

580 To Dr. Parkon Woo

with Compliments, from
Lin-Chong Chen

中華民國民法

第三編 物 權

(中華民國十九年五月五日起施行)

THE CIVIL CODE OF THE REPUBLIC OF CHINA

BOOK III

Law of Things

(In force from 5th May, 1930)

TRANSLATION

By

S. FRANCIS LIU

A.B. (Oberlin), L.L.B. (Yale), Fellow at
Göttingen, Berlin, and Grenoble Universities, Professor of Law at
The Comparative Law School of China, Member of
Shanghai Bar Association, Etc.,

BOYER P. H. CHU

and

LIN-CHONG CHEN

Obtainable at S. Francis Liu Law Office,
Yokohama Specie Bank Building,
24 Bund Road, Shanghai.
Printed by Shanghai Press, Ltd.
22-24 Juikin Road
Tel. 41052.



上海图书馆藏书



A541 212 0018 9532B



中 華 民 國 民 法

第 三 編 物 權

(中 華 民 國 十 九 年 五 月 五 日 起 施 行)

THE CIVIL CODE OF THE REPUBLIC OF CHINA

BOOK III

Law of Things

(*In force from 5th May, 1930*)

TRANSLATION

By

S. FRANCIS LIU

A.B. (Oberlin), L.L.B. (Yale), Fellow at
Göttingen, Berlin, and Grenoble Universities, Professor of Law at
The Comparative Law School of China, Member of
Shanghai Bar Association, Etc.,

BOYER P. H. CHU

and

LIN-CHOHG CHEN



1519652

PREFACE

The law of things is the kernel of the civil law in any legal system. It, more than any other branch of law, reflects the form of social economy, which in turn constitutes the foundation of the modern state. The translators of this part of the Code, therefore, have done an invaluable service not only to foreign lawyers who want to know the modern Chinese law of property but also to political scientists who wish to get a real insight into the philosophy underlying the present political and social life of China.

A perusal of the present book will show how modern Chinese law steers safely between the Scylla of extreme individualism and the Charybdis of Communistic régime. On the one hand, private ownership is fully recognized and duly protected. On the other hand, property is no longer of absolute nature, but is to be held within the limits of reason and social well-being. A most significant provision is found in Article 773, which reads: "In the absence of restrictions imposed by law and ordinances the right of ownership in land extends both above and underneath it, provided the exercise thereof confers a benefit. The interference from a third party which does not impair the exercise of the right of ownership may not be resisted and restrained." From this it will be seen that while the starting point is still the well-known legal maxim: *Cojus est solum, ejus est ad coelum et ad inferos*, yet the scope of the right of ownership is limited to the extent of actual benefit. This is but one of many instances where the good sense of the Chinese legislators follows the time-honored doctrine of mean.

It is not my purpose to make a summary, however brief, of the law of things or even to write a review of the translation. I may, however, be permitted to say that I have had the privilege of reading over the manuscripts and have found the translation an admirable piece of work. I am particularly interested in the translators' "Notes on The Right of *Dien*", which is a peculiarly Chinese institution, and their explanation of the origin of the institution, seems to me to be very ingenious. On the

one hand, the owner of a land is in need of money; on the other, he does not wish to make an irrevocable alienation of his land, which is looked upon as being "loss of face." So the institution of *Dien* by which he gets a lump sum but retains the title in the land, serves his purpose. Such is their explanation. But to my mind the matter is not quite so simple, there being other factors to be taken into consideration. While the sentimental reason of avoiding a loss of face which would result from an irrevocable alienation of one's real estate may play a part in the invention of *Dien*, it does not seem to be its sole or even its chief cause. To begin with, as the price of *Dien* is usually much lower than the purchase price, it affords to the grantee of the *Dien* a good reason why he should prefer *Dien* to purchase, and there is to the grantee a further advantage in the fact that except in the case of wilful default or gross negligence on his part, he is responsible for the destruction of the property only to the extent of the price of *Dien*. (see Article 422) In the second place, while the owner could have got a bigger sum by sale, yet by retaining the title he will be entitled to the benefit of the enhanced market price of the land when the *Dien* expires. Furthermore, he is entitled to a part compensation when the thing is destroyed by *force majeure*. (see Article 920). This serves as a kind of insurance. It seems to me, therefore, that the *raison d'etre* of this institution is at least partly to be found in the mutual benefits which it secures to both parties.

Let me conclude by pointing out another interesting point in the present Code. Paragraph II Art. 808 provides: "If the treasure-trove is discovered in a movable or an immovable belonging to another, the latter and discoverer each acquires one-half of the interest in the treasure-trove." While this is by no means a rule peculiar to the Chinese law, it may be of interest to the readers to know that an identical rule prevailed as early as under the T'ang Dynasty. (see The Code of T'ang). Many things which the modern Chinese jurists believe are borrowed from other countries are no more than treasure-trove in the inexhaustible history of Chinese institutions!

JOHN C. H. WU

Table of Contents

Chapter I.	General Provisions	....	....	....	....	....	1
Chapter II.	The Right of Ownership	....	....	....	....	....	3
	Title 1. General Provisions	....	....	....	....	....	3
	Title 2. Right of Ownership in Immovables	....	....	....	....	....	4
	Title 3. Right of Ownership in Movables	....	....	....	....	....	11
	Title 4. Co-ownership	....	....	....	....	....	14
Chapter III.	Superficies	....	....	....	....	....	18
Chapter IV.	Emphyteusis	....	....	....	....	....	20
Chapter V.	Servitudes	....	....	....	....	....	22
Chapter VI.	Hypotheca	....	....	....	....	....	24
Chapter VII.	Right of Pledge	....	....	....	....	....	29
	Title 1. Right of Pledge on Movables	....	....	....	....	....	29
	Title 2. Right of Pledge on Rights	....	....	....	....	....	31
Chapter VIII.	The Right of <i>Dien</i>	....	....	....	....	....	34
Chapter IX.	Right of Detention	....	....	....	....	....	38
Chapter X.	Possession	....	....	....	....	....	40

目 錄

第一章	通則	1
第二章	所有權	3
第一節	通則	3
第二節	不動產所有權	4
第三節	動產所有權	11
第四節	共有	14
第三章	地上權	18
第四章	永佃權	20
第五章	地役權	22
第六章	抵押權	24
第七章	質權	29
第一節	動質質權	29
第二節	權利質權	31
第八章	典權	34
第九章	留置權	38
第十章	占有	40

CIVIL CODE BOOK III.

Law Of Things.

Chapter I

General Provisions.

- Art. 757. Real rights may only be created in accordance with the provisions of this Code and other laws.
- Art. 758. The acquisition, creation, loss and modification through acts-in-the-law of real rights relating to immovables shall have no legal effect prior to their registration.
- Art. 759. When real rights relating to immovables are acquired through inheritance, compulsory execution, expropriation for public use or the judgment of a Court, no disposal shall be made of them prior to their registration.
- Art. 760. The creation or transfer of real rights relating to immovables shall be in writing.
- Art. 761. In the absence of the delivery of a movable the transfer of real rights relating thereto shall have no legal effect. But if the transferee is already in possession of the movable property, the transfer shall have legal effect immediately upon the concurrence of the parties therein.

If the transferor continues in possession of the movable after the transfer, an agreement may be concluded between the transferor and the transferee whereby the latter acquires the indirect possession in lieu of delivery.

民 法

第 三 編

物 權

第一章 通則

- 第七百五十七條 物權除本法或其他法律有規定外不得創設
- 第七百五十八條 不動產物權依法律行為而取得設定喪失及變更者非經登記不生效力
- 第七百五十九條 因繼承強制執行公用徵收或法院之判決於登記前已取得不動產物權者非經登記不得處分其物權
- 第七百六十條 不動產物權之移轉或設定應以書面為之
- 第七百六十一條 動產物權之讓與非將動產交付不生效力但受讓人已占有動產者於讓與合意時即生效力
讓與動產物權而讓與人仍繼續占有動產者讓與人與受讓人間得訂立契約使受讓人因此取得間接占有以代交付

If the movable at the time of the transfer is in the possession of a third party, the transferor may cede his right against the third party to the transferee in lieu of delivery,

Art. 762. When the right of ownership and other real rights relating to a single thing are vested in one person, the other real rights are extinguished by virtue of the merger, unless their continuing existence confers a legal advantage upon the owner or any third party.

Art. 763. When real rights other than the rights of ownership and other rights which have the real rights as their object are vested in one person, the other rights are extinguished by virtue of the merger.

The restrictive clause of the preceding article as indicated by "unless" shall *mutatis mutandis* apply to the circumstances of the preceding paragraph.

Art. 764. In the absence of provisions of the law to the contrary real rights are extinguished through waiver.

讓與動產物權如其動產由第三人占有時讓與人得以
對於第三人之返還請求權讓與於受讓人以代交付

第七百六十二條 同一物之所有權及其他物權歸屬於一人者其他物權
因混同而消滅但其他物權之存續於所有人或第三人
有法律上之利益者不在此限

第七百六十三條 所有權以外之物權及以該物權為標的物之權利歸屬
於一人者其權利因混同而消滅
前條但書之規定於前項情形準用之

第七百六十四條 物權除法律另有規定外因拋棄而消滅

CHAPTER II

The Right of Ownership.

Title I

General Provisions.

- Art. 765. Apart from the restrictions imposed by law and ordinances, the owner of a thing may make free use or disposal of the thing he owns and he may appropriate its fruits as well as ward off the interference from others.
- Art. 766. In the absence of provisions of law to the contrary the component parts and the natural fruits of a thing belong to its owner even after their severance.
- Art. 767. The owner may demand the return of a thing from any one who is in possession of the thing without right or has unlawfully deprived him of its possession; he may demand the removal of any infringement upon his right of ownership; he may demand the prevention when an infringement is apprehensible.
- Art. 768. One who has possessed a movable belonging to another with the intention of possessing it as his own openly and peacefully for a period of five years acquires the right of ownership therein.
- Art. 769. One who has possessed a non-registered immovable belonging to another peacefully and continuously for a period of twenty years may apply to have himself registered as its owner.
- Art. 770. One who has openly and peacefully possessed an immovable with the intention of possessing it as

第二章 所有權

第一節 通則

第七百六十五條 所有人於法令限制之範圍內得自由使用收益處分其所有物並排除他人之干涉

第七百六十六條 物之成分及其天然孳息於分離後除法律另有規定外仍屬於其物之所有人

第七百六十七條 所有人對於無權占有或侵奪其所有物者得請求返還之對於妨害其所有權者得請求除去之有妨害其所有權之虞者得請求防止之

第七百六十八條 以所有之意思五年間和平公然占有他人之動產者取得其所有權

第七百六十九條 以所有之意思二十年間和平繼續占有他人未登記之不動產者得請求登記為所有人

第七百七十條 以所有之意思十年間和平繼續占有他人未登記之不

his own for a period of ten years, may apply to have himself registered as its owner, provided he is bona fide and not guilty of negligence at the commencement of his possession.

Art. 771. When the possessor voluntarily abandons the possession or ceases to possess the thing with the intention of possessing it as his own or is unlawfully deprived of the possession by another, the acquisitive prescription is thereby interrupted, unless his possession is recovered in accordance with the provisions of Article 949 or Article 962.

Art. 772. The provisions of the preceding four articles may apply *mutatis mutandis* to the acquisition of property rights other than the right of ownership.

Title II

Right of Ownership in Immovables

Art. 773. In the absence of restrictions imposed by law and ordinances the right of ownership in land extends both above and underneath it, provided the exercise thereof confers a benefit. The interference from a third party which does not impair the exercise of the right of ownership may not be resisted and restrained.

Art. 774. In carrying on industrial enterprises and exercising other rights, the owner of the land shall take care with a view to avoiding any injury to the neighbouring land.

