AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES

[CONTINUED FROM LAST ISSUE]

BOOK IV

OBLIGATIONS AND CONTRACTS

Title I.—OBLIGATIONS

CHAPTER 1

GENERAL PROVISIONS

ART. 1176. An obligation is a juridical necessity to give, to do or not to do. (n)

ART. 1177. Obligations arise from:

(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and
(5) Quasi-delicts. (1089a)

ART. 1178. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. (1090)

ART. 1179. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (1091a)

ART. 1180. Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book. (n)

ART. 1181. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2197, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages. (1092a)

ART. 1182. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws. (1093a)

CHAPTER 2

NATURE AND EFFECT OF OBLIGATIONS

ART. 1183. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care. (1094a)

ART. 1184. The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him. (1095)

ART. 1185. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1190, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery. (1096)

ART. 1186. The obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned. (1097a)

ART. 1187. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. (1098)

ART. 1188. When the obligation consists in not doing, and the obligor does what has been forbidden him, it shall also be undone at his expense. (1099a)

ART. 1189. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

ART. 1190. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. (1101)

ART. 1191. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void. (1102a)

ART. 1192. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. (1103)

ART. 1193. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1191 and 2221, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (1104a)

ART. 1194. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person, shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable. (1105a)

ART. 1195. Usurious transactions shall be governed by special laws. (n)

ART. 1196. The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.

The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid. (1110a)

ART. 1197. The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them. (1111)

ART. 1198. Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary. (1112)

CHAPTER 3

DIFFERENT KINDS OF OBLIGATIONS

SECTION 1.—*Pure and Conditional Obligations*

ART. 1199. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event. (1113)

ART. 1200. When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provision of article 1217. (n)

ART. 1201. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (1114)

ART. 1202. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code. (1115)

ART. 1203. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

The condition not to do an impossible thing shall be considered as not having been agreed upon. (1116a)

ART. 1204. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place. (1117)

ART. 1205. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation. (1118)

ART. 1206. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment. (1119)

ART. 1207. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with. (1120)

ART. 1208. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition. (1121a)

ART. 1209. When the conditions have been imposed with the intention of suspending the effi-

cacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or determination of the thing during the pendency of the condition:

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary. (1122)

ART. 1210. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for obligations to do and not to do, the provisions of the second paragraph of article 1207 shall be observed as regards the effect of the extinguishment of the obligation. (1123)

ART. 1211. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1405 and 1408 and the Mortgage Law. (1124)

ART. 1212. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (n)

SECTION 2.—*Obligations with a Period*

ART. 1213. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section. (1125a)

ART. 1214. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1209 shall be observed. (n)

ART. 1215. Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests. (1126a)

ART. 1216. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other. (1127)

ART. 1217. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them. (1128a)

ART. 1218. The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the creditor attempts to abscond. (1129a)

SECTION 3.—*Alternative Obligations*

ART. 1219. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other undertaking. (1131)

ART. 1220. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation. (1132)

ART. 1221. The choice shall produce no effect except from the time it has been communicated. (1133)

ART. 1222. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable. (1134)

ART. 1223. If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages. (n)

ART. 1224. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared or that of the service which last became impossible.

Damages other than the value of the last thing or service may also be awarded. (1135a)

ART. 1225. When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.

Until then the responsibility of the debtor shall be governed by the following rules:

(1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;

(2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;

(3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible. (1136a)

ART. 1226. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud. (n)

SECTION 4.—*Joint and Solidary Obligations*

ART. 1227. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. (1137a)

ART. 1228. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. (1138a)

ART. 1229. If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share. (1139)

ART. 1230. The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility. (n)

ART. 1231. Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions. (1140)

ART. 1232. Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter. (1141a)

ART. 1233. A solidary creditor cannot assign his rights without the consent of the others. (n)

ART. 1234. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him. (1142a)

ART. 1235. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1239.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. (1143)

ART. 1236. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (1144a)

ART. 1237. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim his co-debtors only the share which corresponds to each,

with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his codebtors, in proportion to the debt of each. (1145a)

ART. 1238. Payment by a solidary debtor shall not entitle him to reimbursement from his codebtors if such payment is made after the obligation has prescribed or become illegal. (n)

ART. 1239. The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the codebtors, in case the debt had been totally paid by anyone of them before the remission was effected. (1146a)

ART. 1240. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his codebtors. (n)

ART. 1241. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action, against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extra-judicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply. (1147a)

ART. 1242. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (1148a)

SECTION 5.—*Divisible and Indivisible Obligations*

ART. 1243. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title. (1149)

ART. 1244. A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (1150)

ART. 1245. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case. (1151a)

SECTION 6.—*Obligations with a Penal Clause*

ART. 1246. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

ART. 1247. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced. (1153a)

ART. 1248. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (n)

ART. 1249. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (1154a)

ART. 1250. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause. (1155)

CHAPTER 4

EXTINGUISHMENT OF OBLIGATIONS

General Provisions

ART. 1251. Obligations are extinguished:

