

民國十五年一月

民律草案總則編

附英譯

法權討論委員會印行

民律草案 總則編

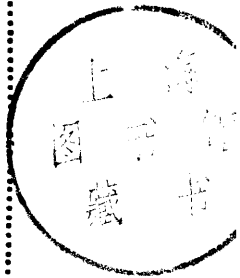
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民律草案 總則編

第一章 人

第一節 人

第一條 人之權利能力始於誕生終於死亡

第二條 胎兒以將來非死產者爲限就其特種權利之保護視爲既已誕生

第三條 失蹤人受亡故宣示後推定其爲死亡

第四條 失蹤人生死不明滿十年者法院得依利害關係人之聲請爲亡故宣示

失蹤人爲未成年人者非達於成年不得爲亡故宣示

失蹤人爲七十歲以上之老人者得於生死不明滿五年後爲亡故宣示

失蹤人爲遭遇特別災難者得於生死不明滿三年後爲亡故宣示

第一項及第三項期限自失蹤人有最後消息之次年第四項期限自災難消弭之次年起算

第五條 亡故之宣示以調查結果無反對形跡者爲限以左列各款之時日爲判決內確定亡故

之時日

一 前條第一項至第三項情形得爲亡故宣示之日

二 前條第四項情形遭遇災難之日

第六條 失蹤人未受死亡故宣示前其財產之管理依非訟事件條例之所定

第七條 孿生子應以誕生之先後定其長幼

第八條 同時遭難之人推定其爲同時死亡

第九條 足二十歲爲成年

第十條 不足七歲之未成年人爲無行爲能力

第十一條 七歲以上之未成年人爲限制有行爲能力

第十二條 有左列各款情形之一之人法院得依本人配偶或最近親屬二人之聲請宣示禁治

產

一 因瘋癲癡騷或其他精神錯亂之病症致不能處理自己事務者

二 因疾病或其他原因精神衰弱致難於處理自己事務者

三 因濫費有陷自己及家屬於困窮之虞者

禁治產之原因消滅時應撤銷其宣示

第十三條 前條第一項第一款原因之禁治產人爲無行爲能力第二款及第三款原因之禁治

產人爲限制有行爲能力

第十四條 不足七歲之未成年人就加害行爲無責任能力

七歲以上之未成年人及七十歲以上之老人以爲加害行爲當時無辨別其行爲責任之意識者爲限無責任能力

前項規定於第十二條第一項第二款原因之禁治產人爲加害行爲者準用之

第十五條 無意識或精神錯亂中爲加害行爲者無責任能力但其無意識或精神錯亂係因飲酒或其類似之方法所致者不在此限

第十六條 凡人不得拋棄其權利能力及行爲能力

第十七條 凡人不得拋棄其自由或至違反法律或有傷風化之程度而自行限制其自由

第十八條 人格權受侵害者得請求排除其侵害

前項情形以法律有特別規定者爲限得請求損害賠償或慰撫金

第十九條 姓名權被侵害者得提起排除侵害之訴請求除去其侵害並請求損害賠償

第二十條 姓名權有被侵害之虞者得提起豫防侵害之訴請求禁止其侵害並請求損害賠償之擔保

第二十一條 以永住之意思住於一定地域內者在其地爲有住址

一人同時不得有兩處住址

第二十二條 以廢止之意思而離去其住址者卽爲廢止住址

第二十三條 住址不明或在中國無住址者其寓所視爲住址但依法律適用條例之規定須依住址地法者不在此限

第二十四條 因特定行爲選定臨時住址者關於其行爲視爲住址

第二十五條 籍貫依住址定之但住居他處而仍保留其原來籍貫者不在此限

第二十六條 籍貫不明之人以其父祖最後之籍貫爲其籍貫父祖之籍貫不明其自身又無住址或住址不明者以其寓所地定其籍貫

第二節 法人

第一款 通則

第二十七條 以公益爲目的之社團及財團以得主管官署之許可取得人格

第二十八條 非以公益爲目的之社團及財團以訂立章程發表成立團體之意思取得人格但其目的不得違反法律或有傷風化

第二十九條 以營利爲目的之社團其取得人格依特別法之規定

第三十條 法人除專屬於人之權利義務外有享受負擔之能力

第三十一條 法人自依法律章程設置必要機關之時起有行爲能力

第三十二條 法人於其機關行職務之際所加他人之損害負賠償責任但行爲人自身就該加

害行爲亦負責任

第三十三條 法人以主事務所所在地爲住址

第三十四條 法人有左列各款之義務

- 一 設立時應於各事務所所在地登記已登記之事項有變更時亦同
- 二 設立時及事務年度終應編造財產清冊存置於各事務所未經定有事務年度者於每年首三個月內爲之

三 社團應置備社員名簿存置於主事務所如有變更應隨時訂正之

第三十五條 法人應登記之事項而不登記或已登記之事項有變更而不爲變更之登記者不能以其事項對抗第三人

第三十六條 法人解散後其財產屬於法人住址地之地方團體但章程或總會決議有特別訂定者不在此限

前項但書之規定於法人因目的違反法律或有傷風化被裁判上解散者不適用之

第三十七條 法人除因破產而解散者外其財產依下列九條之規定清算之

第三十八條 清算由董事爲之但章程或總會決議有特別訂定者不在此限

第三十九條 依前條規定無行其清算事務之人或因其缺額恐生損害者法院得依利害關係

人之聲請爲之選任清算人

前項清算人有重要理由時由法院解任之

第四十條 清算人除本款有特別規定或與清算目的抵觸者外準用關於董事之規定

第四十一條 清算人之職務如左

一 了結現務

二 收取債權清償債務

三 移交餘賸財產於歸屬權利人

清算人爲行前項各款之職務得爲一切必要之行爲

法人於清算目的之範圍內至清算之終結爲止視爲存續

第四十二條 清算人應將其姓名住址法人解散之原因及年月日於法人各事務所所在地登記

第四十三條 清算人應將法人之解散事由於爲前條解散登記時聲請法人各事務所所在地之法院公告之公告內應催告債權人報明其權利

第四十四條 清算人對於已知悉姓名之債權人應逐一爲催告

第四十五條 清算人非於解散公告後經過一年不得將餘賸財產移交於歸屬權利人

於前項期限後始行報明之債權人僅得就尙未移交歸屬權利人之財產請求清償但知悉姓名之債權人雖未報明其權利清算人仍應將其債權全額提存之

債權未至清償期或雖至清償期而其標的物不便提存或有爭訟者清算人非提出擔保於債權人後不得將餘賸財產移交於歸屬權利人

第四十六條 清算人於法人財產不敷清償其債務時應聲請宣示破產

清算人將其事務移交於破產管財人時其職務終了

第四十七條 法人之解散及清算屬於法院監督

法院得隨時爲監督上必要之檢查

第四十八條 清算人怠於爲登記聲請破產聲請公告聲請催告或爲不實之聲請公告又或不遵法院監督命令或妨礙其檢查者科以五元以上五百元以下之罰鍰

第四十九條 清算人怠於爲公告聲請破產聲請催告提存或不遵法定期限或未提出擔保又或因過失於未清償所應清償之債務前將餘賸財產移交於歸屬權利人致法人之債權人受損害者對之應連帶負賠償責任

