vestienas parish	44.4
157.	Sāvienas ezers	Ļaudonas parish	57.9
158.	Sezēra ezers	Liezēres parish	29.0
159.	Stirnezers	Sausnējas parish	68.2
160.	Talejas ezers	Bērzaunes parish, Vestienas parish	79.7
161.	Ūbēra ezers	Liezēres parish	30.6
	Preiļi district		
162.	Bešēnu ezers (Biešona ezers)	Aglonas parish	64.2
163.	Bleidas ezers	Vārkavas parish	33.8
164.	Eikša ezers	Rušonas parish	57.5
165.	Garlaku ezers	Roškalnu parish	37.0
166.	Ilzas ezers	Aglonas parish	33.5
167.	Jāšezers	Rušonas parish	107.6
168.	Kategradas ezers	Rušonas parish	133.1
169.	Kaučera ezers	Rušonas parish	49.9
170.	Lielais Kurtaša ezers	Rušonas parish	48.8
171.	Lielais Salkas ezers	Rušonas parish	48.5
172.	Mazais Salkas ezers	Rušonas parish	27.0
173.	Pakalņa ezers	Aglonas parish	54.8

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No.	Name of lake	Parish, city/town	Area (ha)
174.	Salmeja ezers	Rušonas parish	104.3
175.	Šusta ezers	Aizkalnes parish	73.0
	Vīragnas ezers (part Daugavpils district, see No. 37)	Pelēču parish	128.4
	Rēzekne district		
176.	Adamovas ezers	Vērēmu parish	186.0
177.	Bižas ezers	Griškānu parish	140.1
178.	Ilzas ezers	Mākoņkalna parish	40.0
179.	Ismeru ezers (Žagatu ezers)	Čornajas parish	147.0
180.	Kaugaru ezers	Mākoņkalna parish	52.0
181.	Labvārža ezers (Salatu ezers, Sološu ezers)	Lendžu parish	66.2
182.	Lielais Kūriņu ezers (Lielais Kiuriņa ezers)	Gaigalavas parish	65.8
183.	Micānu ezers	Bērzgales parish	142.8
184.	Pārtavas ezers	Kaunatas parish	83.4
185.	Sedzera ezers (Zeltiņu ezers)	Lendžu parish	57.7
186.	Sološnieku ezers (Salošu ezers)	Dricānu parish	81.2
187.	Stiebrāja ezers	Mākoņkalna parish	45.1
188.	Svētavas ezers (Svātavas ezers)	Pušas parish	133.3
189.	Umaņu ezers	Pušas parish	56.5
190.	Viraudas ezers	Mākoņkalna parish	124.1
	Rīga district		
191.	Kadagas ezers	Ādažu parish	25.0
192.	Sudrabezers	Garkalnes parish	31.4
193.	Sunīšu ezers	Garkalnes parish	22 2
194.	Umma ezers	Carnikavas parish	25.4
	Saldus district		
195.	Ķerkliņu ezers	Zvārdes parish	50.0
196.	Veiķenieku ezers	Lutriņi parish	28.0
197.	Zvārdes ezers (Odzēnu ezers)	Zvārdes parish	20.0
	Talsi district		
198.	Gulbju ezers	Ģibuļu parish	115.5
199.	Laidzes ezers (except for the area with the land cadastral No. 8837-12-0009)	Laidzes parish (-39.2 ha)	170.5

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No.	Name of lake	Parish, city/town	Area (ha)
200.	Lubezers	Valdemārpils (with rural territory)	129.6
201.	Mordangas - Kāņu ezers	Ģibuļu parish	78.0
202.	Plunču ezers	Ģibuļu parish	42.1
203.	Spāres ezers	Ģibuļu parish	201.1
	Tukums district		
204.	Kliģu ezers	Lestenes parish	21.8
205.	Sēkļa ezers	Tumes parish	34.2
	Valka district		
206.	Salaiņa ezers	Zvārtavas parish	77.8
207.	Vadaiņa ezers	Zvārtavas parish	49.6
208.	Vēdera ezers	Zvārtavas parish	50.8
	Valmiera district		
209.	Lielais Bauža ezers (part see No. 17)	Cēsis district, Vaidavas parish	57.6
210.	Mazais Bauža ezers (part see No. 18)	Cēsis district, Vaidavas parish	32.0

[14 May 1998; 17 September 1998; 12 December 2002]

Annex III (to the note on Section 1117)

List of Rivers with Parts in which Fishing Rights belong Exclusively to the State.

1. Aiviekste (with forking canals) — full length;
2. Bārta — from the Latvia-Lithuania border to its junction with (the Lake) Liepājas ezers;
3. Brasla - from the Brasla reservoir dam to its junction with (the River) Gauja;
4. Buļļupe ((the River) Lielupe branch in the territory of Rīga) — full length;
5. Daugava (its branches un Pļaviņi, ķegums un Rīga HES reservoirs) — from the Latvia-Russia border to its outfall in the Gulf of Rīga (including the section along the Latvia-Belarus border);
6. Gauja - from its juction with (the River) Brasla to its outfall in the Gulf of Rīga;
7. Gāte - full length;
8. Irbe - full length;
9. Lielupe and its branches - full length;
10. Mērsraga canal ((the Lake) Engures ezers canal) - full length;
11. Mīlgrāvis - full length;
12. Rīva — from its junction with (the River) Aga to its outfall in the Baltic Sea;
13. Roja - from the Lube windmill to its outfall in the Gulf of Rīga;
14. Saka - full length;
15. Salaca - full length;
16. Užava - from its junction with (the River) Kauliņa to its outfall in the Baltic Sea; and
17. Venta - from the Latvia-Lithuania border to its outfall in the Baltic Sea."

[14 May 1998]

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