(1) By payment or performance;
(2) By the loss of the thing due;
(3) By the condonation or remission of the debt;
(4) By the confusion or merger of the rights of creditor and debtor;
(5) By compensation;
(6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code. (1156a)

SECTION 1.—*Payment or Performance*

ART. 1252. Payment means not only the delivery of money but also the performance, in any other manner, of an obligation. (n)

ART. 1253. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. (1157)

ART. 1254. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligor. (n)

ART. 1255. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. (n)

ART. 1256. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (1158a)

ART. 1257. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty. (1159a)

ART. 1258. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it. (n)

ART. 1259. In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valid, without prejudice to the provisions of article 1427 under the Title on "Natural Obligations." (1160a)

ART. 1260. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it. (1162a)

ART. 1261. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

(1) If after the payment, the third person acquires the creditor's rights;

(2) If the creditor ratifies the payment to the third person;

(3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (1163a)

ART. 1262. Payment made in good faith to any person in possession of the credit shall release the debtor. (1164)

ART. 1263. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid. (1165)

ART. 1264. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (1166a)

ART. 1265. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales. (n)

ART. 1266. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (1167a)

ART. 1267. Unless it is otherwise stipulated, the extra-judicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern. (1168a)

ART. 1268. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

ART. 1269. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance. (1170)

ART. 1270. In case an extraordinary inflation or deflation of the currency stipulated should su-

pervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (n)

ART. 1271. Payment shall be made in the place designated in the obligation.

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court. (1171a)

SUBSECTION 1.—*Application of Payments*

ART. 1272. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract. (1172a)

ART. 1273. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. (1173)

ART. 1274. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately. .(1174a)

SUBSECTION 2.—*Payment by Cession*

ART. 1275. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws. (1175a)

SUBSECTION 3.—*Tender of Payment and Consignation*

ART. 1276. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

(1) When the creditor is absent or unknown, or does not appear at the place of payment;

(2) When he is incapacitated to receive the payment at the time it is due;

(3) When, without just cause, he refuses to give a receipt;

(4) When two or more persons claim the same right to collect;

(5) When the title of the obligation has been lost. (1176a)

ART. 1277. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment. (1177)

ART. 1278. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (1178)

ART. 1279. The expenses of consignation, when properly made, shall be charged against the creditor. (1179)

ART. 1280. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force. (1180)

ART. 1281. If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The codebtors, guarantors and sureties shall be released. (1181a)

SECTION 2.—*Loss of the Thing Due*

ART. 1282. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk. (1182a)

ART. 1283. In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation. (n)

ART. 1284. The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation. (n)

ART. 1285. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of article 1185. This presumption does not apply in case of earthquake, flood, storm or other natural calamity. (1183a)

ART. 1286. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible, without the fault of the obligor. (1184a)

ART. 1287. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part. (n)

ART. 1288. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it. (1185)

ART. 1289. The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss. (1186)

SECTION 3.—*Condonation or Remission of the Debt*

ART. 1290. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation. (1187)

ART. 1291. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (1188)

ART. 1292. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (1189)

ART. 1293. The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force. (1190)

ART. 1294. It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing. (1191a)

SECTION 4.—*Confusion or Merger of Rights*

ART. 1295. The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person. (1192a)

ART. 1296. Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation. (1195)

ART. 1297. Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur. (1194)

SECTION 5.—*Compensation*

ART. 1298. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (1195)

ART. 1299. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (1196)

ART. 1300. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor. (1197)

ART. 1301. Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation. (n)

ART. 1302. The parties may agree upon the compensation of debts which are not yet due. (n)

ART. 1303. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof. (n)

ART. 1304. When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially rescinded or avoided. (n)

ART. 1305. The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment. (1198a)

ART. 1306. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment. (1199a)

ART. 1307. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 321. (1200a)

ART. 1308. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense. (n)

ART. 1309. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation. (1201)

ART. 1310. When all the requisites mentioned in article 1299 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation. (1202a)

SECTION 6.—*Novation*

ART. 1311. Obligations may be modified by:

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor. (1203)

ART. 1312. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point incompatible with each other. (1204)

ART. 1313. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237. (1205a)

ART. 1314. If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligation shall not give rise to any liability on the part of the original debtor. (n)

ART. 1315. The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except when said insolvency was already existing and of public knowledge, or known to the debtor, when he delegated his debt. (1206a)

ART. 1316. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent. (1207)

ART. 1317. If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event. (n)

ART. 1318. The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor, or when ratification validates acts which are voidable. (1208a)

ART. 1319. If the original obligation was subject to a suspensive or resolutory condition, the new obligation shall be under the same condition, unless it is otherwise stipulated. (n)

ART. 1320. Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in order that it may take effect. (1209a)

ART. 1321. Conventional subrogation of a third person requires the consent of the original parties and of the third person. (n)

ART. 1322. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. (1210a)

ART. 1323. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation. (1212a)

ART. 1324. A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit. (1213)

Title II.—CONTRACTS

CHAPTER 1

GENERAL PROVISIONS

ART. 1325. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. (1254a)