Art. 775. The owner of the lower land may not obstruct the water which flows naturally from the upper land to his land.

When the natural water course which flows

動產而其占有之始為善意並無過失者得請求登記為
所有人

第七百七十一條 占有人自行中止占有或變為不以所有之意思而占有
或其占有為他人侵奪者其所有權之取得時效中斷但
依第九百四十九條或第九百六十二條之規定回復其
占有者不在此限

第七百七十二條 前四條之規定於所有權以外財產權之取得準用之

第二節 不動產所有權

第七百七十三條 土地所有權除法令有限制外於其行使有利益之範圍
內及於土地之上下如他人之干涉無礙其所有權之行
使者不得排除之

第七百七十四條 土地所有人經營工業及行使其他之權利應注意防免
鄰地之損害

第七百七十五條 由高地自然流至之水低地所有人不得妨阻

由高地自然流至之水而為低地所必需者高地所有人

from the upper land to the lower land, is necessary to the latter land, the owner of the former may not stem the entire stream even though the upper land requires it.

Art. 776. If in consequence of the destruction or obstruction of the structures constructed for the purpose of storing, draining or conveying water, damage is done to the land belonging to another or there is danger of damage being done, the owner of the land shall at his own expenses make necessary repairs or dredging or take preventive measures. If there is a custom governing the burden of expenses such custom shall be applied.

Art. 777. The owner of land shall not construct eaves or other structures in such a manner as to cause the rain-water to fall directly upon the neighbouring immovable.

Art. 778. When in consequence of a change of circumstances a water course is obstructed on the lower land, the owner of the upper land may at his own expenses undertake necessary clearance. If there is a custom governing the burden of such expenses, such custom shall be applied.

Art. 779. In drying up the land immersed with water or discharging the water used for domestic, agricultural or industrial purposes to a river or a ditch, the owner of the upper land may direct the water to flow thru the lower land at such place and in such manner as to cause the least damage to the latter land.

Under the circumstances of the preceding paragraph the owner of the upper land shall compensate the owner of the lower land for damages sustained.

縱因其土地之必要不得防堵其全部

第七百七十六條 土地因蓄水排水或引水所設之工作物破潰阻塞致損害及於他人之土地或有致損害之虞者土地所有人應以自己之費用為必要之修繕疏通或預防但其費用之負擔另有習慣者從其習慣

第七百七十七條 土地所有人不得設置屋簷或其他工作物使雨水直注於相鄰之不動產

第七百七十八條 水流如因事變在低地阻塞高地所有人得以自己之費用為必要疏通之工事但其費用之負擔另有習慣者從其習慣

第七百七十九條 高地所有人因使浸水之地乾涸或排泄家用農工業用之水以至河渠或溝道得使其水通過低地但應擇於低地損害最少之處所及方法為之

前項情形高地所有人對於低地所受之損害應支付償金

Art. 780. The owner of land may, in order to facilitate the passage of a water course from his land, use the structures constructed by the owner of the upper or lower land, but he shall bear the expenses for their construction and maintenance in proportion to the benefit he may receive therefrom.

Art. 781. The owner of a spring, well, ditch and water course may make free use of its water, unless there is a special custom to the contrary.

Art. 782. The owner of a spring or well may demand compensation from any person whose industrial enterprise obstructs, diminishes or impurifies the source of water. If the supply of water is essential for drinking purposes or for the exploitation of land, the owner of a spring or well may demand such person to restore it to its original state unless the restoration is impossible.

Art. 783. When water is necessary for household use or the exploitation of land and can only be obtained at excessive expense and labor the owner of the land may request the owner of the neighbouring land to supply him the superfluous water.

Art. 784. The owner of a water course may not alter or widen the stream if the opposite riparian land belongs to another person.

When both riparian lands belong to the owner of the water course, he may alter or widen the stream in such a manner as not to effect the natural course of the downstream.

If there is a custom governing the circumstances of the two preceding paragraphs, such custom shall be applied.

Art. 785. If it is necessary for the owner of a water

第七百八十條 土地所有人因使其土地之水通過得使用高地或低地
所有人所設之工作物但應按其受益之程度負擔該工
作物設置及保存之費用

第七百八十一條 水源地井溝渠及其他水流地之所有人得自由使用其
水但有特別習慣者不在此限

第七百八十二條 水源地或井之所有人對於他人因工事杜絕減少或污
穢其水者得請求損害賠償如其水為飲用或利用土地
所必要者並得請求回復原狀但不能回復原狀者不在
此限

第七百八十三條 土地所有人因其家用或利用土地所必要非以過鉅之
費用及勞力不能得水者得支付償金對鄰地所有人請
求給與有餘之水

第七百八十四條 水流地所有人如對岸之土地屬於他人時不得變更其
水流或寬度
兩岸之土地均屬於水流地所有人者其所有人得變更
其水流或寬度但應留下游自然之水路
前二項情形如另有習慣者從其習慣

第七百八十五條 水流地所有人有設堰之必要者得使其堰附著於對岸

course to construct a dam, he may extend the dam to the opposite riparian land but shall compensate for damages caused.

If the water course is partly owned by the owner of the opposite riparian land, the latter may use the dam as constructed in accordance with the preceding paragraph but shall bear the expenses of the construction and preservation of the dam in proportion to the benefit he may receive therefrom.

If there is a custom governing the circumstances of the two preceding paragraphs, such custom shall be applied.

Art. 786. The owner of land may lay electric wires, water and gas pipes or other pipes above and beneath the land belonging, to another if without doing so the installation of the same would be impossible or would cause him excessive expenses. In doing so he shall select the place and the method which would cause the least damage to the land of another and shall at the same time compensate for damages caused.

In case of a change of circumstances after laying electric wires, water and gas pipes or other pipes in accordance with the preceding paragraph, the owner of the other land may demand an alteration of the installation. The owner of the land shall bear the expenses of the alteration, but if a contrary custom exists, such custom shall be applied.

Art. 787. When a piece of land cannot without appropriate access to a public road be used in the usual way, its owner may pass over the surrounding land

但對於因此所生之損害應支付償金

對岸地所有人如水流地之一部屬於其所有者得使用

前項之堰但應按其受益之程度負擔該堰設置及保存
之費用

前二項情形如另有習慣者從其習慣

第七百八十六條 土地所有人非通過他人之土地不能安設電線水管煤
氣管或其他簡管或雖能安設而需費過鉅者得通過他
人土地之上下而安設之但應擇其損害最少之處所及
方法為之並應支付償金

依前項之規定安設電線水管煤氣管或其他簡管後如
情事有變更時他土地所有人得請求變更其安設
前項變更安設之費用由土地所有人負擔但另有習慣
者從其習慣

第七百八十七條 土地因與公路無適宜之聯絡致不能為通常使用者土
地所有人得通行周圍地以至公路但對於通行地因此

to the public road, but he shall compensate the owner of the surrounding land for damages caused by the right of way.

The person possessing a right of way under the circumstances of the preceding paragraph shall within the scope of necessity, select the place and method which would cause the least damage to the owner of the surrounding land.

Art. 788. The person possessing a right of way may in case of necessity build a road upon the land belonging to another, but he shall compensate for damages caused to the land on which the road is built.

Art. 789. When alienation of a part of land to another person or partition among several persons leaves a portion of land without access to the public road the owner of such land may only pass over the land owned by the transferee or devisees.

A person who has acquired a right of way under the circumstances of the preceding paragraph need not pay any compensation.

Art. 790. The owner of land may forbid another person to trespass upon his land, unless

- 1 such person has a right of way, or
- 2 according to the local custom other persons are suffered to go on unenclosed fields, pasturages, mountains and forests for the purpose of cutting grasses, gathering withered branches and trunks, hunting game or pasturing cattle.

Art. 791. The owner of land must suffer the owner or possessor of a thing or an animal to enter upon the

所受之損害應支付償金

前項情形有通行權人應於通行必要之範圍內擇其周

圍地損害最少之處所及方法爲之

第七百八十八條 有通行權人於必要時得開設道路但對於通行地因此

所受之損害應支付償金

第七百八十九條 因土地一部之讓與或分割致有不通公路之土地者不

通公路土地之所有人因至公路僅得通行受讓人或讓

與人 or 他分割人之所有地

前項情形有通行權人無須支付償金

第七百九十條 土地所有人得禁止他人侵入其地內但有左列情形之

一者不在此限

一 他人有通行權者

二 依地方習慣任他人入其未設圍障之田地牧場

山林刈取雜草採取枯枝枯幹或採集野生物或

放牧牲畜者

第七百九十一條 土地所有人遇他人之物品或動物偶至其地內者應許

land for the purpose of searching and recapturing the thing or animal which has casually come upon the land.

If the owner of land has sustained damage under the circumstances of the preceding paragraph he may demand compensation. Before such compensation being paid he may detain the thing or animal.

Art. 792. The owner of land shall suffer his neighbour to use his land if it is necessary to the latter in constructing or repairing structures on or near the boundary. The owner of land may demand compensation for damages caused.

Art. 793. The owner of land may forbid any intrusion of gases, vapors, odors, smoke, heat, soot, noises, vibrations, or the like from the land belonging to another, unless such intrusion is slight or considered reasonable with respect to the situation of land or local custom.

Art. 794. Any excavation or construction which the owner undertakes on his own land shall not affect or endanger the foundation of the neighbouring land or damage the structures thereon.

Art. 795. When a part or the whole of a building or other structures is in danger of falling and the neighbouring land may be damaged thereby, the owner of the neighbouring land may demand the owner of the building or structures to take necessary precautionary measures.

Art. 796. When the owner of land constructs a building beyond the boundary, the owner of the neighbouring land may not demand its removal or alteration, if he fails to object immediately upon having the

該物品或動物之占有人或所有人入其地內尋查取回]

前項情形土地所有人受有損害者得請求賠償於未受

賠償前得留置其物品或動物

第七百九十二條 土地所有人因鄰地所有人在其疆界或近旁營造或修繕建築物有使用其土地之必要應許鄰地所有人使用其土地但因而受損害者得請求償金

第七百九十三條 土地所有人於他人之土地有煤氣蒸氣臭氣烟氣熱氣灰屑喧囂振動及其他與此相類者侵入時得禁止之但其侵入輕微或按土地形狀地方習慣認為相當者不在此限

第七百九十四條 土地所有人開掘土地或為建築時不得因此使鄰地之地基動搖或發生危險或使鄰地之工作物受其損害

第七百九十五條 建築物或其他工作物之全部或一部有傾倒之危險致鄰地有受損害之虞者鄰地所有人得請求為必要之豫防

第七百九十六條 土地所有人建築房屋逾越疆界者鄰地所有人如知其越界而不即提出異議不得請求移去或變更其建築物

knowledge thereof. He may, however, demand the owner of land to pay reasonable price for the land encroached upon and to compensate for damages sustained.

Art. 797. If branches or roots of bamboos or trees extend beyond the boundary to his land, the owner of the land may demand the owner of the bamboos or trees to remove them within reasonable time.

If the owner of the bamboos or trees fails to remove them within the time as provided for in the preceding paragraph, the owner of land may himself remove such branches and roots extending beyond the boundary.

The provisions of the two preceding paragraphs shall not apply if the branches and roots do not interfere with the use of the land.

Art. 798. Fruits which fall upon neighboring land in the course of nature are deemed to belong to the neighbouring land unless the neighbouring land is for public use.

Art. 799. When a building is partitioned among several persons so that each owns a part, the common parts of the said building and its appurtenances are deemed to be jointly owned by the several owners. The expenses of repairs and other burdens relating to the common parts shall be borne by the several owners in proportion to the value of their parts.