第二欸 社團法人

第五十條 設立社團法人者應寫立創設章程章程內應記載左列各事項

一 目的

二 名稱

三 董事組織及其任免之訂定

四 總會招集之要件程序及其決議之證明

五 社員出資之訂定

六 社員資格得喪之訂定

七 事務所

第五十一條 社團法人設立時應登記之事項如左

一 目的

二 名稱

三 主事務所及分事務所

四 董事之姓名及住址

五 財產之總額

六 應受設立許可者其許可之年月日

七 定有出資方法者其方法

八 限制董事代表權者其限制

九 定有存立時期者其時期

第五十二條 社團法人之機關組織及法人與社員之關係以不反於下列十九條之規定爲限
得由設立人以章程定之

第五十三條 社團法人以總會爲最高機關

總會由董事招集之

總會應依章程所定及有關法人利害時招集之但有全體社員十分一以上之請求表明會議
目的及招集理由請求招集者董事應招集之

董事受前項之請求後兩星期內不爲招集者得由請求之社員經法院之許可招集之

第五十四條 總會選任董事開除社員變更章程並議決一切不得委任他機關之事務

總會監督董事及其他辦事人之行爲得隨時將其解任但不妨其本於契約所有之請求權

第五十五條 總會決議除本律有特別規定外依到會社員多數決之

總會決議以招集時豫行通知之事項爲限但章程有特別訂定者亦得臨時提出事件以爲決議

全體社員以書信表同意者雖不開總會亦有決議之效力

第五十六條 社團法人變更章程之決議應有全體社員三分之二以上之同意始得爲之但關於法人之目的不得爲變更之決議

受設立許可之社團法人變更章程時除增減及遷移事務所之事情外其變更應得主管官署之許可

第五十七條 社團法人之董事由總會選任之

第五十八條 董事就社團法人一切事務對外代表法人

關於董事代表權準用法定代理權之規定

董事之代表權得以章程限制之

第五十九條 董事執行法人之事務

關於董事之執行事務準用委任之規定

第六十條 董事有數人者其執行事務以過半數之決議行之但他人對社團法人爲意思表示得僅向其董事中一人爲之

章程所定之董事若有缺額他董事得行董事之職務至補缺時爲止但無他董事或恐補缺遲延致生損害者法院得依利害關係人之聲請爲之選任臨時董事

第六十一條 社團法人存立中登記或破產之聲請社員名簿之置備及財產清冊之編造等由

董事負其責任

董事怠於爲前項行爲或爲不正之行爲又或不遵主管官署之監督命令或妨礙其檢查者科以五元以上五百元以下之罰鍰

第六十二條 董事怠於爲設立登記或破產聲請致第三人受損害者對之應連帶負賠償責任

第六十三條 社員得隨時退社但章程限定於事務年度終或經過豫告期限後始准退社者不在此限

前項豫告期限至多不得逾一年

第六十四條 法人有正當事由者得開除社員但開除之事由得以章程限定之

第六十五條 社員之資格不得讓與

第六十六條 社員之特別權不得以總會之決議侵害之但經該社員同意者不在此限

第六十七條 各社員在總會有平等之表決權但非公益法人其章程有特別訂定者不在此限

第六十八條 總會決議之事項爲關於社團法人與社員及其配偶或其近親間之法律行爲或權利之爭者該社員無表決權

第六十九條 社員出資之比例除章程有特別訂定外由各社員平均分擔之

第七十條 已退社或開除之社員關於社團法人之財產無請求權但非公益法人其章程有特

別訂定者不在此限

前項社員其退社或開除以前應分擔之出資仍負清償之義務

第七十一條 總會之決議有違反法令或章程者其對該決議原不同意之社員得以訴請求法院宣示其決議無效

前項之訴應從知悉決議之日起一個月內提起之但從決議之日經過三個月者不得提起

第七十二條 受設立許可之社團法人其業務屬於主管官署監督

主管官署得隨時檢查社團法人之事務及其財產狀況

第七十三條 社團法人得隨時由總會決議解散

前項決議應有全體社員四分之三以上之同意始得爲之但章程有特別訂定者不在此限

第七十四條 社團法人有左列各款事情之一者法律上當然解散

一 章程內所定之解散事由發生

二 目的事業已成就或不能成就

三 社員僅存一人

四 破產

第七十五條 社團法人違反設立許可之條件者因主管官署撤銷其設立許可而解散

第七十六條 社團法人之目的或其行爲違反法律或有傷風化或法人爲目的外之事業者法院得依主管官署檢察官或利害關係人之訴宣示解散

第三款 財團法人

第七十七條 設立財團法人者應寫立捐施章程但以遺囑捐施者得以言詞爲之捐施章程至少應訂明法人目的及所捐財產

第七十八條 捐施人之承繼人或其債權人得據撤銷贈與之原因撤銷捐施

第七十九條 財團法人設立時應登記之事項如左

一 目的

二 名稱

三 主事務所及分事務所

四 董事之姓名及住址

五 財產之總額

六 應受設立許可者其許可之年月日

七 限制董事代表權者其限制

八 定有存立時期者其時期

第八十條 財團法人之機關組織及其管理方法由捐施人以捐施章程定之

捐施章程所定之組織不完全或重要之管理方法不具備者法院得依利害關係人之聲請爲必要之處分

第八十一條 受設立許可之財團法人其業務第一級屬於其住址地之地方團體監督第二級屬於許可之主管官署監督

主管官署及地方團體得隨時檢查財團法人之事務及其財產狀況

第八十二條 爲維持財團法人之目的或保存其財產法院得依主管官署地方團體捐施人或利害關係人之聲請變更財團法人之組織

第八十三條 因事情變更致財團法人之目的顯然反於捐施人之本意者法院得依主管官署地方團體捐施人或利害關係人之聲請變更財團法人之目的或並變更其組織

第八十四條 財團法人存立中登記或破產之聲請及財產清冊之編造等由董事負其責任
董事怠於爲前項行爲或爲不正之行爲又或不遵主管官署或地方團體之監督命令或妨礙其檢查者科以五元以上五百元以下之罰鍰