ART. 1326. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)

ART. 1327. Innominate contracts shall be regulated by the stipulations of the parties, by the provisions of Titles I and II of this Book, by the rules governing the most analogous nominate contracts, and by the customs of the place. (n)

ART. 1328. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. (1256a)

ART. 1329. The determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties. (n)

ART. 1330. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances. (n)

ART. 1331. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (1257a)

ART. 1332. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws. (n)

ART. 1333. Creditors are protected in cases of contracts intended to defraud them. (n)

ART. 1334. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. (n)

ART. 1335. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. (1258)

ART. 1336. Real contracts, such as deposit, pledge and commodatum, are not perfected until the delivery of the object of the obligation. (n)

ART. 1337. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)

CHAPTER 2

ESSENTIAL REQUISITES OF CONTRACTS

General Provision

ART. 1338. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established. (1261)

SECTION 1.—*Consent*

ART. 1339. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (1262a)

ART. 1340. An acceptance may be express or implied. (n)

ART. 1341. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with. (n)

ART. 1342. An offer made through an agent is accepted from the time acceptance is communicated to him. (n)

ART. 1343. An offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. (n)

ART. 1344. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. (n)

ART. 1345. Unless it appears otherwise, business advertisements of things for sale are not definite offers, but mere invitations to make an offer. (n)

ART. 1346. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears. (n)

ART. 1347. The following cannot give consent to a contract:

(1) Unemancipated minors;

(2) Insane or demented persons, and deaf-mutes who do not know how to write. (1263a)

ART. 1348. Contracts entered into during a lucid interval are valid. Contracts agreed to in a state of drunkenness or during a hypnotic spell are voidable. (n)

ART. 1349. The incapacity declared in article 1347 is subject to the modifications determined by law, and is understood to be without prejudice to special disqualifications established in the laws. (1264)

ART. 1350. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ART. 1351. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent.

A simple mistake of account shall give rise to its correction. (1266a)

ART. 1352. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n)

ART. 1353. There is no mistake if the party alleging it knew the doubt, contingency or risk affecting the object of the contract. (n)

ART. 1354. Mistake on a doubtful question of law, or on the construction or application thereof, may vitiate consent. (n)

ART. 1355. There is violence when in order to wrest consent, serious or irresistible force is employed.

There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (1267a)

ART. 1356. Violence or intimidation shall annul the obligation, although it may have been employed by a third person who did not take part in the contract. (1268)

ART. 1357. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress. (n)

ART. 1358. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (1269)

ART. 1359. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

ART. 1360. The usual exaggeration in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

ART. 1361. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)

ART. 1362. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake. (n)

ART. 1363. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

ART. 1364. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages. (1270)

ART. 1365. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. (n)

ART. 1366. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (n)

SECTION 2.—*Object of Contracts*

ART. 1367. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract. (1271a)

ART. 1368. Impossible things or services cannot be the object of contracts. (1272)

ART. 1369. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties. (1273)

SECTION 3.—*Cause of Contracts*

ART. 1370. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor. (1274)

ART 1371. The particular motives of the parties in entering into a contract are different from the cause thereof. (n)

ART. 1372. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy. (1275a)

ART. 1373. The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful. (1276)

ART. 1374. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary. (1277)

ART. 1375. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence. (n)

CHAPTER 3

FORMS OF CONTRACTS

ART. 1376. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised. (1278a)

ART. 1377. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

ART. 1378. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles 1403, No. 2 and 1405. (1280a)

CHAPTER 4

REFORMATION OF INSTRUMENTS (n)

ART. 1379. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

ART. 1380. The principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code.

ART. 1381. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.

ART. 1382. If one party was mistaken and the other acted fraudulently or inequitably in such a way that the instrument does not show their true intention, the former may ask for the reformation of the instrument.

ART. 1383. When one party was mistaken and the other knew or believed that the instrument did not state their real agreement, but concealed that fact from the former, the instrument may be reformed.

ART. 1384. When through the ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or of the clerk or typist, the instrument does not express the true intention of the parties, the courts may order that the instrument be reformed.

ART. 1385. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.

ART. 1386. There shall be no reformation in the following cases:

(1) Simple donations *inter vivos* wherein no condition is imposed;

(2) Wills;

(3) When the real agreement is void.

ART. 1387. When one of the parties has brought an action to enforce the instrument, he cannot subsequently ask for its reformation.

ART. 1388. Reformation may be ordered at the instance of either party or his successors in interest, if the mistake was mutual; otherwise, upon petition of the injured party, or his heirs and assigns.

ART. 1389. The procedure for the reformation of instruments shall be governed by rules of court to be promulgated by the Supreme Court.

CHAPTER 5

INTERPRETATION OF CONTRACTS

ART. 1390. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (1281)

ART. 1391. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

ART. 1392. However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree. (1283)

ART. 1393. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual. (1284)

ART. 1394. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (1285)

ART. 1395. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract. (1286)

ART. 1396. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established. (2187)

ART. 1397. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity. (1288)

ART. 1398. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests.