Art. 800. Under the circumstances of the preceding article the owner of a part of the building may, in case of necessity, use the central entrance belonging to another. If there is special agreement or custom to the contrary, such agreement or custom shall be applied,

但得請求土地所有人以相當之價額購買越界部分之
土地如有損害並得請求賠償

第七百九十七條 土地所有人遇鄰地竹木之枝根有逾越疆界者得向竹
木所有人請求於相當期間內刈除之

竹木所有人不於前項期間內刈除者土地所有人得刈
取越界之枝根

越界竹木之枝根如於土地之利用無妨害者不適用前
二項之規定

第七百九十八條 果實自落於鄰地者視為屬於鄰地但鄰地為公用地者
不在此限

第七百九十九條 數人區分一建築物而各有其一部者該建築物及其附
屬物之共用部份推定為各所有人之共有其修繕費及
其他負擔由各所有人按其所有部分之價值分擔之

第八百條 前條情形其一部分之所有人有使用他人正中宅門之
必要者得使用之但另有特約或另有習慣者從其特約

If damage is caused to the owner (of the central entrance) by such use as provided for in the preceding paragraph, compensation shall be paid.

Title III

Right of Ownership in Movables

- Art. 801. When the transferee of a movable is in possession and is protected by the provisions relating to possession, he acquires the right of ownership, although the transferor has no right to make the transfer.
- Art. 802. One who possesses an ownerless movable with the intention of possessing it as his own acquires the right of ownership therein.
- Art. 803. One who finds lost property shall notify its owner; if its owner or his whereabouts is unknown the finder shall give public notice for reclamation or report his finding and deliver the found property to the police authorities or the Organs for Self-Government.
- Art. 804. If the owner of the lost property fails to reclaim it within a reasonable time after the public notice of the finding has been given, the finder shall report to the police authorities or the Organs for Self-Government and hand out the found property for lodgment.
- Art. 805. If the owner of the lost property reclaims it within six months after the finding, the finder, the police authorities or the Organs for Self-Government shall return the thing to the owner after being reimbursed with the expenses for the notice and the lodgment.

或習慣

因前項使用致所有人受損害者應支付償金

第三節 動產所有權

第八百零一條 動產之受讓人占有動產而受關於占有規定之保護者縱讓與人無移轉所有權之權利受讓人仍取得其所有權

第八百零二條 以所有之意思占有無主之動產者取得其所有權

第八百零三條 拾得遺失物者應通知其所有人不知所有人或所有人所在不明者應為招領之揭示或報告警署或自治機關報告時應將其物一併交存

第八百零四條 拾得物經揭示後所有人不於相當期間認領者拾得人應報告警署或自治機關並將其物交存

第八百零五條 遺失物拾得後六個月內所有人認領者拾得人或警署或自治機關於揭示及保管費受償還後應將其物返還之

Under the circumstances of the preceding paragraph the finder may claim from the owner a reward equivalent to three-tenths of the value of the lost property.

Art. 806. If the lost property is of perishable nature or its lodgment requires excessive expenses, the police authorities or the Organs for Self-Government may sell it by auction and lodge the proceeds of its sale.

Art. 807. If the lost property is not reclaimed within six months after finding, the police authorities or the Organs for Self-Government may hand the thing or the proceeds of its sale by auction to the finder as its owner.

Art. 808. The discoverer of a treasure trove who takes possession of it acquires the right of ownership.

If the treasure trove is discovered in a movable or an immovable belonging to another, the latter and the discoverer each acquires one-half of the interest in the treasure trove.

Art. 809. If the treasure trove may serve as materials for the study of science, art, paleology or history the right of ownership therein shall be determined by special law.

Art. 810. The provisions relating to the finding of lost property shall apply to the finding of drifts or sunken things.

Art. 811. The owner of an immovable becomes the owner of a movable which is affixed to the immovable as its essential component part.

Art. 812. If a movable is incorporated with another movable belonging to another person in such a manner

前項情形拾得人對於所有人得請求其物價值十分三
之報酬

第二百零六條 如拾得物有易於腐壞之性質或其保管需費過鉅者警
署或自治機關得拍賣之而存其價金

第二百零七條 遺失物拾得後六個月內所有人未認領者警署或自治
機關應將其物或其拍賣所得之價金交與拾得人歸其
所有

第二百零八條 發見埋藏物而占有者取得其所有權但埋藏物係在他
人所有之動產或不動產中發見者該動產或不動產之
所有人與發見人各取得埋藏物之半

第二百零九條 發見之埋藏物足供學術藝術考古或歷史之資料者其
所有權之歸屬依特別法之規定

第二百一十條 拾得漂流物或沉沒品者適用關於拾得遺失物之規定

第二百一十一條 動產因附合而為不動產之重要成分者不動產所有人
取得動產所有權

第二百一十二條 動產與他人之動產附合非毀損不能分離或分離需費
過鉅者各動產所有人按其動產附合時之價值共有合

that severance would destroy the incorporated thing or would require excessive expenses, the incorporated thing will be jointly owned by both owners whose shares shall correspond to the values of the movables at the time of their incorporation.

If under the circumstances of the preceding paragraph one of the movables may be considered as the principal thing, the owner of the latter acquires the ownership in the incorporated thing.

Art. 813. If a movable is mingled with the movable belonging to another person in such a way as to make them undistinguishable from each other or the distinction would require excessive expenses, the provision of the preceding article shall apply *mutatis mutandis*.

Art. 814. When labor is expended upon the material belonging to another, the owner of the material becomes the owner of the finished thing; but when the value increased by labor apparently exceeds the value of the original material the ownership of the finished thing vests in the laborer.

Art. 815. If the right of ownership in a movable is extinguished according to the provisions of the four preceding articles other rights relating to the same movable are likewise extinguished.

Art. 816. One who is deprived of any right and has sustained damage under the preceding five articles may demand compensation from the other party in accordance with the provisions relating to unjustified benefit.

成物

前項附合之動產有可視為主物者該主物所有人取得

合成物之所有權

第八百一十三條 動產與他人之動產混合不能識別或識別需費過鉅者

準用前條之規定

第八百一十四條 加工於他人之動產者其加工物之所有權屬於材料所有人但因加工所增之價值顯逾材料之價值者其加工物之所有權屬於加工人

第八百一十五條 依前四條之規定動產之所有權消滅者該動產上之其他權利亦同消滅

第八百一十六條 因前五條之規定喪失權利而受損害者得依關於不當得利之規定請求償金

Title IV

Co-Ownership

- Art. 817. Co-owners are those persons who have the right of ownership in one single thing by shares.
- The shares of the co-owners if unspecified are presumed to be equal.
- Art. 818. Each co-owner has the right of user and usufruct with respect to the whole co-owned thing in proportion to his share.
- Art. 819. Each co-owner may freely dispose of his share.
- The unanimous consent of all co-owners is required for disposing of, altering and encumbering the co-owned thing.
- Art. 820. In the absence of a stipulation in the agreement to the contrary, the co-owned thing shall be jointly managed by all co-owners.
- Simple repairs and preservative measures may be undertaken by several co-owners independently.
- The improvement of the co-owned thing shall not be made without the consent of the majority of the co-owners whose shares exceed one-half of the total number of shares.
- Art. 821. Each co-owner may, by virtue of his right of ownership set up claim against any third person with respect to the whole co-owned thing; but a claim for the recovery of the co-owned thing may only be enforced for the benefit of all co-owners.

第四節 共有

- 第八百一十七條 數人按其應有部分對於一物有所有權者為**共有人**
各共有人之應有部分不明者推定其為均等
- 第八百一十八條 各共有人按其應有部分對於共有物之全部有**使用收益**
益之權
- 第八百一十九條 各共有人得自由處分其應有部分
共有物之處分變更及設定負擔應得共有人**全體之同意**
- 第八百二十條 共有物除契約另有訂定外由共有人**共同管理之**
共有物之簡易修繕及其他保存行為得由各**共有人單獨**
獨為之
共有物之改良非經共有人過半數並其應有部分**合計**
已過半數者之同意不得為之
- 第八百二十一條 各共有人對於第三人得就共有物之全部為**本於所有**
權之請求但回復共有物之請求僅得為共有人**全體之**
利益為之

Art. 822. In the absence of a stipulation in the agreement to the contrary the costs of management and other burdens shall be borne by the several co-owners in proportion to their shares.

If one of the co-owners incurs outlays for the co-owned thing and such outlays exceed his share of the burden he may demand reimbursement from other co-owners in proportion to their respective shares.

Art. 823. Each co-owner may at any time demand a division of the co-owned thing, unless the purpose of its use forbids the division or the agreement provides for a period of time during which it may not be divided.

A period of indivisibility which may be provided for by agreement under the preceding paragraph may not exceed five years. If it exceeds five years, it is shortened to five years.

Art. 824. The division of a co-owned thing shall take place in such manner as agreed upon by all co-owners.

In the event of failure to reach an agreement among the co-owners with respect to the manner of division the Court may upon the application of any co-owner order the following:—

- 1 divide the original thing among co-owners, or
- 2 sell the co-owned thing and divide the the proceeds of its sale among co-owners.

If any one of the co-owners cannot upon the division of the original thing receive his proportionate share therein, he may be compensated in money.

第八百二十二條 共有物之管理費及其他擔負除契約另有訂定外應由各共有人按其應有部分分擔之
共有人中之一人就共有物之担負為支付而逾其所應分担之部分者對於其他共有人得按其各應分担之部分請求償還

第八百二十三條 各共有人得隨時請求分割共有物但因物之使用目的不能分割或契約訂有不分割之期限者不在此限
前項契約所定不分割之期限不得逾五年逾五年者縮短為五年

第八百二十四條 共有物之分割依共有人協議之方法行之
分割之方法不能協議決定者法院得因任何共有人之聲請命為左列之分配

- 一 以原物分配於各共有人
- 二 變賣共有物以價金分配於各共有人

以原物為分配時如共有人中有人不能按其應有部分受分配者得以金錢補償之

Art. 825. Each co-owner according to this share warrants as a seller to other co-owners for the things they receive in consequence of the proportional division of the co-owned thing.

Art. 826. Each divisee shall after the division of the co-owned thing preserve the certificate for the thing he may receive.

One who receives the largest share of the co-owned thing shall preserve the certificate for the co-owned thing. If no person receives the largest share the custody of the certificate (for the co-owned thing) may be determined by an agreement among the divisees. If it cannot be determined by agreement, the Court may, upon application, appoint any divisee for the purpose.

Any divisee may demand another to grant him the use of the certificate in his custody.

Art. 827. Co-owners in common are persons who co-own a thing by virtue of a common relation which results from a provision of law or an agreement among parties.

The co-owners in common have rights over the whole of the co-owned thing.

Art. 828. The rights and the obligations of co-owners in common are determined in accordance with the provision of law or their agreement whereby their common relation is regulated.

In the absence of any provision of law or stipulation in the agreement to the contrary as mentioned in the preceding paragraph, the disposal of the thing co-owned in common and the exercise of other rights relating thereto require the unanimous consent of all co-owners in common.

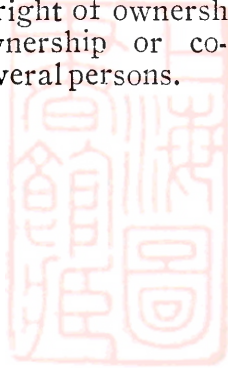
第八百二十五條 各共有人對於他共有人因分割而得之物按其應有部分負與出賣人同一之担保責任

第八百二十六條 共有物分割後各分割人應保存其所得物之證書
共有物分割後關於共有物之證書歸取得最大部分之人保存之無取得最大部分者由分割人協議定之不能協議決定者得聲請法院指定之

第八百二十七條 依法律規定或依契約成一共同關係之數人基於其共同關係而共有一物者為共同共有人
各共同共有人之權利及於共同共有物之全部

第八百二十八條 共同共有人之權利義務依其共同關係所由規定之法律或契約定之
除前項之法律或契約另有規定外共同共有物之處分及其他之權利行使應得共同共有人全體之同意

- Art. 829. Each co-owner in common may not, during the continuance of the common relation demand the division of the thing co-owned in common.
- Art. 830. The co-ownership in common is extinguished upon the termination of the common relation or the transfer of the thing co-owned in common to another. In the absence of provisions of law to the contrary the manner of division of a thing co-owned in common shall conform to the provisions of law governing the division of a co-owned thing
- Art. 831. The provisions under this title shall apply *mutatis mutandis* to the property rights other than the right of ownership, which are subject to the co-ownership or co-ownership in common among several persons.