第八十五條 董事怠於爲設立登記破產聲請致第三人受損害者對之應連帶負賠償責任

第八十六條 財團法人有左列各款事情之一者法律上當然解散

- 一 章程內所定之解散事由發生
- 二 目的事業已成就或不能成就

三 破產

第八十七條 財團法人之目的本來或嗣後因事情變更違反法律或有傷風化者法院得依主管官署地方團體檢察官或利害關係人之訴宣示解散

第四款 外國法人

第八十八條 外國法人除國家及國家之行政區域商事公司外非依法律條約不認其成立
認其成立之外國法人與同種類之中國法人有同一權利能力及行爲能力但依法律或條約不能享受之權利及外國人不得享受之權利不在此限

第八十九條 第三十四條第一款第三十五條第五十一條及第七十九條之規定於外國法人在中國設事務所者準用之

第九十條 外國法人在中國初設事務所者於其事務所所在地未登記以前第三人得不認其成立

第九十一條 外國法人在中國設事務所者應置駐中國之代表人就外國法人之一切事務對外代表法人

第九十二條 第六十一條第六十二條第八十四條及第八十五條之規定於外國法人之代表人準用之

第九十三條 外國法人其行爲違反法律或有傷風化又或爲目的外之事業者法院得依檢察官或利害關係人之訴命令撤去其事務所

第九十四條 不認其成立之外國法人以其名義與第三人爲法律行爲其行爲人就該法律行爲應連帶負其責任

第二章 物

第九十五條 稱物者謂有體物

能受法律支配之天然力視爲有體物

第九十六條 稱不動產者謂土地及房屋

第九十七條 非變更物之本質或毀損其物不能與其物分離之部分爲物之重要成分

不得專以物之重要成分爲物權之標的

第九十八條 固結於不動產或由不動產產出尙未分離又或以永久目的附着或連屬於不動產之物爲不動產之重要成分

子種從播種後植物從種植後視爲不動產之重要成分

以暫時目的附着或連屬於不動產之物不爲其成分

第九十九條 非主物之成分常助主物之效用而同屬於一人者爲從物但交易上有特別習慣者不在此限

主物之處分及於從物

第一百條 依其物之生產上之用法所收穫之物爲天然孳息

因法律關係所息取之物爲法定孳息

第二百零一條 有收取天然孳息權利之人其權利存續中取得與原物分離之孳息

有收取法定孳息權利之人按其權利存續期內之日數取得其孳息

第三章 法律行爲

第一節 行爲能力

第二百零二條 無能力人之意思表示無效雖非無能力人而其意思表示係在無意識或精神錯亂中所爲者亦同

第二百零三條 無能力人由法定代理人代爲並代受意思表示

第二百零四條 限制能力人之意思表示除純獲法律上利益者外應得法定代理人或照管人之

允許

第二百零五條 限制能力人未得法定代理人或照管人之允許所訂結之契約應有法定代理人或照管人之承認始生效力

第二百零六條 契約相對人得定一個月以上之期限催告法定代理人或照管人確答是否承認於前項期限內法定代理人或照管人不為確答者視為拒絕承認

第二百零七條 限制能力人於限制原因消滅後所為之承認與法定代理人或照管人之承認有同一效力

前條規定於前項情形準用之

第二百零八條 契約未經承認前相對人得撤回之但結約當時知其未經得有允許者不在此限

第二百零九條 限制能力人未得法定代理人或照管人之允許所為之單獨行為不生效力但相對人知其未經允許情甘待其法定代理人照管人或其自己將來之承認者不在此限

第二百零五條至第二百零七條之規定於前項情形準用之

第一百十條 限制能力人用詐術使人信其為有能力人或使人信其已得法定代理人或照管人之允許者不問其為契約或單獨行為法定代理人或照管人不得拒絕承認

第一百十一條 法定代理人或照管人豫定目的或未豫定目的允許限制能力人處分之財產限制能力人就其財產有處分能力

第一百十二條 法定代理人或照管人允許限制能力人獨力營業者限制能力人關於其營業有完全能力

限制能力人有不勝營業情形時法定代理人或照管人得將其允許撤銷或限制之

第一百十三條 法定代理人或照管人允許限制能力人爲他人服勞務者限制能力人於勞務關係之締結廢止有完全能力

前條第二項之規定於前項情形準用之

第二節 意思表示

第一百十四條 表意人本無欲爲其意思表示之意而爲意思表示者其意思表示並不因之無效但其情形爲相對人所明知者不在此限

第一百十五條 表意人豫期他人可知其非真意而爲意思表示者其意思表示無效

第一百十六條 表意人與相對人通謀而爲虛偽意思表示者其意思表示無效但不得以其無效

對抗善意第三人

虛偽意思表示隱藏他項法律行爲者其法律行爲仍屬有效

第一百十七條 意思表示之內容有錯誤者表意人得將其意思表示撤銷之交易上認爲重要之當事人資格或物之性質有錯誤者亦同

前項規定於表意人就所爲之意思表示若詳知其事情即不爲者準用之

第一百十八條 意思表示因傳達人傳達不實者得比照前條第一項之規定撤銷之

第一百十九條 前二條情形有撤銷權之人應於知悉撤銷原因後速行撤銷

前二條之撤銷權自意思表示後經過三年卽爲消滅

第一百二十條 依第一百十五條之規定其意思表示無效或依第一百十七條及第一百十八條之規定其意思表示被撤銷者表意人對於信其意思表示爲有效而受損害之相對人或第三人應負賠償責任但被害人明知其無效撤銷之原因或可得而知者不在此限

第一百二十一條 因被詐欺或被脅迫而決定意思以爲表示者表意人得撤銷其意思表示但詐欺係由第三人所爲者以相對人明知其事實或可得而知者爲限始得撤銷之
被詐欺意思表示之撤銷不得以之對抗善意第三人