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void. (1289)

ART. 1399. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts. (n)

CHAPTER 6

RESCISSIBLE CONTRACTS

ART. 1400. Contracts validly agreed upon may be rescinded in the cases established by law. (1290)

ART. 1401. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation, if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission. (1291a)

ART. 1402. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

ART. 1403. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. (1294)

ART. 1404. Rescission shall be only to the extent necessary to cover the damages caused. (n)

ART. 1405. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss. (1295)

ART. 1406. Rescission referred to in Nos. 1 and 2 of article 1401 shall not take place with respect to contracts approved by the courts. (1296a)

ART. 1407. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence. (1297a)

ART. 1408. Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.

If there are two or more alienations, the first acquirer shall be liable to fine, and so on successively. (1298a)

ART. 1409. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known. (1299)

CHAPTER 7

VOIDABLE CONTRACTS

ART. 1410. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification. (n)

ART. 1411. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases. (1301a)

ART. 1412. Ratification extinguishes the action to annul a voidable contract. (1309a)

ART. 1413. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right. (1311a)

ART. 1414. Ratification may be effected by the guardian of the incapacitated person. (n)

ART. 1415. Ratification does not require the conformity of the contracting party who has no right to bring the action for annulment. (1312)

ART. 1416. Ratification cleanses the contract from all its defects from the moment it was constituted. (1313)

ART. 1417. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract. (1302a)

ART. 1418. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages. (1303a)

ART. 1419. When the defect of the contract consists in the incapacity of one of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him. (1304)

ART. 1420. Whenever the person obliged by the decree of annulment to return the thing cannot do so because it has been lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interest from the same date. (1307a)

ART. 1421. The action for annulment of contracts shall be extinguished when the thing which is the object thereof is lost through the fraud or fault of the person who has a right to institute the proceedings.

If the right of action is based upon the incapacity of any one of the contracting parties, the loss of the thing shall not be an obstacle to the success of the action, unless said loss took place through the fraud or fault of the plaintiff. (1314a)

ART. 1422. As long as one of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him. (1308)

CHAPTER 8

UNENFORCEABLE CONTRACTS (n)

ART. 1423. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(*a*) An agreement that by its terms is not to be performed within a year from the making thereof;

(*b*) A special promise to answer for the debt, default, or miscarriage of another;

(*c*) An agreement made in consideration of marriage, other than a mutual promise to marry;

(*d*) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(*e*) An agreement for the leasing for a longer perriod than one year, or for the sale of real property or of an interest therein;

(*f*) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

ART. 1424. Unauthorized contracts are governed by article 1337 and the principles of agency in Title X of this Book.

ART. 1425. Contracts infringing the Statute of Frauds, referred to in No. 2 of article 1423, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

ART. 1426. When a contract is enforceable under the Statute of Frauds, and a public document is necessary for its registration in the Registry of Deeds, the parties may avail themselves of the right under article 1377.

ART. 1427. In a contract where both parties are incapable of giving consent, express or implied ratification by the parent, or guardian, as the case may be, of one of the contracting parties shall give the contract the same effect as if only one of them were incapacitated.

If ratification is made by the parents or guardians, as the case may be, of both contracting parties, the contract shall be validated from the inception.

ART. 1428. Unenforceable contracts cannot be assailed by third persons.

CHAPTER 9

VOID OR INEXISTENT CONTRACTS[1]

ART. 1429. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[1] New, except articles 1431 and 1432

ART. 1430. The action or defense for the declaration of the inexistence of a contract does not prescribe.

ART. 1431. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise. (1305)

ART. 1432. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise. (1306)

ART. 1433. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

ART. 1434. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property.

ART. 1435. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person.

ART. 1436. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

ART. 1437. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess.

ART. 1438. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit.

ART. 1439. When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

ART. 1440. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

ART. 1441. The defense of illegality of contracts is not available to third persons whose interests are not directly affected.

ART. 1442. A contract which is the direct result of a previous illegal contract, is also void and inexistent.

Title III.—NATURAL OBLIGATIONS[1]

ART. 1443. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles.

ART. 1444. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.

ART. 1445. When without the knowledge or against the will of the debtor, a third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later voluntarily reimburses the third person, the obligor cannot recover what he has paid.

ART. 1446. When a minor between eighteen and twenty-one years of age who has entered into a contract without the consent of the parent or guardian, after the annulment of the contract voluntarily returns the whole thing or price received, notwithstanding the fact that he has not been benefited thereby, there is no right to demand the thing or price thus returned.

ART. 1447. When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a fungible thing in fulfillment of the obligation, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith. (1160a)

ART. 1448. When, after an action to enforce a civil obligation has failed, the defendant voluntarily performs the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered.

ART. 1449. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.

ART. 1450. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.

Title IV.—ESTOPPEL (*n*)

ART. 1451. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

ART. 1452. The principles of estoppel are hereby adopted insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws.

ART. 1453. Estoppel may be *in pais* or by deed.