第八百二十九條 共同關係存續中各共同共有人不得請求分割其共同共有物

第八百三十條 共同共有之關係自共同關係終止或因共同共有物之讓與而消滅
共同共有物分割之方法除法律另有規定外應依關於共有物分割之規定

第八百三十一條 本節規定於所有權以外之財產權由數人共有或共同共有者準用之



CHAPTER III

Surperficiaries.

Art. 832. Surperficiaries is the right to have (to construct and maintain) buildings or other structures or to plant trees or bamboos upon the land belonging to another.

Art. 833. The provisions of Articles 774 to 798 shall apply *mutatis mutandis* among the superficiaries or between a surperficiary and the owner of the land.

Art. 834. If the term of surperficiaries is not fixed, the surperficiary may at any time waive his rights unless there is a custom to the contrary.

The waiver under the preceding paragraph shall be effected by a declaration of intention to the owner of the land.

Art. 835. If the payment of ground-rent is agreed upon the surperficiary shall upon waiving his right give notice to the owner of the land one year in advance or pay one year's ground rent which is not yet due.

Art. 836. In the absence of a custom to the contrary the owner of the land may rescind the surperficiaries when the surperficiary is in arrears with the payment of rents which is equivalent to the total of two years' rents.

The rescission as provided for in the preceding paragraph shall be effected by a declaration of intention to the surperficiary.

Art. 837. The surperficiary may not demand the remission or the reduction of the rent even if the use of the land is impaired by *force majeure*.

第三章 地上權

第八百三十二條 稱地上權者謂以在他人土地上有建築物或其他工作物或竹木爲目的而使用其土地之權

第八百三十三條 第七百七十四條至第七百九十八條之規定於地上權人間或地上權人與土地所有人間準用之

第八百三十四條 地上權未定有期限者地上權人得隨時拋棄其權利但另有習慣者不在此限
前項拋棄應向土地所有人以意思表示爲之

第八百三十五條 有支付地租之訂定者其地上權人拋棄權利時應於一年前通知土地所有人或支付未到支付期之一年分地租

第八百三十六條 地上權人積欠地租達二年之總額者除另有習慣外土地所有人得撤銷其地上權
前項撤銷應向地上權人以意思表示爲之

第八百三十七條 地上權人縱因不可抗力妨礙其土地之使用不得請求免除或減少租金

Art. 838. In the absence of a stipulation in an agreement or a custom to the contrary the surperficiary may transfer his right to another person.

Art. 839. Upon the termination of surperficies the surperficiary may remove the structures, trees and bamboos from the land but shall restore the land to its original state.

Under the circumstances of the preceding paragraph, the surperficiary may not refuse the offer of the owner of the land to purchase the structures, trees and bamboos at the current price.

Art. 840. When the surperficies is terminated upon the expiration of its term, the owner of the land shall reimburse the surperficiary for the buildings on the land according to its current price. If there is a stipulation in the agreement, such stipulation shall be applied.

The owner of the land may prior to the expiration of the term demand the surperficiary to extend its term within the period as the building may be used. If the surperficiary objects to the extension he may not demand the reimbursement as provided for in the preceding paragraph.

Art. 841. The surperficies is not terminated through the destruction of the structures, or trees or bamboos on the land.

第八百三十八條 地上權人得將其權利讓與他人但契約另有訂定或另有習慣者不在此限

第八百三十九條 地上權消滅時地上權人得取回其工作物及竹木但應回復土地原狀

前項情形土地所有人以時價購買其工作物或竹木者地上權人不能拒絕

第八百四十條 地上權人之工作物為建築物者如地上權因存續期間屆滿而消滅土地所有人應按該建築物之時價為補償但契約另有訂定者從其訂定

土地所有人於地上權存續期間屆滿前得請求地上權人於建築物可得使用之期限內延長地上權之期間地上權人拒絕延長者不得請求前項之補償

第八百四十一條 地上權不因工作物或竹木之滅失而消滅

CHAPTER IV

Emphyteusis.

- Art. 842. Emphyteusis is the right permanently to do farming or pasturing on the land belonging to another against the payment of a ground-rent.
Emphyteusis is deemed to be a lease if its term is fixed at its creation. The provisions of law governing lease shall be applied.
- Art. 843. Emphyteusis is transferable.
- Art. 844. The emphyteuta may demand reduction or remission of the ground-rent upon the failure or decrease of the usufructuary revenue in consequence of *force majeure*.
- Art. 845. The emphyteuta may not lease the land to another.
The owner of the land may rescind the emphyteusis upon the emphyteuta's violation of the provision of the preceding paragraph.
- Art. 846. In the absence of a custom to the contrary the owner of the land may rescind the emphyteusis, when the ground-rents in arrears are equivalent to the total amount of two years' ground-rent.
- Art. 847. The rescission of the emphyteusis under the two preceding articles shall be effected by a declaration of intention to the emphyteuta.
- Art. 848. The provision of article 839 shall apply *mutatis mutandis* to the emphyteusis.
- Art. 849. When the emphyteusis is transferred to a third person such third person shall pay the owner of

第四章 永佃權

第八百四十二條 稱永佃權者謂支付佃租永久在他人土地上為耕作或
牧畜之權

永佃權之設定定有期限者視為租賃適用關於租賃之
規定

第八百四十三條 永佃權人得將其權利讓與他人

第八百四十四條 永佃權人因不可抗力致其收益減少或全無者得請求
減少或免除佃租

第八百四十五條 永佃權人不得將土地出租於他人

永佃權人違反前項之規定者土地所有人得撤佃

第八百四十六條 永佃權人積欠地租達二年之總額者除另有習慣外土
地所有人得撤佃

第八百四十七條 前二條之撤佃應向永佃權人以意思表示為之

第八百四十八條 第八百三十九條之規定於永佃權準用之

第八百四十九條 永佃權人讓與其權利於第三人者所有前永佃權人對

the land all the ground-rents owed by the preceding emphyteuta.

Art. 850. The provisions of Articles 774 to 798 shall *mutatis mutandis* apply among the emphyteutae or between the emphyteuta and the owner of the land.



於土地所有人所欠之租額由該第三人負償還之責

第八百五十條 第七百七十四條至第七百九十八條之規定於永佃權

人間或永佃權人與土地所有人間準用之



CHAPTER V

Servitudes.

- Art. 851. Servitude is the right to use the land belonging to another for the convenience of one's own land.
- Art. 852. Servitudes when exercised continuously and openly are acquired through prescription.
- Art. 853. Servitudes may not be transferred apart from the dominant tenement or be the object of other rights.
- Art. 854. The person enjoying servitude may do necessary acts for the purpose of its exercise and maintenance, but he shall select the place and method which would cause the least damage to the servient tenement.
- Art. 855. The person enjoying a servitude has the duty to maintain structures which he constructs for the purpose of exercising his servitude.
- The owner of the servient tenement may use the structures under the preceding paragraph, unless his user would interfere with the exercise of the servitude.
- Under the circumstances of the preceding paragraph the owner of the servient tenement shall bear the expenses for the maintenance of the structures in proportion to the benefit he receives from the user.
- Art. 856. The servitude continues to exist for the benefit of the resultant parts after the division of the servient tenement; but if the exercise of the servitude is according to its nature intended only

第五章 地役權

第八百五十一條 稱地役權者謂以他人土地供自己土地便宜之用之權

第八百五十二條 地役權以繼續並表見者為限因時效而取得

第八百五十三條 地役權不得由需役地分離而為讓與或為其他權利之標的物

第八百五十四條 地役權人因行使或維持其權利得為必要之行為但應擇於供役地損害最少之處所及方法為之

第八百五十五條 地役權人因行使權利而為設置者有維持其設置之義務

供役地所有人得使用前項之設置但有礙地役權之行使者不在此限

前項情形供役地所有人應按其受益之程度分擔維持其設置之費用

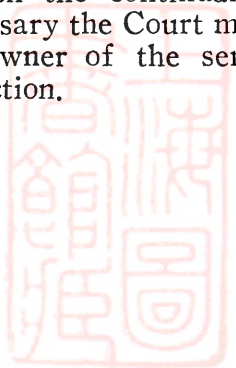
第八百五十六條 需地役經分割者其地役權為各部分之利益仍為存續但地役權之行使依其性質祇關於需役地之一部分者

for one part of the dominant tenement, then it continues to exist with respect to such part only.

Art. 857. Upon the division of the servient tenement a servitude continues to exist with respect to the resultant parts, but if the servitude is according to its nature only related to one part of the servient tenement, then it continues to exist with respect to such part only.

Art. 858. The provisions of article 767 shall *mutatis mutandis* apply to servitudes.

Art. 859. When the continuance of the servitude is not necessary the Court may upon the application of the owner of the servient tenement declare its extinction.



僅就該部分仍為存續

第八百五十七條 供役地經分割者地役權就其各部分仍為存續但地役權之行使依其性質祇關於供役地之一部分者僅對於該部分仍為存續

第八百五十八條 第七百六十七條之規定於地役權準用之

第八百五十九條 地役權無存續之必要時法院因供地役所有人之聲請得宣告地役權消滅



CHAPTER VI

Hypotheca.

- Art. 860. Hypotheca is the right to obtain satisfaction out of the proceeds of sale of immovables which are given by the debtor or a third person as security without their possession being transferred.
- Art. 861. In the absence of a stipulation in an agreement to the contrary, hypotheca offers security to the principal debt, its interest, its dilatory interest and the expenses for the enforcement of the hypotheca.
- Art. 862. The legal effect of the hypotheca extends to the accessories and accessory rights of the hypothecated thing.
- The provision of the preceding paragraph does not affect the rights to the accessories acquired by a third person prior to the creation of the hypotheca.
- Art. 863. The legal effect of hypotheca extends to the natural fruits severed from the hypothecated thing after the latter has been seized in attachment proceedings.
- Art. 864. The legal effect of hypotheca extends to the legal fruits collectable by the grantor of hypotheca from the hypothecated thing after the latter has been seized in attachment proceedings. The fact that the hypothecated thing has been seized cannot be set up without previous notice by the grantee of hypotheca against the person who is under the duty to pay the legal fruits.
- Art. 865. When the owner of an immovable creates several hypothecae to secure several debts, the

第六章 抵押權

第八百六十條 稱抵押權者謂對於債務人或第三人不移轉占有而供擔保之不動產得就其賣得價金受清償之權

第八百六十一條 抵押權所擔保者為原債權利息遲延利息及實行抵押權之費用但契約另有訂定者不在此限

第八百六十二條 抵押權之效力及於抵押物之從物與從權利
第三人於抵押權設定前就從物取得之權利不受前項規定之影響

第八百六十三條 抵押權之效力及於抵押物扣押後由抵押物分離之天然孳息

第八百六十四條 抵押權之效力及於抵押物扣押後抵押人就抵押物得收取之法定孳息但抵押權人非以扣押抵押物之事情通知應清償法定孳息之義務人不得與之對抗

第八百六十五條 不動產所有人因擔保數債權就同一不動產設定數抵

priority of the hypotheca is determined by the order of their registration.

Art. 866. The owner of an immovable charged with a hypotheca may create superficies and other rights on the same immovable, but the hypotheca is not affected thereby.