第一百二十二條 前條情形有撤銷權人應於發見詐欺或脅迫終止後一年內撤銷之
前條之撤銷權自意思表示後經過十年卽爲消滅

第一百十五條至第一百十七條之規定於第一項期限之進行準用之

第一百二十三條 法律行爲違反禁止規定者無效但法律有特別規定者不在此限

第一百二十四條 法律行爲有傷風化者無效

第二百五條 法律行爲係乘他人窘迫輕率或無經驗而爲依當時情形顯失公平者其法律行爲無效

第二百六條 法律行爲違反爲保護特定人之利益而禁止讓與之法律或裁判者其法律行爲無效但受益人非因歸責於己之事由而不知者不在此限

第二百七條 法律行爲缺法定方式者無效

第二百八條 法律行爲缺約定方式者無效但當事人有特別訂定者不在此限

第二百九條 當面爲意思表示者其意思表示以相對人了知時發生效力

第三十條 非當面爲意思表示者其意思表示以通知達到相對人時發生效力但其撤回通知於其前或同時達到者不在此限

表意人於發出通知後死亡或喪失能力又或能力受限制者其意思表示不因之失其效力

第三十一條 向無能力人或限制能力人爲意思表示者應向其法定代理人或照管人爲之但使限制能力人純獲法律上利益之意思表示或法定代理人照管人就限制能力人受領意思表示已表同意者其意思表示亦得向限制能力人爲之

第三十二條 意思表示得委託承發更依民事訴訟條例之規定送達以爲通知

第三十三條 表意人不知相對人之姓名住處非由於自己之過失者得依民事訴訟條例公

示送達之規定以公示送達爲意思表示之通知

第三百三十四條 解釋意思表示應探究其真意不得拘泥辭句

第三節 契約

第三百三十五條 契約之要約人因要約而受拘束但要約當時豫行聲明不受拘束者不在此限

第三百三十六條 要約經拒絕者失其效力

第三百三十七條 要約於依以下三條規定之正當時期內無承諾者失其效力

第三百三十八條 當面爲要約者應立時承諾

第三百三十九條 非當面爲要約者應依通常情形要約人須相待之時期內爲承諾

第三百四十條 要約定有承諾期限者應於其期限內爲承諾

第三百四十一條 承諾之通知本於正當時期內可達到而遲到者要約人應向相對人速發遲到

之通知

要約人怠於爲前項通知者其承諾視爲未遲到

第三百四十二條 遲延之承諾視爲新要約

將要約擴張限制或變更而爲承諾者視爲拒絕原要約而爲新要約

第三百四十三條 依交易上之習慣承諾不必通知者其契約自可認爲有承諾之事實時成立

前項規定於要約人要約當時豫行聲明承諾無須通知者準用之

前二項情形其要約失其效力之時期依要約內要約人所表示之意思或依其他事情可以推知之要約人意思定之

第四百十四條 要約人於承諾前死亡或喪失能力又或能力受限制者其契約之成立不受影響但要約人顯有反對之意思者不在此限

第四百十五條 契約當事人約定其契約須寫立字據者在字據未寫立前推定其契約不成立
第四百十六條 拍賣以拍定爲契約成立

拍賣之要約以有他較高價之要約或不爲拍定而終止拍賣時失其效力

第四節 條件及期限

第四百十七條 附停止條件之法律行爲自條件成就時發生效力

附解除條件之法律行爲自條件成就時失其效力

第四百十八條 依當事人之特約使條件成就之效果溯及既往者當事人互負回復條件成就前應發生效力時之原狀之義務

第四百十九條 附停止條件之法律行爲當事人於條件成否未定前爲加害相對人之行爲致相對人因條件成就所應取得之權利喪失或減少者應負賠償損害責任附解除條件之法律

行爲因當事人之加害行爲致相對人因條件成就所應回復之權利喪失或減少者亦同

第一百五十條 就一物爲附停止條件之處分當事人於條件成否未定前復就該物爲其他處分者其處分以有礙於條件成就因條件成就所生之效果爲限失其效力

前項規定於條件成否未定前因強制執行假扣押所爲之處分或破產管財人所爲之處分準用之

關於由無權利人讓受權利者之利益之規定於前二項情形準用之

第五十一條 前條規定於就解除條件成就所應消滅之權利爲處分者準用之

第五十二條 因條件成就而受不利益之當事人違反誠實信用而阻條件之成就者視爲條件已成就

因條件成就而受利益之當事人違反誠實信用而促條件之成就者視爲不成就

第五十三條 附始期之法律行爲於期限屆至時發生效力

附終期之法律行爲於期限屆至時消滅效力

第一百四十九條至第一百五十二條之規定於前二項情形準用之

第五節 代理

第一百五十四條 稱法定代理者謂依法律規定授與代理權之代理

稱意定代理人謂依當事人意思表示授與代理權之代理

第一百五十五條 代理人於代理權限內以本人名義所爲之意思表示無論爲本人抑對本人均生效力

所謂以本人名義者不必定用本人姓名卽依其事情認爲顯然係用本人姓名者卽可

前二項規定於應向本人爲意思表示而向其代理人爲之者準用之

第一百五十六條 意思表示是否以他人名義所爲不明者認爲爲自己而爲

第一百五十七條 代理人行爲能力之限制不影響於所爲或所受之意思表示之效力但關於法定代理人之資格法律有特別規定者不在此限

第一百五十八條 意思表示若因意思欠缺被欺被迫或明知其事情或可得而知致其效力受影響者其事實之有無應就代理人決之但意定代理人之行爲係依本人指示而爲者本人於其已知或因過失而不知之事情不得藉口於代理人不知而否認其效力