ART. 1454. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

ART. 1455. If a person in representation of another sells or alienates a thing, the former cannot subsequently set up his own title as against the buyer or grantee.

[1] New, except article 1447.

ART. 1456. A lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

ART. 1457. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

(1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;

(2) The party precluded must intend that the other should act upon the facts as misrepresented;

(3) The party misled must have been unaware of the true facts; and

(4) The party defrauded must have acted in accordance with the misrepresentation.

ART. 1458. One who has allowed another to assume apparent ownership of personal property for the purpose of making any transfer of it, cannot, if he received the sum for which a pledge has been constituted, set up his own title to defeat the pledge of the property, made by the other to a pledgee who received the same in good faith and for value.

ART. 1459. Estoppel is effective only as between the parties thereto or their successors in interest.

Title V.—TRUSTS (n)

CHAPTER 1

GENERAL PROVISIONS

ART. 1460. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

ART. 1461. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

ART. 1462. The principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, the Rules of Court and special laws are hereby adopted.

CHAPTER 2

EXPRESS TRUSTS

ART. 1463. No express trusts concerning an immovable or any interest therein may be proved by parol evidence.

ART. 1464. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

ART. 1465. No trust shall fail because the trustee appointed declines the designation, unless the contrary should appear in the instrument constituting the trust.

ART. 1466. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary.

CHAPTER 3

IMPLIED TRUSTS

ART. 1467. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in article 1462 shall be applicable.

ART. 1468. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

ART. 1469. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

ART. 1470. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

ART. 1471. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

ART. 1472. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

ART. 1473. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

ART. 1474. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

ART. 1475. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

ART. 1476. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

ART. 1477. An implied trust may be proved by oral evidence.

Title VI.—SALES

CHAPTER 1

NATURE AND FORM OF THE CONTRACT

ART. 1478. By the contract of sale one of the contracting parties obligate himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional. (1445a)

ART. 1479. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. (n)

ART. 1480. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties. (n)

ART. 1481. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void. (n)

ART. 1482. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, in this Title called "future goods."

There may be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen. (n)

ART. 1483. The sole owner of a thing may sell an undivided interest therein. (n)

ART. 1484. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from goods of the same kind and quality, unless a contrary intent appears. (n)

ART. 1485. Things subject to a resolutory condition may be the object of the contract of sale. (n)

ART. 1486. In construing a contract containing provisions characteristic of both the contract of sale and of the contract of agency to sell, the essential clauses of the whole instrument shall be considered. (n)

ART. 1487. A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work. (n)

ART. 1488. If the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of the money or its equivalent; otherwise, it is a sale. (1446a)

ART. 1489. In order that the price may be considered certain, it shall be sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a specified person or persons.

Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.

If the third person or persons acted in bad faith or by mistake, the courts may fix the price.

Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be. (1447a)

ART. 1490. Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. (n)

ART. 1491. If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract. (n)

ART. 1492. The price of securities, grain, liquids, and other things shall also be considered certain, when the price fixed is that which the thing sold would have on a definite day, or in particular exchange or maket, or when an amount is fixed above or below the price on such day, or in such exchange or market, provided said amount be certain. (1448)

ART. 1493. The fixing of the price can never be left to the discretion of one of the parties. How-

ever, if the price fixed by one of the parties accepted by the other, the sale is perfected. (1449a)

ART. 1494. Where the price cannot be determined in accordance with the preceding articles, or in any other manner, the contract is inefficacious. However, if the thing or any part thereof has been delivered to and appropriated by the buyer, he must pay a reasonable price therefor. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (n)

ART. 1495. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

ART. 1496. In case of a sale by auction:

(1) Where goods are put up for sale by auction in lots, each lot is subject of a separate contract of sale.

(2) A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller, unless otherwise provided by law or by stipulation.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer, to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any other person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (n)

ART. 1497. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. (n)

ART. 1498. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price. (n)

ART. 1499. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price. (1451a)

ART. 1500. Any injury to or benefit from the thing sold, after the contract has been perfected, from the moment of the perfection of the contract to the time of delivery, shall be governed by articles 1183 to 1185, and 1282.

This rule shall apply to the sale of fungible things, made independently and for a single price, or without consideration of their weight, number, or measure.

Should fungible things be sold for a price fixed according to weight, number, or measure, the risk shall not be imputed to the vendee until they have been weighed, counted, or measured, and delivered, unless the latter has incurred in delay. (1452a)

ART. 1501. In a contract of sale of goods by description, or by sample, the contract may be rescinded if the bulk of the goods delivered do not correspond with the description or the sample, and if the contract be by sample as well as by description, it is not sufficient that the bulk of goods correspond with the sample if they do not also correspond with the description.