Art. 867. The owner of an immovable charged with hypotheca may transfer it to another person, but the hypotheca is not affected thereby.

Art. 868. The hypotheca is not affected, when the hypothecated immovable is divided or one part of it is transferred or one of the several immovables jointly securing a debt is transferred to another person.

Art. 869. The hypotheca is not affected, when a debt secured by hypotheca is divided among several creditors or one part of it is assigned to a new creditor.

The provision of the preceding paragraph shall apply when the burden of a debt is divided among several debtors.

Art. 870. The hypotheca shall not be transferred apart from the debt and shall not serve as security for debts other than the original one.

Art. 871. When the act of the grantor of the hypotheca tends to diminish the value of the hypothecated thing the grantee of the hypotheca may demand the former to refrain from such acts. In case of emergency the grantee may make necessary disposal of the hypothecated thing for the purpose of its preservation.

The grantor shall bear the expenses resulting

押權者其次序依登記之先後定之

第八百六十六條 不動產所有人設定抵押權後於同一不動產上得設定地上權及其他權利但其抵押權不因此而受影響

第八百六十七條 不動產所有人設定抵押權後得將不動產讓與他人但其抵押權不因此而受影響

第八百六十八條 抵押之不動產如經分割或讓與其一部或擔保一債權之數不動產而以其一讓與他人者其抵押權不因此而受影響

第八百六十九條 以抵押權擔保之債權如經分割或讓與其一部者其抵押權不因此而受影響

前項規定於債務分割時適用之

第八百七十條 抵押權不得由債權分離而為讓與或為其他債權之担保

第八百七十一條 抵押人之行為足使抵押物之價值減少者抵押權人得請求停止其行為如有急迫之情事抵押權人得自為必

要之保全處分

from the making of the demand or the disposal in accordance with the preceding paragraph.

Art. 872. When the value of the hypothecated thing is diminished, the grantee may demand the grantor to restore it to its original state or to provide further security equivalent to the value diminished.

When the diminution in the value of the hypothecated property is due to circumstances for which the grantor is not responsible, the grantee may demand the grantor to provide security to the extent of the compensation the grantor may receive.

Art. 873. When the debt is not paid at its maturity the grantee of the hypotheca may apply to the Court for the sale of the hypothecated thing by auction and obtain satisfaction out of the proceeds of sale.

A stipulation in the agreement to the effect that the ownership in the hypothecated thing would be vested in the grantee upon the grantor's default to pay the debt at its maturity is void.

Art. 874. The proceeds of sale of the hypothecated thing shall be distributed to the grantees of hypotheca according to the order of their several hypothecae.

If several hypothecae are of the same order the proceeds of sale shall be equally distributed among the grantees.

Art. 875. When several immovables secure one single debt and no apportionment of the encumbrance is made, the grantee of the hypothecae may obtain satisfaction of the whole or a part of the debt out of the proceeds of sale of any hypothecated immovable.

Art. 876. When the land and a building thereon are

因前項請求或處分所生之費用由抵押人負擔

第八百七十二條 抵押物價值減少時抵押權人得請求抵押人回復抵押物之原狀或提出與減少價額相當之担保

抵押物之價值因非可歸責於抵押人之事由致減少者抵押權人僅於抵押人得受損害賠償之限度內請求提出擔保

第八百七十三條 抵押權人於債權已屆清償期而未受清償者得聲請法院拍賣抵押物就其賣得價金而受清償

約定於債權已屆清償期而未為清償時抵押物之所有權移屬於抵押權人者其約定為無效

第八百七十四條 抵押物賣得之價金按各抵押權人之次序分配之其次序同者平均分配之

第八百七十五條 為同一債權之擔保於數不動產上設定抵押權而未限定各個不動產所負擔之金額者抵押權人得就各個不動產賣得之價金受債權全部或一部之清償

第八百七十六條 土地及其土地上之建築物同屬於一人所有而僅以土

owned by one person and only the land or the building is hypothecated the superficies is deemed to have been created when the hypothecated thing is sold by auction. The ground-rent for the land is to be agreed upon by the parties. If the parties fail to agree, the Court may, upon application, determine it.

When the land and a building thereon are owned by one person and both the land and the building are hypothecated, the provision of the preceding paragraph shall apply, if the successful bidders for the land and the building at the auction are different persons.

Art. 877, When the owner of the land after having hypothecated his land erects a building thereon, the grantee of the hypotheca may in case of necessity sell by auction the building together with the land, but he has no priority of satisfaction from the proceeds of sale of the building.

Art. 878. After the maturity of the secured debt the grantee of the hypotheca may for the purpose of obtaining satisfaction enter into an agreement with the grantor whereby he acquires the ownership of the hypothecated property or the right to dispose of the same in other manner than by auction, unless the interests of other grantees are injured thereby.

Art. 879. When a third person who grants a hypotheca as security for a debt of another, satisfies the debt on the debtor's behalf or when he is deprived of his ownership of the hypothecated property by the execution of the hypotheca by the grantee, he has the right to claim reimbursement from the

地或僅以建築物為抵押者於抵押物拍賣時視為已有
地上權之設定其地租由當事人協議定之協議不諧時
得聲請法院定之

土地及其土地上之建築物同屬於一人所有而以土地
及建築物為抵押者如經拍賣其土地與建築物之拍定
人各異時適用前項之規定

第八百七十七條 土地所有人於設定抵押權後在抵押之土地上營造建
築物者抵押權人於必要時得將其建築物與土地併付
拍賣但對於建築物之價金無優先受清償之權

第八百七十八條 抵債權人於債權清償期屆滿後為受清償得訂立契約
取得抵押物之所有權或用拍賣以外之方法處分抵押
物但有害於其他抵押權人之利益者不在此限

第八百七十九條 為債務人設定抵押權之第三人代為清償債務或因抵
押權人實行抵押權致失抵押物之所有權時依關於保

debtor in accordance with the provisions relating to surety.

Art. 880. When a debt secured by a hypotheca is extinguished through prescription, the hypotheca is also extinguished, if the grantee fails to enforce it within five years after the debt is barred by the completion of the extinctive prescription.

Art. 881. The hypotheca is extinguished through the destruction of the hypothecated thing; but if there is a compensation obtainable for the destruction, the latter shall be distributed among several grantees of the hypotheca in accordance with the order of their hypothecae.

Art. 882. Surperficies, emphyteusis and the right of *Dien** may be the object of hypotheca.

Art. 883. The provisions of this Chapter relating to hypotheca shall apply *mutatis mutandis* to the hypotheca allowed under the preceding articles as well as the hypotheca created by force of law.

*See Translators' Notes on the Right of *Dien*, p. 48

證之規定對於債務人有求償權

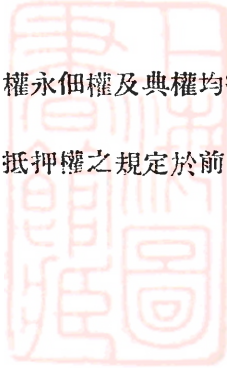
第八百八十條 以抵押權擔保之債權其請求權已因時效而消滅如抵押權人於消滅時效完成後五年間不實行其抵押權者其抵押權消滅

第八百八十一條 抵押權因抵押物滅失而消滅但因滅失得受之賠償金

應按各抵押權人之次序分配之

第八百八十二條 地上權永佃權及典權均得為抵押權之標的物

第八百八十三條 本章抵押權之規定於前條抵押權及法定抵押權準用之



CHAPTER VII
RIGHT OF PLEDGE

Title I

Right of Pledge on Movables.

- Art. 884. The right of pledge to a movable is the right to satisfy a claim out of the proceeds of the sale of the movable, the possession of which is transferred to the creditor by the debtor or a third person as security for the claim.
- Art. 885. The creation of a right of pledge shall have legal effect when the possession (of the pledged property) is transferred.
The pledgee shall not permit the pledgor to have the possession of the pledged movable on his behalf.
- Art. 886. If the pledgee's possession of the movable is protected by provisions governing possession, the pledgee acquires the right of pledge, although the pledgor has no right to dispose of the pledged movable.
- Art. 887. In the absence of a stipulation in the agreement to the contrary, the right of pledge serves as security for the principal debt, its interest, its dilatory interest, costs of enforcement of the pledge and also damages caused by hidden defects in the pledged movable.
- Art. 888. The pledgee shall in managing the pledged movable exercise such care as is required of a good custodian.
- Art. 889. In the absence of a stipulation in the agreement to the contrary, the pledgee has the right to

第七章 質 權

第一節 動產質權

第八百八十四條 稱動產質權者謂因擔保債權占有由債務人或第三人移交之動產得就其賣得價金受清償之權

第八百八十五條 質權之設定因移轉占有而生效力

質權人不得使出質人代自己占有質物

第八百八十六條 質權人占有動產而受關於占有規定之保護者縱出質人無處分其質物之權利質權人仍取得質權

第八百八十七條 質權所擔保者為原債權利息遲延利息實行質權之費用及因質物隱有瑕疵而生之損害賠償但契約另有訂定者不在此限

第八百八十八條 質權人應以善良管理人之注意保管質物

第八百八十九條 質權人得收取質物所生之孳息但契約另有訂定者不

appropriate the fruits from the pledged movable.

Art. 890. If the pledgee is entitled to appropriate the fruits of the pledged movable he shall exercise such care as he would bestow on the management of his own property, and shall render an account for fruits appropriated.

The fruits which are appropriated in accordance with the preceding paragraph shall be applied to pay the expenses of the appropriation, then to cover the interest on the principal debt, and lastly to satisfy the principal debt itself.

Art. 891. During the existence of the right of pledge, the pledgee may on his own responsibility sub-pledge the pledged movable to a third person but is responsible for damages which may result from sub-pledging, even though caused by force majeure.

Art. 892. When the deterioration of the pledged thing is apprehensible or its value has apparently diminished, thus affecting the pledgee's rights, the bledgee may sell the pledged thing by auction and hold the proceeds of sale in lieu of the pledged thing.

Art. 893. When the claim is not satisfied at its maturity the pledgee may sell the pledged thing by auction and apply the proceeds of the sale to the satisfaction of the claim.

A stipulation by which the title of the pledged thing will be vested in the pledgee upon the pledgor's default at maturity of the claim is invalid.

Art. 894. Under the circumstances of the preceding two articles the pledgee shall prior to the sale at auction notify the pledgor unless such notice is impracticable.

- 在此限
- 第八百九十條 質權人有收取質物所生孳息之權利者應以對於自己
財產同一之注意收取孳息並為計算
前項孳息先抵充收取孳息之費用次抵原債權之利息
次抵原債權
- 第八百九十一條 質權人於質權存續中得以自己之責任將質物轉質於
第三人其因轉質所受不可抗力之損失亦應負責
- 第八百九十二條 因質物有敗壞之虞或其價值顯有減少足以害及質權
人之權利者質權人得拍賣質物以其賣得價金代充質
物
- 第八百九十三條 質權人於債權已屆清償期而未受清償者得拍賣質物
就其賣得價金而受清償
約定於債權已屆清償期而未為清償時質物之所有權
移屬於質權人者其約定為無效
- 第八百九十四條 前二條情形質權人應於拍賣前通知出質人但不能通
知者不在此限

- Art. 895. The provision of Article 878 shall *mutatis mutandis* apply to the right of pledge on movables.
- Art. 896. The pledgee shall upon the extinction of the secured claim return the pledged thing to the person who is entitled to receive it.
- Art. 897. The right of pledge to a movable is extinguished when the pledged thing is returned to the pledgor.
- When upon the return of the pledged thing the continuing existence of the right of pledge is reserved, such reservation is invalid.
- Art. 898. The right of pledge to a movable is extinguished if the pledgee is deprived of the possession of the pledged thing and may not claim its return.
- Art. 899. The right of pledge to a movable is extinguished when the pledged thing is destroyed. If compensation is obtainable by reason of its destruction the pledgee may apply such compensation to the satisfaction of the claim.