第一百五十九條 代理人除專履行債務之行爲外不得爲本人與自己或爲兩造之代理人而爲法律行爲但當事人有特別意思表示者不在此限

第一百六十條 代理人有數人者其代理行爲應共同爲之但法律有特別規定或當事人有特別意思表示者不在此限

第六十一條 意定代理權之授與向代理人或對之爲代理行爲之第三人以意思表示爲之
第六十二條 意定代理權之消滅依其授與原因之法律關係定之

授與原因之法律關係無特別訂定者授權人得於其關係存續中撤回其代理權
前條規定於撤回代理權準用之

第六十三條 意定代理權係向第三人爲意思表示而授與者其代理權之存續至授權人將
代理權之消滅通知第三人時爲止

第六十四條 意定代理權係以授權狀交付代理人而授與者其代理權之存續至代理人將
授權狀交還授權人或授權人宣示授權狀無效時爲止

代理人關於授權狀之交還不得留置

代理人將授權狀遺失或因其他事情不能交還者授權人得依公示催告規定聲請宣示授權
狀無效

第六十五條 第六十三條及第六十四條第一項之規定於第三人爲法律行爲當時明
知其代理權消滅或可得而知者不適用之

第六十六條 授權人若將已授與代理權於他人之事通知第三人或公告者不問有無授與
其人以代理權第三人與其人所爲之行爲對於本人發生效力

前項規定於代理人將授權人交付之授權狀提示於第三人者準用之

第六十七條 前條規定於第三人爲法律行爲當時明知其無代理權或可得而知者不適用之

第六十八條 無代理權人代理他人訂結契約者非經本人承認對於本人不生效力

前項契約之承認得對於無權代理人爲之但已受相對人之承認催告者應向相對人爲之

第六十九條 相對人得定相當期限催告本人確答是否承認

本人於前項期限內不承認者視爲拒絕承認

第七十條 無代理權人所訂結之契約相對人於本人未承認前得撤回之但結約當時明知

代理人無代理權者不在此限

前項契約之撤回得對於無權代理人爲之

第七十一條 以他人之代理人名義訂結契約者若不能證明其代理權並經本人拒絕承認

時相對人得對之請求履行或損害賠償

前項情形若代理人不自知其無代理權者相對人僅得請求損害賠償其賠償額不得超過因

契約有效相對人所應得之利益

第七十二條 相對人明知其無代理權或可得而知者代理人不負前條責任其代理人係限

制能力人者亦同但已經法定代理人同意者不在此限

第一百七十三條 無權代理人代理他人爲單獨行爲者不生效力但其行爲當時相對人同意其無代理權或不考究其有無代理權者準用關於無權代理契約之規定其向無權代理人得其同意而爲單獨行爲者亦同

第六節 無效撤銷同意及承認

第一百七十四條 法律行爲之一部無效者全部皆爲無效但因其情形可認當事人雖無該部亦爲該法律行爲者不在此限

第一百七十五條 無效之法律行爲若具備他法律行爲之要件並因其情形可認當事人若知其無效而欲爲他法律行爲者其他法律行爲仍爲有效

第一百七十六條 無效之法律行爲若當事人知其無效而採認者視爲新法律行爲

第一百七十七條 無效法律行爲之當事人於爲行爲當時知其無效或可得而知者應負回復其未爲行爲前法律上狀態之義務

第一百七十八條 撤銷之法律行爲視爲自始無效知其應撤銷或可得而知者其法律行爲撤銷時準用第一百七十七條之規定

第一百七十九條 撤銷應向相對人爲之

得撤銷行爲之相對人確定者以其相對人爲撤銷之相對人但第三人因其行爲直接取得權利者以第三人爲撤銷之相對人

得撤銷行爲之相對人不確定者以其行爲直接取得權利之人爲撤銷之相對人

第一百八十條 有撤銷權人承認其行爲者其行爲視爲自始有效但不得對抗善意第三人

第一百八十一條 第一百七十九條之規定於承認準用之

第一百八十二條 契約須得第三人之同意始生效力者其同意或拒絕得向契約當事人之一造爲之

前項規定於有相對人之單獨行爲須得第三人之同意始生效力者準用之

第一百八十三條 事前之同意於爲法律行爲前得撤回之但依其同意原因之法律關係之性質不能撤回者不在此限

撤回得向當事人之一造爲之

第一百八十四條 事後之承認無特別訂定時溯及爲法律行爲時發生效力

承認人在承認前就法律行爲之標的所爲之處分或因強制執行假扣押所爲之處分又或破產管財人之處分不受前項規定之影響

第一百八十五條 無權利人就權利標的所爲之處分經有權利人之承認而生效力

無權利人就權利標的爲處分後取得其權利者其處分自始有效

第八十六條 前條第二項情形若數人之處分相抵觸時惟最初之處分有效

第四章 期限之計算

第八十七條 期限之計算法除法令裁判或法律行爲有特別訂定外依本章之規定

第八十八條 以時刻定期限者卽時起算

以日星期月或年定期限者自翌日午前零時起算但其事件卽起於午前零時者不在此限

第八十九條 以日星期月或年定期限者以期限末日之終止爲期限之滿了

期限不以星期月或年之始起算者以最後之星期月或年與起算日相當日之前一日爲期限

之末日但以月或年定期限於最後之月無相當日者以其月之末日爲期限之末日

第九十條 於一定期限內爲意思表示或爲給付者若其期限之末日適值星期日紀念日或

其他休息日者其期限以休息日次日之終止爲滿了

第九十一條 前條之規定於以特定之日爲意思表示或爲給付者準用之

第九十二條 期限謂月或年者依歷之所定

第九十三條 期限謂月初月中月底者推定爲月之一日十五日月末日

第九十四條 期限謂半個月者推定爲自期限起算之日起十五日一季者爲三個月半年者

爲六個月

第九十五條 年齡應自誕生之當日起算

第五章 消滅時效

第九十六條 凡請求權因三十年間不使行而消滅但其存續期長於三十年者自其最後得爲請求之日起十年間不使行而消滅

第九十七條 一年或不及一年之定期給付債權其各期給付請求權因五年間不使行而消滅

第九十八條 左列各款之請求權因三年間不使行而消滅

- 一 旅店及遊戲場之住宿費飲食費座費及其消費物之價並其墊款
- 二 運送費或運送人所墊之款
- 三 以租賃動產爲營業者之租價
- 四 醫生穩婆之診費報酬及其所墊藥物等費
- 五 律師公證人承發吏之報酬及小費
- 六 律師公證人承發吏所收當事人物件之交還