The buyer shall have a reasonable opportunity of comparing the bulk with the description or the sample. (n)

ART. 1502. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract. (1454a)

ART. 1503. Subject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. (n)

ART. 1504. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (1454-A-a)

ART. 1505. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing. (1454-A-a)

ART. 1506. In the cases referred to in the two preceding articles, a stipulation that the installments or rents paid shall not be returned to the vendee or lessee shall be valid insofar as the same may not be unconscionable under the circumstances. (n)

ART. 1507. The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary. (1455a)

ART. 1508. The expropriation of property for public use is governed by special laws. (1456)

CHAPTER 2

CAPACITY TO BUY OR SELL

ART. 1509. All persons who are authorized in this Code to obligate themselves, may enter into a contract of sale, saving the modifications contained in the following articles.

Where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefor. Necessaries are those referred to in article 310. (1457a)

ART. 1510. The husband and the wife cannot sell property to each other, except:

(1) When a separation of property was agreed upon in the marriage settlements; or

(2) When there has been a judicial separation of property under article 211. (1458a)

ART. 1511. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(1) The guardian, the property of the person or persons who may be under his guardianship;

(2) Agents, the property whose administration or sale may have been intrusted to them, unless the consent of the principal has been given;

(3) Executors and administrators, the property of the estate under administrations;

(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government owned or controlled corporation, or institution, the administration of which has been instrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession;

(6) Any others specially disqualified by law. (1459a)

ART. 1512. The prohibitions in the two preceding articles are applicable to sales in legal redemption, compromises and renunciations. (n)

CHAPTER 3

EFFECTS OF THE CONTRACT WHEN THE THING SOLD HAS BEEN LOST

ART. 1513. If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost, the contract shall be without any effect.

But if the thing should have been lost in part only, the vendee may choose between withdrawing from the contract and demanding the remaining part, paying its price in proportion to the total sum agreed upon. (1460a)

ART. 1514. Where the parties purport a sale of specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(1) As avoided; or

(2) As valid in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the agreed price for the goods in which the ownership will pass, if the sale was divisible.

CHAPTER 4

OBLIGATIONS OF THE VENDOR

SECTION 1.—*General Provisions*

ART. 1513. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (1461a)

ART. 1516. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1517 to 1521, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. (n)

SECTION 2.—*Delivery of the Thing Sold*

ART. 1517. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

ART. 1518. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. (1463a)

ART. 1519. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

ART. 1520. There may also be tradition *constitutum possessorium*. (n)

ART. 1521. With respect to incorporeal property, the provisions of the first paragraph of article 1518 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery. (1464)

ART. 1522. When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revest the ownership in the seller by returning or tendering the goods within the time fixed in the contrat, or, if no time has been fixed, within a reasonable time. (n)

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact. (n)

ART. 1523. Where there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier of other bailee for the purpose of transmission to the buyer.

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (n)

ART. 1524. Unless otherwise agreed, the goods remain at the seller's risk until the ownership therein is transferred to the buyer, but when the ownership therein is transferred to the buyer the goods are at the buyer's risk whether actual delivery has been made or not, except that:

(1) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery;

(2) Where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. (n)

ART. 1525. Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Nothing in this Title, however, shall affect:

(1) The provisions of any factors' acts, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(2) The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction;

(3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws. (n)

ART. 1526. Where the seller of goods has a voidable title thereto, but his title has not been voided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (n)

ART. 1527. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. (n)

ART. 1528. A negotiable document of title may be negotiated by delivery:

(1) Where by the terms of the document the carrier, warehouseman. or other bailee isuing the same undertakes to deliver the goods to the bearer; or

(2) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. (n)

ART. 1529. A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. (n)

ART. 1530. If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to bearer, to a specified person or order of a specified person or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this Title. But nothing in this Title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or placing thereon the words "not negotiable," "non-negotiable," or the like. (n)

ART. 1531. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. (n)

ART. 1532. A negotiable document of title may be negotiated:

(1) By the owner thereof; or

(2) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. (n)

ART. 1533. A person to whom a negotiable document of title has been duly negotiated acquires thereby:

(1) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(2) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (n)

ART. 1534. A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification to such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. (n)

ART. 1535. Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (n)

ART. 1536. A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(1) That the document is genuine;

(2) That he has a legal right to negotiate or transfer it;

(3) That he has knowledge of no fact which would impair the validity or worth of the document; and

(4) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (n)

ART. 1537. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. (n)

ART. 1538. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion. (n)

ART. 1539. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in possession of such bailee, be attached by garnishment or otherwise or be levied under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (n)

ART. 1540. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (n)

ART. 1541. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he has one, and if not his residence; but in case of a contract of sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

Where by a contract of sale the seller is bound to send the goods to the buyer, but no time for sending, them is fixed, the seller is bound to send them within a reasonable time.

Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf.

Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (n)

ART. 1542. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest.

In the preceding two paragraphs, if the subject matter is indivisible, the buyer may reject the whole of the goods.

The provisions of this article are subject to any usage of trade, special agreement, or course of dealing between the parties. (n)

ART. 1543. Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in article 1523, first, second and third paragraphs, or unless a contrary intent appears.

Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (n)

ART. 1544. The vendor shall not be bound to deliver the thing sold, if the vendee has not paid him the price, or if no period for the payment has been fixed in the contract. (1466)

ART. 1545. The seller of goods is deemed to be an unpaid seller within the meaning of this Title:

(1) When the whole of the price has not been paid or tendered;

(2) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

In articles 1545 to 1555 the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller. (n)

ART. 1546. Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

(1) A lien on the goods or right to retain them for the price while he is in possession of them;

(2) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;

(3) A right of resale as limited by this Title;

(4) A right to rescind the sale as likewise limited by this Title.

Where the ownership in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage *in transitu* where the ownership has passed to the buyer. (n)

ART. 1547. Subject to the provisions of this Title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(1) Where the goods have been sold without any stipulation as to credit;

(2) Where the goods have been sold on credit, but the term of credit has expired;

(3) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (n)

ART. 1548. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (n)

ART. 1549. The unpaid seller of goods loses his lien thereon:

(1) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the ownership in the goods or the right to the possession thereof;

(2) When the buyer or his agent lawfully obtain possession of the goods;

(3) By waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (n)

ART. 1550. Subject to the provisions of this Title, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (n)

ART. 1551. Goods are in transit within the meaning of the preceding article:

(1) From the time when they are delivered to a carrier by land, water, or air, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(2) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

Goods are no longer in transit within the meaning of the preceding article:

(1) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(2) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that further destination for the goods may have been indicated by the buyer;

(3) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

If the goods are delivered to a ship, freight train, truck, or airplane chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the carrier as such or as agent of the buyer.

If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (n)

ART. 1552. The unpaid seller may exercise his right of stoppage *in transitu* either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. (n)

ART. 1553. Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time, an unpaid seller having a right of lien or having stopped the goods *in transitu* may resell the goods.

He shall not thereafter be liable to the original buyer upon the contract of sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract of sale.

Where a resale is made, as authorized in this article, the buyer acquires a good title as against the original buyer.

It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract of sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the resale was made.

It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. He cannot, however, directly or indirectly buy the goods. (n)

ART. 1554. An unpaid seller having the right of lien or having stopped the goods *in transitu*, may rescind the transfer of title and resume the ownership in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract of sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract.

The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the right of rescission was asserted. (n)

ART. 1555. Subject to the provision of this Title, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage *in transitu* shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage *in transitu*. (n)

ART. 1556. The vendor is not bound to deliver the thing sold in case the vendee should lose the right to make use of the term as provided in article 1218. (1467a)

ART. 1557. The vendor is bound to deliver the thing sold and its accessions and accessories in the condition in which they were upon the perfection of the contract.

All the fruits shall pertain to the vendee from the day on which the contract was perfected. (1468a)

ART. 1558. In case of loss, deterioration or improvement of the thing before its delivery, the rules in article 1209 shall be observed, the vendor being considered the debtor.

ART. 1559. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a)

ART. 1560. If, in the case of the preceding article, there in a greater area or number in the immovable than that stated in the contract, the vendee may accept the area included in the contract and reject the rest. If he accepts the whole area, he must pay for the same at the contract rate. (1470a)

ART. 1561. The provisions of the two preceding articles shall apply to judicial sales. (n)

ART. 1562. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)

ART. 1563. The actions arising from articles 1539 and 1562 shall prescribe in six months, counted from the day of delivery. (1472a)

ART. 1564. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473)

SECTION 3.—*Conditions and Warranties*

ART. 1565. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing. (n)

ART. 1566. Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendeney of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer. (n)

ART. 1567. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgage, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest. (n)

SUBSECTION 1.—*Warranty in Case of Eviction*

ART. 1568. Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall answer for the eviction even though nothing has been said in the contract on the subject.

The contracting parties, however, may increase, diminish, or suppress this legal obligation of the vendor. (1475a)

ART. 1569. The vendee need not appeal from the decision in order that the vendor may become liable for eviction. (n)

ART. 1570. When adverse possession had been commenced before the sale but the prescriptive period is completed after the transfer, the vendor shall not be liable for eviction. (n)

ART. 1571. If the property is sold for nonpayment of taxes due and not made known to the vendee before the sale, the vendor is liable for eviction. (n)

ART. 1572. The judgment debtor is also responsible for eviction in judicial sales, unless it is otherwise decreed in the judgment. (n)

ART. 1573. Any stipulation exempting the vendor from the obligation to answer for eviction shall be void, if he acted in bad faith.

ART. 1574. If the vendee has renounced the right to warranty in case of eviction, and eviction should take place, the vendor shall only pay the value which the thing sold had at the time of the eviction. Should the vendee have made the waiver with knowledge of the risks of eviction and assumed its consequences, the vendor shall not be liable. (1477)

ART. 1575. When the warranty has been agreed upon or nothing has been stipulated on this point, in case eviction occurs, the vendee shall have the right to demand of the vendor:

(1) The return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale;

(2) The income or fruits, if he has been ordered to deliver them to the party who won the suit against him;

(3) The costs of the suit which caused the eviction, and, in a proper case, those of the suit brought against the vendor for the warranty;

(4) The expenses of the contract, if the vendee has paid them;

(5) The damages and interests, and ornamental expenses, if the sale was made in bad faith. (1478)

ART. 1576. Should the vendee lose, by reason of the eviction, a part of the, thing sold of such importance, in relation to the whole, that he would

not have bought it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other encumbrances than those which it had when he acquired it.