Title II

RIGHT OF PLEDGE ON RIGHTS

- Art. 900. Assignable claims and all other rights may be the object of the right of pledge.
- Art. 901. In the absence of the provisions in this Title to the contrary, the provisions relating to the right of pledge on movables shall apply *mutatis mutandis* to the right of pledge on rights.
- Art. 902. In the absence of the provisions in this Title to the contrary, the right of pledge on rights shall be created in accordance with the provisions relating to the assignment of rights.

- 第八百九十五條 第八百七十八條之規定於動產質權準用之
- 第八百九十六條 動產質權所擔保之債權消滅時質權人應將質物返還於有受領權之人
- 第八百九十七條 動產質權因質權人返還質物於出質人而消滅
返還質物時為質權繼續存在之保留者其保留無效
- 第八百九十八條 質權人喪失其質物之占有不能請求返還者其動產質權消滅
- 第八百九十九條 動產質權因質物滅失而消滅如因滅失得受賠償金者質權人得就賠償金取償

第二節 權利質權

- 第九百條 可讓與之債權及其他權利均得為質權之標的物
- 第九百零一條 權利質權除本節有規定外準用關於動產質權之規定
- 第九百零二條 權利質權之設定除本節有規定外應依關於其權利讓與之規定為之

- Art. 903. The pledgor shall not by an act-in-the-law extinguish or modify the pledged rights without the pledgee's consent.
- Art. 904. If a claim is the object of the pledge, it shall be created in writing. If the claim is evidenced by a certificate, said certificate shall be delivered to the creditor (pledgee).
- Art. 905. If the pledged claim matures prior to the secured claim, the pledgee may demand the debtor to lodge the object of performance.
- Art. 906. If the pledged claim matures after the secured claim, the pledgee may after maturity of the latter demand performance directly from the debtor. If the pledged claim is a money claim the pledgee may only demand such part of the performance as shall correspond to the amount of the secured claim.
- Art. 907. When the debtor of the pledged claim after being notified of the pledge tenders the performance to either the pledgor or pledgee he shall obtain the consent of the other. If the other party does not agree, the debtor shall lodge the object of performance.
- Art. 908. When instruments to bearer are pledged, the pledge is created upon the delivery of the instruments to the pledgor. When other valuable instruments are pledged, it shall be created by endorsement.
- Art. 909. When instruments to bearer, negotiable instruments, instruments which are assignable by endorsement are pledged, the pledgee may collect whatever is due on the instruments, although the secured claim is not yet mature.

- 第九百零三條 爲質權標的物之權利非經質權人之同意出質人不得以法律行爲使其消滅或變更
- 第九百零四條 以債權爲標的物之質權其設定應以書面爲之如債權有證書者並應交付其證書於債權人
- 第九百零五條 爲質權標的物之債權其清償期先於其所擔保債權之清償期者質權人得請求債務人提存其爲清償之給付物
- 第九百零六條 爲質權標的物之債權其清償期後於其所擔保債權之清償期者質權人於其清償期屆滿時得直接向債務人請求給付如係金錢債權僅得就自己對於出質人之債權額爲給付之請求
- 第九百零七條 爲質權標的物之債權其債務人受質權設定之通知者如向出質人或質權人一方爲清償時應得他方之同意他方不同意時債務人應提存其爲清償之給付物
- 第九百零八條 質權以無記名證券爲標的物者因交付其證券於質權人而生設定質權之效力以其他之有價證券爲標的物者並應依背書方法爲之
- 第九百零九條 質權以無記名證券票據或其他依背書而讓與之證券爲標的物者其所擔保之債權縱未屆清償期質權人仍得收取證券上應受之給付如有預行通知證券債務人

When notice to the debtor under the instruments is necessary and when the pledgee is entitled to give the notice, the debtor may only tender his performance to the pledgee.

Art. 910. When valuable instruments are pledged, the effect of the pledge also reach their accessory rights, such as interest coupons, annuity and dividend certificates, provided the latter are delivered to the pledgee.



之必要並有爲通知之權利債務人亦僅得向質權人爲
給付

第九百一十條 質權以有價證券爲標的物者其附屬於該證券之利息
證券定期金證券或分配利益證券以已交付於質權人
者爲限其質權之效力及於此等附屬之證券



CHAPTER VIII

THE RIGHT OF *Dien**.

- Art. 911. The right of *Dien* is the right to have against the payment of price the possession of an immovable belonging to another for the user and usufruct.
- Art. 912. The agreed term of the right of *Dien* shall not exceed thirty years; if it exceeds thirty years it shall be shortened to thirty years.
- Art. 913. If the agreed term of the right of *Dien* is below fifteen years, a stipulation in the agreement that the *Dien* will be turned into an absolute sale upon the default to redeem at the expiration of the term, is invalid.
- Art. 914. The provisions of Articles 774 to 800 shall apply *mutatis mutandis* among the grantees of the *Dien* or between the grantee of the *Dien* and the owner of land.
- Art. 915. During the existence of the *Dien*, the grantee may sub-grant the *Dien* or lease the property to another person. If there is a stipulation in the agreement or a local custom to the contrary, such stipulation or custom shall be applied.
- If the term of the *Dien* is fixed, the term of the sub-*Dien* or the lease shall not exceed the term of the original *Dien*. If the term of the original *Dien* is not fixed, the term of the sub-*Dien* or the lease shall be likewise unfixed.
- The price of the sub-*Dien* shall not exceed the price of the original *Dien*.
- Art. 916. The grantee of the *Dien* shall be responsible for damages to the property resulting from the grant of the sub-*Dien* or the lease.

*See Translators' Notes on the Right of *Dien*, p. 48

第八章 典 權

第九百一十一條 稱典權者謂支付典價占有他人之不動產而為使用及收益之權

第九百一十二條 典權約定期限不得逾三十年逾三十年者縮短為三十年

第九百一十三條 典權之約定期限未滿十五年者不得附有到期不贖即作絕賣之條款

第九百一十四條 第七百七十四條至第八百條之規定於典權人間或典權人與土地所有人間準用之

第九百一十五條 典權存續中典權人得將典物轉典或出租於他人但契約另有訂定或另有習慣者依其訂定或習慣

典權定有期限者其轉典或租賃之期限不得逾原典權

之期限未定期限者其轉典或租賃不得定有期限

轉典之典價不得超過原典價

第九百一十六條 典權人對於典物因轉典或出租所受之損害負賠償責任

Art. 917. The grantee of *Dien* may transfer the *Dien* to another.

As against the grantor of the *Dien* the transferee of the *Dien* under the preceding paragraph acquires the same rights as those of the grantee of the *Dien*.

Art. 918. The grantor of the *Dien* may after the creation of the *Dien* transfer to another his ownership of the property subject to the *Dien*.

The grantee of the *Dien* retains the same rights against the transferee under the preceding paragraph.

Art. 919. When the grantor of the *Dien* intends to transfer to another person his ownership in the property subject to the *Dien*, he may not without good reason refuse the grantee of the *Dien* to purchase the property for the same price as offered by the other person.

Art. 920. When during the existence of the *Dien* a part or the whole of the property subject to *Dien* is destroyed by *force majeure*, both the right of *Dien* and the right of redemption are extinguished with respect to the destroyed part.

Under the circumstances of the preceding paragraph the grantor of the *Dien* may upon redeeming the remaining part of the property demand a deduction from the original price of the *Dien* of one half of the current price of the destroyed part at the time of the destruction. The deduction is however only limited to the extent of the original price of *Dien*.

Art. 921. When during the existence of the *Dien* the property is wholly or in part destroyed by *force*

第九百一十七條 典權人得將典權讓與他人

前項受讓人對於出典人取得與典權人同一之權利

第九百一十八條 出典人於典權設定後得將典物之所有權讓與他人

典權人對於前項受讓人仍有同一之權利

第九百一十九條 出典人將典物之所有權讓與他人時如典權人聲明提

出同一之價額留買者出典人非有正當理由不得拒絕

第九百二十條 典權存續中典物因不可抗力致全部或一部滅失者就

其滅失之部分典權與回贖權均歸消滅

前項情形出典人就典物之餘存部分為回贖時得由原

典價中扣減典物滅失部分滅失時之價值之半數但以

扣盡原典價為限

第九百二十一條 典權存續中典物因不可抗力致全部或一部滅失者典

majeure the grantee of the *Dien* may reconstruct or repair the destroyed part. The cost of such reconstruction or repairs may not exceed the value of the destroyed part at the time of its destruction, except when the grantor has consented.

Art. 922. When during the existence of *Dien* the property is wholly or in part destroyed on account of the negligence of the grantee of the *Dien*, he shall be responsible for the destruction to the extent of the price of *Dien*. If the destruction is due to his wilful default or gross negligence, he shall make further compensation for the deficit if the price of the *Dien* does not adequately off-set the amount of the damages.

Art. 923. When the term of the *Dien* is fixed, the grantor of the *Dien* may, upon its expiration, redeem the property by paying the original price.

If the grantor of the *Dien* fails to redeem the property at the original price within two years after the expiration of the term, the grantee of the *Dien* acquires the right of ownership in the property.

Art. 924. If the term of the *Dien* is not fixed, the grantor may, at any time, redeem the property at the original price. If the property is not redeemed within thirty years after the grant of the *Dien* the grantee acquires the right of ownership in the property.

Art. 925. If the property subject to *Dien* is an agricultural land, it shall be redeemed only after the harvest and before the beginning of the next season. In case of other immovables the grantor shall give notice to the grantee six months in advance.

權人除經出典人同意外僅得於滅時滅失部分之價值
限度內爲重建或修繕

第九百二十二條 典權存續中因典權人之過失致典物全部或一部滅失者典權人於典價額限度內負其責任但因故意或重大過失致滅失者除將典價抵償損害外如有不足仍應賠償

第九百二十三條 典權定有期限者於期限屆滿後出典人得以原典價回贖典物
出典人於典期屆滿後經過二年不以原典價回贖者典權人即取得典物所有權

第九百二十四條 典權未定期限者出典人得隨時以原典價回贖典物但自出典後經過三十年不回贖者典權人即取得典物所有權

第九百二十五條 出典人之回贖如典物爲耕作地者應於收益季節後次期作業開始前爲之如爲其他不動產者應於六個月前先行通知典權人

Art. 926. When during the existence of *Dien* the grantor intends to transfer his right of ownership in the property to the grantee, the grantee may acquire the right of ownership by making a settlement in accordance with the current price of the property.

The settlement under the preceding paragraph is to be made once.

Art. 927. The grantee who has increased the value of the property by incurring useful expenses or has under-taken reconstruction or repairs in accordance with the provision of Article 921 may at the time of its redemption demand reimbursement to the extent of the present value of the benefits from such expenses, reconstruction or repairs.



第九百二十六條 出典人於典權存續中表示讓與其典物之所有權於典權人者典權人得按時價找貼取得典物所有權
前項找貼以一次為限

第九百二十七條 典權人因支付有益費用使典物價值增加或依第九百二十一條之規定重建或修繕者於典物回贖時得於現存利益之限度內請求償還



CHAPTER IX

RIGHT OF DETENTION

- Art. 928. A creditor who has possession of movables belonging to the debtor may, prior to the satisfaction of the debt, exercise the right of detention if:
- 1 the debt is already mature,
 - 2 the debt created is related to the movable,
 - and 3 the possession of the movable is not acquired by illegal act.
- Art. 929. Movables which come into the possession of mercantile traders on account of business relations and claims growing out of their business relations are deemed to be related to each other in the sense of the preceding article.
- Art. 930. No detention of movables shall be made in violation of public order or good customs or in conflict with the duties assumed by the creditor or with the instructions given by the debtor before or at the time the movables are delivered.
- Art. 931. In the event of the debtor's inability to pay, the creditor may, even before the maturity of the debt, exercise the right of detention.
- If the debtor becomes unable to pay after the delivery of the property or his inability to pay is known to the creditor only after the delivery, the creditor may exercise the right of detention even though such exercise conflicts with the provision of the preceding article.
- Art. 932. When the debt is not fully satisfied, the creditor may exercise the right of detention with respect to the whole property.