第九十九條 消滅時效自請求權成立時進行但以不行爲爲目的之請求權自爲行爲時進

行

第二百零二條 消滅時效因債務人承認相對人之權利而中斷

第二百零一條 消滅時效因起訴而中斷

左列事項與起訴有同一效力

一 依督促程序送達支付命令

二 因和解而傳喚

三 報明破產債權

四 告知訴訟

五 開始執行行為或聲請強制執行

第二百零二條 因起訴而聲請指定管轄法院者時效中斷但於指定後三個月內不起訴者不生中斷之效力

第二百零三條 因起訴之時效中斷若撤回其訴或因不合法而受駁斥之判決其判決確定時不生效力

第二百零四條 因送達支付命令之時效中斷若訴訟拘束失其效力時不生效力

第二百零五條 因和解傳喚之時效中斷若相對人不到庭或和解不成時不生效力

第二百零六條 因報明破產債權之時效中斷若債權人撤回其呈報時不生效力

第二百零七條 因告知訴訟之時效中斷若於訴訟終結後六個月內不提起履行或確認之訴者不生效力

第二百零八條 因開始執行行為之時效中斷若因權利人之聲請或法律上要件之欠缺而撤銷其執行處分時不生效力

因聲請強制執行之時效中斷若撤回其聲請或其聲請被駁斥時不生效力

第二百零九條 因起訴而時效中斷者至受確定判決或因其他方法訴訟終結時為止存續其效力

第二百十條 因報明破產債權而時效中斷者至破產程序終結時為止存續其效力

因對於其債權有異議繫屬訴訟雖未了結若爲其債權已爲提存而終結破產程序者準用前條規定

第二百十一條 因告知訴訟而時效中斷者至受確定判決或因其他方法訴訟終結時為止存續其效力

第二百十二條 時效因公斷人詢問當事人而中斷

第二百零九條之規定於前項情形準用之

第二百十三條 已中斷之時效自中斷事由終止時起再開始進行

第二百十四條 時效中斷以當事人及其承繼人之間爲限始有效力

第二百十五條 時效之期限終止時因天災或其他不可避之事變致不能中斷其時效者自其

妨礙事由消滅時起一個月內其時效不完成

第二百十六條 屬於承繼財產之權利或對於承繼財產之權利自承繼人確定管理人選任或

破產之宣示時起六個月內其時效不完成

第二百十七條 對於無能力人或限制能力人之權利若無法定代理人或照管人時自此等人

成爲能力人或法定代理人與照管人就職時起六個月內其時效不完成

前項規定其限制能力人係有訴訟行爲能力者不適用之

第二百十八條 服從親權人對於行親權人之權利於親屬關係存續中其時效停止進行

前項規定於被保護人對於保護人權利及被照管人對於照管人權利之時效準用之

第二百十九條 妻對於夫之權利於婚姻關係存續中其時效停止進行

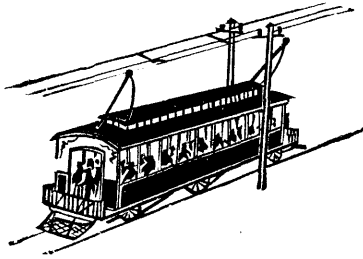
第二百二十條 時效完成後債務人有拒絕給付之權利

已經時效消滅之請求權債務人仍爲履行之給付者事後不得以不知時效爲理由請求返還
其已爲契約上之承認或提出擔保者亦同

第二百二十一條 以抵押權或質權擔保之請求權雖罹時效債權人仍得就其抵押物或質物
請求履行

前項規定於利息及其他定期給付之各期給付請求權之消滅時效不適用之

第二百二十二條 主權利之消滅時效其效力及於從權利但本律有特別規定者不在此限
第二百二十三條 消滅時效不得拋棄或加長年限



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First Book

GENERAL PRINCIPLES

First Chapter

PERSONS

First Title

NATURAL PERSONS

Article 1. The legal capacity of a human being begins with the completion of birth and terminates at the moment of death.

Article 2. A fetus is considered as if he* were born in respect to the protection of his special rights provided that he was not subsequently born dead.

Article 3. A missing person after the declaration of death is presumed to be dead.

Article 4. A missing person may be declared dead by the Court upon the application of the interested persons if for ten years no news has been received that he is alive.

*Whenever the masculine form of a word is used, it includes the feminine, unless it is clear from the context that only the masculine gender is intended.

A missing person who is an infant can only be declared dead after he has reached the age of majority.

A missing person who is upwards of seventy years old may be declared dead, if for five years no news has been received that he is alive.

A missing person who has been in special peril of his life may be declared dead, if for three years no news has been received that he is alive.

In Sections 1 and 3 of this Article, the period is reckoned from the following year after the latest news has been received from the missing person, while in Section 4 thereof, it is reckoned from the following year after the peril is over.

Article 5. The date provided in the following Sub-Sections is the date of death to be fixed in the judgment for the declaration of death, provided that the results of investigation do not prove to the contrary.

(1) In the cases provided for in Sections 1 to 3 of the preceding Article, the date at which the declaration of death may be made ;

(2) In the cases provided for in Section 4 of the preceding Article, the date of the occurrence of the peril.

Article 6. The property of a missing person shall, prior to the declaration of death, be administered in accordance with the Regulations governing Non-contentious Matters.

Article 7. In the case of twin sons the order of seniority shall be determined by the time of their birth.

Article 8. If several persons have perished in a common peril, it is presumed that they died simultaneously.

Article 9. Majority begins with the completion of the twentieth year of age.

Article 10. A minor who has not completed his seventh year of age is incapable of disposing.

Article 11. A minor who is upwards of seven years old is limited in disposing capacity.

Article 12. A person under any one of the conditions provided for in the following Sub-Sections may be interdicted by the Court upon the application of the person himself his spouse or two of his nearest relatives:

(1) if in consequence of insanity, mental weakness or morbid disturbance of mental activity he is unable to manage his affairs ;

(2) if by illness or other cause he is in a condition of feeble-mindedness and is thereby hardly able to manage his affairs ;

(3) if by prodigality he exposes himself or his family to the danger of want.

The interdiction shall be revoked if the cause thereof disappears.

Article 13. A person interdicted under Sub-Section 1, Section 1 of the preceding Article is incapable of disposing; while those interdicted under Sub-Sections 2 and 3 thereof are limited in disposing capacity.

Article 14. A minor who has not completed his seventh year of age is incapable of being held responsible for any damage done by him.

A minor who is upwards of seven years old or an old person who is upwards of seventy years old is incapable of being held responsible for any damage done by him, if he at the time of committing the damaging act did not have the understanding necessary for realising his responsibility.

The preceding Section applies *mutatis mutandis* to the damaging act committed by a person interdicted under Sub-Section 2, Section 1 of Article 12.

Article 15. A person who commits a damaging act in a condition of unconsciousness, or in a condition of morbid disturbance of the mental activity is incapable of being held responsible therefor, except where he has brought himself into such a condition by excessive drinking or other similar causes.

Article 16. No person shall be allowed to waive his legal capacity and disposing capacity.

Article 17. No person shall be allowed to waive his liberty, or restrict his liberty in a manner contrary to law or good manners.

Article 18. A person who sustains an injury to any right emanating from his personality may apply for the removal of the injury.

Under the above circumstances, damages or solatium may be claimed where special provision is made by law.

Article 19. A person who sustains an injury to the right to the use of his name may bring an action for the removal of the injury and for the payment of damages.

Article 20. A person who is afraid of sustaining an injury to the right to the use of his name may apply for an injunction for the prevention of the injury and for a guarantee for the payment of damages, if any.

Article 21. A person who resides in a place with the intention to remain permanently establishes his domicile at that place.

A person may not have more than one domicile at one and the same time.

Article 22. Domicile is lost if residence is discontinued with the intention of abandoning it.

Article 23. If a person's domicile is unknown or if he has no domicile in China, his residence is deemed to be his domicile, unless it is otherwise provided for in the Rules for the Application of Laws regarding the *lex domicilli*.

Article 24. If a person has chosen a residence for a special purpose, the residence is deemed to be his domicile for this purpose.

Article 25. The place of origin is determined by the place of domicile, unless the place of origin is to be retained during the stay at the place of domicile.