He may exercise this right of action, instead of enforcing the vendor's liability for eviction.

The same rule shall be observed when two or more things have been jointly sold for a lump sum, or for a separate price for each of them, if it should clearly appear that the vendee would not have purchased one without the other. (1479a)

ART. 1577. The warranty cannot be enforced until a final judgment has been rendered, whereby the vendee loses the thing acquired or a part thereof. (1480)

ART. 1578. The vendor shall not be obliged to make good the proper warranty, unless he is summoned in the suit for eviction at the instance of the vendee. (1481a)

ART. 1579. The defendant vendee shall ask, within the time fixed in the Rules of Court for answering the complaint, that the vendor be made a co-defendant. (1482a)

ART. 1580. If the immovable sold should be encumbered with any non-apparent burden or servitude, not mentioned in the agreement, of such a nature that it must be presumed that the vendee would not have acquired it had he been aware thereof, he may ask for the rescission of the contract, unless he should prefer the appropriate indemnity. Neither right can be exercised if the non-apparent burden or servitude is recorded in the Registry of Property, unless there is an express warranty that the thing is free from all burdens and encumbrances.

Within one year, to be computed from the execution of the deed, the vendee may bring the action for rescission, or sue for damages.

One year having elapsed, he may only bring an action for damages within an equal period, to be counted from the date on which he discovered the burden or servitude. (1483a)

SUBSECTION 2.—*Warranty Against Hidden Defects of or Encumbrances Upon the Thing Sold*

ART. 1581. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them. (1484a)

ART. 1582. In a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods, as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality. (n)

ART. 1583. In the case of contract of sale of a specified article under its patent or other trade name, there is no warranty as to its fitness for any particular purpose, unless there is a stipulation to the contrary. (n)

ART. 1584. An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade. (n)

ART. 1585. In the case of a contract of sale by sample, if the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (n)

ART. 1586. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold. (1485)

ART. 1587. In the cases of articles 1581, 1582, 1584, 1585 and 1586, the vendee may elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case. (1486a)

ART. 1588. If the thing sold should be lost in consequence of the hidden faults, and the vendor was aware of them, he shall bear the loss, and shall be obliged to return the price and refund the expenses of the contract, with damages. If he was not aware of them, he shall only return the price and interest thereon, and reimburse the expenses of the contract which the vendee might have paid. (1487a)

ART. 1589. If the thing sold had any hidden fault at the time of the sale, and should thereafter be lost by a fortuitous event or through the fault of the vendee, the latter may demand of the vendor the price which he paid, less the value which the thing had when it was lost.

If the vendor acted in bad faith, he shall pay damages to the vendee. (1488a)

ART. 1590. The preceding articles of this Subsection shall be applicable to judicial sales except that the judgment debtor shall not be liable for damages. (1489a)

ART. 1591. Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold. (1490)

ART. 1592. If two or more animals are sold together, whether for a lump sum or for a separate price for each of them, the redhibitory defect of one shall only give rise to its redhibition, and not that of the others; unless it should appear that the vendee would not have purchased the sound animal or animals without the defective one.

The latter case shall be presumed when a team, yoke, pair, or set is bought, even if a separate price has been fixed for each one of the animals composing the same. (1491)

ART. 1593. The provisions of the preceding article with respect to the sale of animals shall in like manner be applicable to the sale of other things. (1492)

ART. 1594. There is no warranty against hidden defects of animals sold at fairs or at public auctions, or of livestock sold as condemned. (1493a)

ART. 1595. The sale of animals suffering from contagious diseases shall be void.

A contract of sale of animals shall also be void if the use or service for which they are acquired has been stated in the contract, and they are found to be unfit therefor. (1494a)

ART. 1596. If the hidden defect of animals, even in case a professional inspection has been made, should be of such a nature that expert knowledge is not sufficient to discover it, the defect shall be considered as redhibitory.

But if the veterinarian, through ignorance or bad faith, should fail to discover or disclose it, he shall be liable for damages. (1495)

ART. 1597. The redhibitory action, based on the faults or defects of animals, must be brought within forty days from the date of their delivery to the vendee.

This action can only be exercised with respect to faults and defects which are determined by law or by local customs. (1496a)

ART. 1598. If the animal should die within three days after its purchase, the vendor shall be liable, if the disease which caused the death existed at the time of the contract. (1497a)

ART. 1599. If the sale be rescinded, the aimmal shall be returned in the condition in which it was sold and delivered, the vendee being answerable for any injury due to his negligence, and not arising from the redhibitory fault or defect. (1498)

ART. 1600. In the sale of animals with redhibitory defects, the vendee shall enjoy the right mentioned in article 1587; but he must make use thereof within the same period which has been fixed for the exercise of the redhibitory action. (1499)

ART. 1601. The form of sale of large cattle shall be governed by special laws. (n)

(To be Continued)