第九章 留置權

第九百二十八條 債權人占有屬於其債務人之動產而具有左列各款之要件者於未受清償前得留置之

- 一 債權已至清償期者
- 二 債權之發生與該動產有牽連之關係者
- 三 其動產非因侵權行為而占有者

第九百二十九條 商人間因營業關係而占有之動產及其因營業關係所生之債權視為有前條所定之牽連關係

第九百三十條 動產之留置如違反公共秩序或善良風俗者不得為之其與債權人所承擔之義務或與債務人於交付動產前或交付時所為之指示相抵觸者亦同

第九百三十一條 債務人無支付能力時債權人縱於其債權未屆清償期前亦有留置權

債務人於動產交付後成為無支付能力或其無支付能力於交付後始為債權人所知者其動產之留置縱有前條所定之抵觸情形債權人仍得行使留置權

第九百三十二條 債權人於其債權未受全部清償前得就留置物之全部行使其留置權

Art. 933. The creditor shall in managing the property exercise such care as is required of a good custodian.

Art. 934. The creditor may demand from the owner of the detained property the reimbursement of the necessary outlays incurred during his custody of the property.

Art. 935. The creditor may appropriate the fruits of the property towards the satisfaction of the debt.

Art. 936. The creditor may upon the debtor's default after the maturity of the debt notify the latter to the effect that if the debt is not satisfied within a period not less than six months, the detained property would be applied to its satisfaction.

If the debtor fails to make payment within the period as fixed under the preceding paragraph the creditor may, in accordance with the provisions relating to the enforcement of pledge, sell the property by auction or acquire the right of ownership.

When the notice as provided for in the first paragraph is impracticable the creditor may also enforce the rights under the preceding paragraph if the debt is not satisfied after two years from its maturity.

Art. 937. The creditor's right of detention is extinguished when the debtor has furnished appropriate security for the satisfaction of the debt.

Art. 938. The right of detention is extinguished upon the loss of the possession of the property.

Art. 939. In the absence of other provisions, provisions of this Chapter shall be applied *mutatis mutandis* to the statutory right of detention.

- 第九百三十三條 債權人應以善良管理人之注意保管留置物
- 第九百三十四條 債權人因保管留置物所支出之必要費用得向其物之所有人請求償還
- 第九百三十五條 債權人得收取留置物所生之孳息以抵償其債權
- 第九百三十六條 債權人於其債權已屆清償期而未受清償者得定六個月以上之相當期限通知債務人聲明如不於其期限內為清償時即就其留置物取償
債務人不於前項期限內為清償者債權人得依關於實行質權之規定拍賣留置物或取得其所有權
不能為第一項之通知者於債權清償期屆滿後經過二年仍未受清償時債權人亦得行使前項所定之權利
- 第九百三十七條 債務人為債務之清償已提出相當之擔保者債權人之留置權消滅
- 第九百三十八條 留置權因占有之喪失而消滅
- 第九百三十九條 法定留置權除另有規定外準用本章之規定

CHAPTER X

POSSESSION

Art. 940. One who has actual control over a thing is the possessor of the thing.

Art. 941. When a thing is possessed by a pledgee, lessee depositary or one who possesses a thing belonging to another by reason of a similar legal relation, such other person (the owner) is the indirect possessor of the property.

Art. 942. When an employee, an apprentice or a person who is under direction of another by reason of a similar relation, has the control over a thing belonging to another, only such other person is the possessor.

Art. 943. The rights exercised by a possessor over a thing in his possession are presumed to be the rights to which he is legally entitled.

Art. 944. The possessor is presumed to be in possession of a thing in good faith, openly, peacefully and with the intention of possessing it as his own.

One who has proved to have possession of a thing at two points of time is presumed to have continuous possession during the intervening period.

Art. 945. When the circumstances under which the possession is created indicate the lack of the intention in the possessor to possess the thing as his own, his possession will be accompanied with such intention from the moment he declares his intention to possess it as his own to the person who confers

第十章 占有

- 第九百四十條 對於物有事實上管領之力者為占有人
- 第九百四十一條 質權人承租人受寄人或基於其他類似之法律關係對於他人之物為占有者該他人為間接占有人
- 第九百四十二條 雇用人學徒或基於其他類似之關係受他人之指示而對於物有管領之力者僅該他人為占有人
- 第九百四十三條 占有人於占有物上行使之權利推定其適法有此權利
- 第九百四十四條 占有人推定其為以所有之意思善意和平及公然占有者
經證明前後兩時為占有者推定前後兩時之間繼續占有
- 第九百四十五條 占有依其所由發生之事實之性質無所有之意思者其占有人對於使其占有之人表示所有之意思時起為以所有之意思而占有其因新事實變為以所有之意思占

the possession upon him or upon the happening of new circumstances which indicate the presence of his intention to possess it as his own.

Art. 946. The transfer of possession is effective upon the delivery of the thing.

The provision of Article 761 shall apply *mutatis mutandis* to the transfer made under the preceding paragraph.

Art. 947. The heir or the transferee of the possessor may assert rights on the strength of his own possession or his possession tacked with the possession of his predecessor. One who asserts his rights on the strength of his own possession tacked with the possession of his predecessor shall also inherit its defects.

Art. 948. When one in good faith accepts the transfer of possession of movables with a view to transferring or creating the right of ownership or other real rights, his possession is still protected by law, notwithstanding that the transferrer has no right to make the transfer.

Art. 949. When the property is lost or stolen, the loser or the injured party may demand the recovery from the possessor within two years from the time of its being lost or stolen.

Art. 950. If the lost or stolen property has been bought in good faith by the possessor at auction or public market or from mercantile traders who deal with things of the like kind, the property may not be recovered from the possessor without reimbursing him the price paid therefor.

Art. 951. If the lost or stolen thing is money or instruments to bearer, recovery may not be had from the bona fide possessor.

有者亦同

第九百四十六條 占有之移轉因占有物之交付而生效力

前項移轉準用第七百六十一條之規定

第九百四十七條 占有之繼承人或受讓人得就自己之占有或將自己之

占有與其前占有人之占有合併而為主張

合併前占有人之占有而為主張者並應承繼其瑕疵

第九百四十八條 以動產所有權或其他物權之移轉或設定為目的而善意受讓該動產之占有者縱其讓與人無讓與之權利其占有仍受法律之保護

第九百四十九條 占有物如係盜賊或遺失物其被害人或遺失人自被盜或遺失之時起二年以內得向占有人請求回復其物

第九百五十條 盜賊或遺失物如占有人由拍賣或公共市場或由販賣與其物同種之物之商人以善意買得者非償還其支出之價金不得回復其物

第九百五十一條 盜賊或遺失物如係金錢或無記名證券不得向其善意占有人請求回復

- Art. 952. The bona fide possessor may use the property and appropriate its profits in pursuance to the rights he is presumed to be legally entitled to.
- Art. 953. When the property is destroyed or damaged through circumstances for which the bona fide possessor is responsible, he shall compensate the claimant of its recovery only to the extent of the value of the benefit the possessor receives by reason of the destruction or damage to the property.
- Art. 954. The bona fide possessor may demand the reimbursement of necessary outlays incurred by him for the preservation of the property from the claimant of the recovery of the property but if he has appropriated the fruits of the property he has no claim for the reimbursement of the outlays.
- Art. 955. The bona fide possessor may demand from the claimant of the recovery of the property the reimbursement of useful outlays incurred by him for the improvement of the property to the extent of the existing increased value of the property.
- Art. 956. The mala fide possessor or a possessor without the intention of possessing the property as his own shall compensate the claimant of the recovery of the property for damages resulting from destruction or deterioration of the property caused by circumstances for which he (the possessor) is responsible.
- Art. 957. The mala fide possessor may demand from the claimant of the recovery of the property the reimbursement of necessary outlays incurred by him for its preservation in accordance with the provisions relating to the management of affaires without mandate.

第九百五十二條 善意占有人依推定其為適法所有之權利得為占有物之使用及收益

第九百五十三條 善意占有人因可歸責於自己之事由致占有物滅失或毀損者對於回復請求人僅以因滅失或毀損所受之利益為限負賠償之責

第九百五十四條 善意占有人因保存占有物所支出之必要費用得向回復請求人請求償還但已就占有物取得孳息者不得請求償還

第九百五十五條 善意占有人因改良占有物所支出之有益費用於其占有物現存之增加價值限度內得向回復請求人請求償還

第九百五十六條 惡意占有人或無所有意思之占有人因可歸責於自己之事由致占有物滅失或毀損者對於回復請求人負損害賠償之責

第九百五十七條 惡意占有人因保存占有物所支出之必要費用對於回復請求人得依關於無因管理之規定請求償還

- Art. 958. The mala fide possessor shall return the fruits. If the fruits are consumed or deteriorated through his negligence or if he has neglected to collect them, he shall reimburse the price of such fruits.
- Art. 959. The bona fide possessor is, upon dismissal of his claim in a lawsuit over the principal right, deemed to be a mala fide possessor from the date of the commencement of *lis pendens*.
- Art. 960. The possessor may resist by his own force the acts of another which deprive him of the possession or interfere with *his possession*.
In case of immovable property the possessor may immediately upon the deprivation of his possession recover the possession by ejecting the wrong-doer. In case of movable property the possessor may recapture it from the wrong-doer right on the spot or upon the chase.
- Art. 961. One who has control over a thing in accordance with the provision of Article 942 may also exercise the rights of a possessor defined in the preceding article.
- Art. 962. The possessor may demand the return of the possession of the property when he is deprived thereof; the removal of interference, when his possession is interfered with; the prevention of interference, if interference is apprehensible.
- Art. 963. The right to demand under the preceding article is extinguished by its non-exercise within one year from the deprivation of or interference with the possession or from the commencement of the danger.
- Art. 964. Possession is extinguished by the loss by the

- 第九百五十八條 惡意占有人負返還孳息之義務其孳息如已消費或因其過失而毀損或怠於收取者負償還其孳息價金之義務
- 第九百五十九條 善意占有人於本權訴訟敗訴時自其訴訟拘束發生之日起視為惡意占有人
- 第九百六十條 占有人對於侵奪或妨害其占有之行為得以己力防禦之
占有物被侵奪者如係不動產占有人得於侵奪後即時排除加害人而取回之如係動產占有人得就地或追縱向加害人取回之
- 第九百六十一條 依第九百四十二條所定對於物有管領力之人亦得行使前條所定占有之權利
- 第九百六十二條 占有人其占有被侵奪者得請求返還其占有物占有被妨害者得請求除去其妨害占有有被妨害之虞者得請求防止其妨害
- 第九百六十三條 前條請求權自侵奪或妨害占有或危險發生後一年間不行使而消滅
- 第九百六十四條 占有因占有人喪失其對於物之事實上管領力而消滅

possessor of actual control over the thing, unless he is only temporarily unable to exercise it.

Art. 965. When property is jointly possessed by several persons, they may not mutually claim the protection for the possession with respect to the use of the property.

Art. 966. When a property right is established not by virtue of the possession of the property, the person exercising the property right is a quasi-possessor.

The provisions of this Chapter relating to possession shall apply *mutatis mutandis* to the quasi-possession under the preceding paragraph.