Article 26. If a person's place of origin is unknown the latest place of origin of his father or that of his grand father is his place of origin. If the place of origin of his father or that of his grandfather is also unknown and he himself has no domicile or his domicile is unknown, his residence is his place of origin.

Second Title

JURISTIC PERSONS

First Paragraph

GENERAL PROVISIONS

Article 27. An association or a foundation whose object is for public welfare acquires juristic personality by a grant from the competent authorities.

Article 28. An association or a foundation whose object is not for public welfare acquires juristic personality by making a constitution and expressing the intention to form a body corporate, subject to the condition that its object shall not be contrary to law or good manners.

Article 29. An association whose object is profit-making acquires juristic personality in accordance with provisions of special laws.

Article 30. A juristic person has the capacity to enjoy all rights and assume all obligations which do not appertain to a natural person exclusively.

Article 31. A juristic person has the capacity to exercise civil rights from the moment when an organ or organs are established which the law and the constitution of such organ or organs require.

Article 32. A juristic person is liable to pay damages for any damage done to another person by its organ in the performance of its duties. Besides, the wrong-doer himself is personally responsible for committing the damaging act.

Article 33. The domicile of a juristic person is the place where it has its principal office.

Article 34. A juristic person is under an obligation to do the following acts :—

(1) At the time of its formation it shall register itself at each place where its office is situated. The same rule applies in case of any alteration in the registered matters.

(2) At the time of its formation as well as at the end of its business term, an inventory of its property shall be prepared and deposited at each office. If no business term has been fixed, the inventory shall be prepared within the first three months of each year.

(3) An association shall prepare a register of members to be deposited at its principal office. In case of any alteration, corrections shall be made from time to time.

Article 35. A juristic person can not set up a defence against a third party for unregistered matters or subsequent unregistered changes of registered matters, which should have been registered.

Article 36. On the dissolution of a juristic person, its

assets devolve upon the local public institution of the place of its domicile, unless it is otherwise provided in its constitution, or in the resolution of the General Meeting of Members.

The saving clause in the preceding Section is not applicable to the case where the juristic person is dissolved by the Court on the ground that its object is contrary to law or good manners.

Article 37. Except in the case of dissolution by bankruptcy, the assets of a juristic person are to be liquidated in accordance with the provisions of the following nine Articles.

Article 38. Unless it is otherwise provided in the constitution or in the resolution of the General Meeting of Members, the liquidation is to be effected by the directors.

Article 39. When there is no person to act as liquidator as provided for in the preceding Article, or when a liquidator is wanting and damage is apprehended in consequence, the Court may appoint liquidators upon the application of an interested party.

The liquidators provided for in the preceding Section may, for serious cause, be dismissed by the Court.

Article 40. The provisions applicable to directors apply *mutatis mutandis* to liquidators, unless there are in this paragraph special provisions to the contrary or unless a contrary intention appears from the object of the liquidation.

Article 41. The functions of the liquidators are as follows :—

- (1) To wind up pending business ;
- (2) To collect claims and pay debts ;
- (3) To deliver the remaining assets to the persons entitled thereto.

Liquidators may do all acts necessary for the discharge of all the functions mentioned in the above three Sub-Sections of the preceding Section.

The (dissolved) juristic person is deemed to continue in existence in so far as it is necessary within the scope and until the completion of the liquidation.

Article 42. Liquidators shall register their names, domiciles as well as the cause and date of the dissolution of the juristic person at each place where its office is situated.

Article 43. At the time of the registration of the dissolution of a juristic person in accordance with the preceding Article, the liquidators shall request the Court at each place where it has its office to make public notification whereby the creditors are invited to present their claims.

Article 44. Liquidators shall invite known creditors by separate special communications.

Article 45. The remaining assets of the juristic person

may not be delivered to the persons entitled thereto before the expiration of one year after the public notification of its dissolution.

If a creditor presents his claim after the expiration of the above-mentioned period, he can only demand payment out of the balance of the assets not yet delivered to the persons entitled thereto. But in the case of a known creditor the full amount of his claim shall be lodged by the liquidators, although he has not presented his claim.

When a debt is not yet due, or when it is impracticable to lodge the subject matter of a matured debt, or when its lodgment is contested, the remaining assets may not be delivered to the persons entitled thereto until after security has been given to the creditor.

Article 46. When the assets of a juristic person are insufficient to meet its liabilities, the liquidators shall apply for a declaration of bankruptcy.

The duties of the liquidators terminate as soon as they have delivered their affairs to the Bankruptcy Administrator.

Article 47. The dissolution and liquidation of a juristic person are to be supervised by the Court.

The Court may from time to time make inspections necessary for the supervision.

Article 48. If the liquidators have neglected to make

registration, or to apply for a declaration of bankruptcy, or to apply for a public notification, or to address a special communication, or have made false statements in the application for public notification, or have disobeyed the order of the supervising Court, or have obstructed the inspection by the Court, they are liable to a fine of from 5 to 500 *Yuan*.

Article 49. If the liquidators have neglected to apply for a public notification, or for a declaration of bankruptcy, or to address a special communication, or if they have, without having paid those debts which ought to have been paid, delivered the remaining assets of the juristic person to persons entitled thereto in contravention of the time-limit prescribed by law, or in default of the lodgment of security, or on account of negligence, thereby causing damage to the creditors of the juristic person, they shall be jointly liable *vis-a-vis* such creditors for the payment of damages.

Second Paragraph

ASSOCIATIONS

Article 50. The founders of an association shall draw up a Constitution for its formation, which shall contain the following particulars:—

1. The object ;
2. The name ;

3. Provisions relating to the composition of the directorate and the appointment and dismissal of directors;

4. The essential conditions under which the General Meeting of Members shall be called, its procedure, and the authentication of its resolutions;

5. Provisions concerning the contributions of the members;

6. Provisions concerning the acquisition and loss of membership;

7. The site of the office.

Article 51. Upon the formation of an association, it shall register the following particulars:—

1. The object;

2. The name;

3. The principal and branch offices;

4. The names and domiciles of the directors;

5. The total amount of the assets;

6. The date of grant for formation, if its formation should have been granted;

7. If the method of contributing property is fixed, such method;

8. If the power of the director to represent the association is limited, such limitation;

9. If the period of duration is fixed, such period.

Article 52. The constitution of the organs of an association and the relation of the association with its members may be determined in the constitution by its founders, provided that nothing therein shall contravene the provisions of the following nineteen articles.

Article 53. The General Meeting of Members of an association is the organ in which lies the supreme power of the association.

This General Meeting is to be called by the directors.