但其管領力僅一時不能實行者不在此限

第九百六十五條 數人共占有一物時各占有人就其占有物使用之範圍
不得互相請求占有之保護

第九百六十六條 財產權不因物之占有而成立者行使其財產權之人為
準占有入

本章關於占有之規定於前項準占有準用之



THE LAW INTRODUCING THE LAW OF THINGS OF THE CIVIL CODE

- Art. 1. In the absence of special provisions in this Law to the contrary, the provisions of the Law of Things of the Civil Code shall not apply to the real rights which are created before the Law of Things (of the Civil Code) goes into effect.
- Art. 2. Where the real rights as provided for in the Law of Things are created before it goes into effect, their effects shall be governed by its provisions from the day it goes into effect.
- Art. 3. The registration provided for in the Law of Things shall be regulated by a special law.
- The provisions of the Law of Things relating to registration shall not apply to the real rights which cannot be registered in accordance with the special law as mentioned in the preceding paragraph.
- Art. 4. Where according to the provisions of the Law of Things the extinctive prescription has completed or has yet less than a year to complete before it goes into effect, the entitled party may assert his right within one year from the time it goes into effect, unless the period which has elapsed from the completion of the prescription to the time it goes into effect already exceeds one half of what is specified therein.
- Art. 5. The legally fixed periods devoid of prescriptive character, which expired before the Law of Things goes into effect, are deemed to have expired.

民法物權編施行法

第一條 民法物權編施行前發生之物權除本施行法有特別規定外不適用民法物權編之規定

第二條 民法物權編所定之物權在施行前發生者其效力自施行之日起依民法物權編之規定

第三條 民法物權編所規定之登記另以法律定之物權於未能依前項法律登記前不適用民法物權編關於登記之規定

第四條 民法物權編施行前依民法物權編之規定消滅時效業已完成或其時效期間尚有殘餘不足一年者得於施行之日起一年內行使請求權但自其時效完成後至民法物權編施行時已逾民法物權編所定時效期間二分之一者不在此限

第五條 民法物權編施行前無時效性質之法定期間已屆滿者其期間為屆滿

Where the legally fixed periods devoid of the prescriptive character have commenced before the Law of Things goes into effect, the period of time which has already elapsed will be calculated towards time after it has gone into effect.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to acquisitive prescription.

- Art. 6. One who is in possession of a movable in compliance with the requirements of Article 768 of the Civil Code before the Law of Things goes into effect acquires the right of ownership in the movable on the day when it goes into effect.
- Art. 7. One who is in possession of an immovable in compliance with the requirements of the Articles 769 or 770 before the Law of Things goes into effect may apply to register his name as its owner.
- Art. 8. When the office for registration as provided for in Article 3, Paragraph 1 is not yet established, the person who may according to law apply for registration is deemed to be the owner of the property on the day the application for registration may be made.
- Art. 9. One who is in possession of a movable in compliance with the requirements of Article 801 or Article 886 of the Civil Code before the Law of Things goes into effect, acquires the right of ownership or the right of pledge in the movable on the day it goes into effect.
- Art. 10. One who has found lost property, drifts or sunken things in compliance with the requirements of Article 803 and Article 807 of the Civil Code before the Law of Things goes into effect acquires the rights provided for in Article 807 of the Civil Code on the day the Law of Things goes into effect.

民法物權編施行前已進行之期間依民法物權編所定之無時
效性質之法定期間於施行時尙未完成者其已經過之期間與
施行後之期間合併計算

前項規定於取得時效準用之

第六條 民法物權編施行前占有動屋而具備民法第七百六十八條之
條件者於施行之日取得其所有權

第七條 民法物權編施行前占有不動產而具備民法第七百六十九條
或第七百七十條之條件者自施行之日起得請求登記為所有
人

第八條 依法得請求登記為所有人者如第三條第一項所定之登記機
關尙未設立得於請求登記之日視為所有人

第九條 民法物權編施行前占有動產而具備民法第八百零一條或第
八百八十六條之條件者於施行之日取得其所有權或質權

第十條 民法物權編施行前拾得遺失物漂流物或沉沒品而具備民法
第八百零三條及第八百零七條之條件者於施行之日取得民
法第八百零七條所定之權利

- Art. 11. The person who may acquire ownership in accordance with the provisions of Article 808 or Articles 811 to 814 of the Civil Code before the Law of Things goes into effect, acquires ownership on the day the latter goes into effect.
- Art. 12. If an agreement has before the Law of Things goes into effect stipulated the period during which the co-owned thing might not be divided, and if the remainder of that period on the day the Law of Things goes into effect is shorter than the period as provided for in Article 823, Paragraph II, of the Civil Code, the period as agreed upon may be given effect; if it is longer, the provision of Article 823 paragraph II shall apply from the day the Law of Things goes into effect.
- Art. 13. When the extinctive prescription for a debt secured by hypotheca has completed according to the provisions of the Civil Code before the Law of Things goes into effect, the period of extinctive prescription for the hypotheca as specified in Article 880 of the Civil Code shall commence from the day the Law of Things goes into effect. If ten years have elapsed from the completion of the extinctive prescription to the day the Law of Things goes into effect, the hypotheca may not be enforced.
- Art. 14. The provisions relating to the right of pledge in the Law of Things shall not apply to pawn-shops or others who take pledges as a trade.
- Art. 15. Where a period is specified for the right of Dien before the Law of Things goes into effect and the old Law permits the redemption, the old Law shall be applied.
- Art. 16. This Introductory Law shall go into effect on the day the Law of Things goes into effect.

- 第十一條** 民法物權編施行前依民法第八零八條或第八百十一條至第八百十四條之規定得取得所有權者於施行之日取得其所有權
- 第十二條** 民法物權編施行前以契約訂有共有物不分割之期限者如其殘餘期限自施行日起算較民法第八百二十三條第二項所定之期限為短者依其期限較長者應自施行之日起適用民法第八百二十三條第二項之規定
- 第十三條** 民法物權編施行前以抵押權担保之債權依民法之規定其請求權消滅時效已完成者民法第八百八十條所規定抵押權之消滅期間自施行日起算但自請求權消滅時效完成後至施行之日已逾十年者不得行使抵押權
- 第十四條** 民法物權編關於質權之規定於當舖或其他以受質為營業者不適用之
- 第十五條** 民法物權編施行前定有期限之典權依舊法規得回贖者仍適用舊法規
- 第十六條** 本施行法自民法物權編施行之日施行

Translators' Notes on the Right of *Dien*

“The right of *Dien* is the right to have against the payment of a price the possession of an immovable belonging to another for the purpose of exercising the user and usufruct”, (Art. 911). The foregoing article of the Chinese Civil Code lays down a legal definition for the institution of pure Chinese origin. Jurists, both Chinese and foreign alike, have made repeated attempts to ascertain its intrinsic nature, but, regretful to state, their efforts are not crowned with success in that they searched in vain for its counterpart in other existing legal systems of the world. Analogies have been sought in (1) the French *antichrèse*, (2) the German *Grundschuld* (land charge), (3) the Welsh mortgage and (4) the Japanese pledge relating to immovables. But a comparative analysis of each of the above will reveal radical differences between the Chinese and the twin institutions in the other systems.

According to Art. 2085 of the Code Napoleon on the *antichrèse*, it is a contract which confers upon the creditor the enjoyment and possession of land in lieu of interest on the loan advanced to the debtor. If the value of the fruits appropriated by the creditor exceeds the interest payable on the principal, the excess shall be applied to the satisfaction of the latter. The essential characteristics of the *antichrèse* are in the first place the inseparable connection of debt with the immovable as security and in the second place the application of the fruits and profits from the immovable to the satisfaction of the interest and then to the principal. The provision of the Art. 911 of the Chinese Civil Code presents a totally different picture. Except the sole similarity, viz., that the grantee of the *Dien* as well as the creditor under the *antichrèse* acquires the right of usufruct to the immovable surrendered by its owner, the difference between the two are manifold. The *Dien* is more or less in the nature of a sale, as the Chinese law explicitly describes the *quid pro quo* of

the grant as the "price", for which no interest is chargeable. The antichrèse on the other hand is unequivocally a so-called "security-right", conferring upon the creditor the right of usufruct and consequently the profits appropriated by him must be credited to the debtor's account.

A comparison of the *Dien* with the Grundschild (land charge) of the German law points to the entire absence of semblance between the two legal institutions. The jurists who was tempted to venture the comparison saw the only possible similarity in one respect, that is, in both cases the land in question is encumbered for the payment of a certain sum of money. The abstract nature of the Grundschild is diametrically opposed to the *Dien* which is essentially supported by a causa.

On the similarity between the *Dien* and the Welsh Mortgage, few words need be expended for what we have to point would be a repetition of what is said above in connection with the antichrèse. The semblance between the Welsh Mortgage and the antichrèse is very striking, although in the absence of profound research in their respective origins, it is unsafe to venture the surmise that one is transplanted from the other. As far as their semblance to the Chinese *Dien* goes, it can with certainty be asserted that they do not fall on floors with each other.

Now we come to the analogy between the *Dien* and the pledge of immovables. As all students of Anglo-American law well know that the pledge is a right conferred upon the creditor to hold a chattel as security for the payment of a debt, we cannot without violating the terminological accuracy say that the pledge may be created on a piece of land. The term is therefore adopted exclusively for convenience's sake. The Japanese Civil Code in Art. 354 lays down in substance that the pledge on immovables entitles the creditor to the user and usufruct of the land given as security for a debt. The explicit language employed by the Japanese

legislators dismisses any shade of doubt as to the accessory nature of the real right. Owing to its accessory nature the destruction of the property, if not traceable to the creditor's fault, does not in the least affect the existence and the extent of the personal debt. On this very point the distinction from the *Dien* calls for little explanation. According to Art. 920 of the Chinese Civil Code, the destruction of the property subject to *Dien* by *force majeure* would entail the loss of the *Dien* and the right of compensation, or the right to demand another grant, for the destroyed portion. A further distinction is found in Art. 923 of the Chinese Civil Code which denies the owner the right of redemption prior to the expiration of the term of the *Dien*. Such legal restriction does not exist for the pledge of immovable by reason of its accessory nature. These distinctions were wittingly or unwittingly ignored by the judges of the former Supreme Court at Peking, who received their modern legal training at the hands of Japanese jurists and were only acquainted with the pledge on immovables. This explains the unclarity that obtained in the Decisions of the Peking Supreme Court. The *Dien* was identified with the pledge on the immovables. (4th Yr.: Tung No. 226) Only some time later the idea that the *Dien* is an indigenuous product of Chinese civilization and does not identify itself with the modern pledges on immovables commenced to dawn upon the judicial mind on the Supreme Court bench. The modern new-born appreciation of the individuality of the *Dien* was materialized in the separate treatment of the *Dien* and the pledge in the Second Draft of the Civil Code in 1925. The provision in the present Code does not leave us in any reasonable doubt as to the usufructuary nature of the *Dien*, as contra-distinguished from the security rights above discussed.

Before we conclude the present cursory discussion, it may not be out of place to speculate upon the social *raison d'être* of the *Dien*. In the last analysis the *Dien* is tantamount to a sale coupled with the right of pre-emption. In this legal

scheme the Chinese populace has found a safe-guard for its deep-rooted racial aversion to irrevocable alienation of real estates which probably descended to the owner from his fore-fathers. The public sentiment, particularly of olden times, censures severely any heir who is so unworthy of his industrious ancestors as to dispose of the legacy which would in agricultural communities chiefly consist of land estates. The keen sting of conscience and the pecuniary necessitousness on the part of the descendents find a happy compromise in the institution of the *Dien*, which affords him some measure of compensating consolation in the thought that the improvement of his financial condition in future can restore to him the invaluable heir-loom. The grantee on the other hand cau always consider the property virtually as his own appropriating fruits there-from or sub-granting it a third party, when the usufructury right desists to be of financial interest to him.



上海图书馆藏书



A541 212 0018 9532B