The General Meeting shall be called in accordance with the provisions of the constitution, or whenever the interest of the association requires it; but if over one-tenth of the members request the directors to call a General Meeting specifying the object of the meeting and the reasons for its convocation, the latter shall call one accordingly.

If no general meeting is called by the directors within two weeks after the receipt of the above request, the members who have made the request may call one upon the authorisation of the Court.

Article 54. The General Meeting appoints directors, excludes members, makes alteration in the constitution, and decides upon all affairs which shall not be entrusted to other organs.

The General Meeting has the power to supervise over the acts of the directors and other officers and may

dismiss them at any time without prejudice however to their claims arising out of their contractual rights.

Article 55. Unless it is specially provided in this Code, a resolution of the General Meeting is adopted by a majority vote of the members present.

The General Meeting shall pass resolution only upon those matters previously notified at the time of convocation; provided that, if there are special provisions in the constitution, matters may be brought up for decision without previous notice.

A resolution is also valid without a General Meeting, if all the members declare in writing their consent to the resolution.

Article 56. A resolution involving an alteration in the constitution of an association can be passed only by a majority vote of two-thirds of all the members. But no resolution shall be passed for an alteration in the object for which the association was formed.

If an association whose juristic personality is acquired by grant makes an alteration in its constitution, the alteration shall be made through the permission of the competent authorities except in the cases of the increase or diminution in the number of offices or their removal.

Article 57. The directors of an association are to be appointed by the General Meeting.

Article 58. The directors represent the association externally for all acts relating to the affairs of the association.

The provisions applicable to the authority of representation of a statutory agent apply *mutatis mutandis* to the authority of representation of the directors.

The authority of representation of the directors may be restricted by the constitution.

Article 59. The directors manage the affairs of the association.

The provisions applicable to mandate apply *mutatis mutandis* to the management of affairs by the directors.

Article 60. If the directorate consists of several persons, all questions relating to the management of the affairs of the association are to be decided by a majority vote of the directors. But if a declaration of intention is required to be served upon an association, it is sufficient if it is served upon one of the directors.

If there is a vacancy in the number of directors as required by the constitution, other director or directors may perform the duties in his stead until the vacancy is filled. But if there is no other director or if it is feared that the delay in filling the vacancy might thereby cause damage, the Court may appoint a temporary director upon the application of an interested party.

Article 61. During the existence of an association the directors are responsible for making an application for registration or a declaration of bankruptcy, for keeping a register of its members, and for preparing an inventory of its assets.

Directors who have neglected to act in compliance with the preceding Section, or who have acted improperly, or who have disobeyed a supervising order or obstructed an inspection of the competent authorities are liable to a fine of from 5 to 500 *Yuan*.

Article 62. Directors who have neglected to make registration as to the formation of the association or to apply for a declaration of bankruptcy thereby causing damage to a third party are jointly responsible for the payment of damages.

Article 63. Members may withdraw from the association at any time, unless it is provided in the constitution that withdrawal is permissible only at the end of the business term, or not until the expiration of a fixed period after previous notice.

The period provided for in the preceding Section may not exceed one year.

Article 64. A member may be dismissed by the association for a proper cause. The causes of dismissal may be defined in the constitution.

Article 65. Membership is not transferable.

Article 66. Special rights of a member may not be infringed upon by a resolution of the General Meeting except with the consent of such member.

Article 67. Members have equal votes at the General Meeting unless it is otherwise provided in the constitution of an association whose object is not for public welfare.

Article 68. A member may not, at the General Meeting, vote upon any resolution which relates to a juristic act or a legal dispute between himself or his spouse, or his near relative and the association.

Article 69. Unless it is otherwise provided in the constitution, contributions are to be shared in equal proportion among the members.

Article 70. A retired or dismissed member has no right to demand his share of the property of the association unless it is otherwise provided in the constitution of an association whose object is not for public welfare.

The above-mentioned member is still liable for his share of the contributions undertaken before his retirement or dismissal.

Article 71. When a resolution passed by the General Meeting is contrary to law or ordinance or the constitution of the association, any member who has not assented thereto may apply to the court for declaring the resolution null and void.

An application as mentioned above must be made within one month beginning with the date of the knowledge of such resolution, but shall not be made upon the expiration of three months beginning with the date of such resolution.

Article 72. If an association is formed by grant, its business is under the supervision of the competent authorities.

The competent authorities may at any time examine into the business of the association and the state of its property.

Article 73. An association may be dissolved at any time by a resolution carried at its **General Meeting**.

A resolution of dissolution may be passed only with the consent of three-fourths or more than three-fourths of the total number of members of the association, unless the constitution provides otherwise.

Article 74. An association is dissolved *ipso jure* under any one of the following circumstances :—

1. By the happening of any cause of dissolution specified in the Constitution ;
2. By the completion or the impossibility of completion of the undertaking which forms the object of the association ;
3. By the decrease in membership until when there remains only one member ;

4. By bankruptcy.

Article 75. If an association has contravened the conditions under which the permission for its formation has been granted, it is dissolved by the cancellation by the competent authorities of the permission for formation.

Article 76. If the object of an association, or an act done by it, is contrary to law or good manners, or if it has done anything beyond the scope of its object, the court may declare the dissolution of the association upon the institution by the competent authorities, or the public procurator, or an interested party of an action to that effect.

Third Paragraph

FOUNDATIONS

Article 77. The founders of a foundation shall draw up in writing an Act of Endowment except in the case of donation by will which may be made orally.

The Act of Endowment shall at least specify the object of the foundation and the property donated.

Article 78. The heir or creditor of the founder may revoke the donation according to the provisions relating to the causes for the revocation of a gift.

Article 79. Upon the formation of a foundation, it shall register the following particulars :—

1. The object ;
2. The name ;
3. The principal and branch offices ;
4. The names and domiciles of the directors ;
5. The total amount of the assets ;
6. The date of grant for formation, if such grant is necessary ;
7. If the power of the director to represent the foundation is limited, such limitation ;
8. If the period of duration is fixed, such period.

Article 80. The organization of the organs of a foundation and the methods of administration are to be regulated by the founder of the foundation in the Act of Endowment.

If the organization as provided in the Act of Endowment is imperfect or if there are therein insufficient indications of the important points as regards the method of administration, the Court may, on the application of any interested party, take whatever steps may be necessary.

Article 81. When a foundation is formed by grant, its business is subject first to the supervision of the local body of the locality where it has its domicile, and, secondly, to

the supervision of the competent authority by which the permission for creation was granted.

The competent authority and the local body may at any time examine into the business of the foundation and the state of its property.

Article 82. For maintaining the object of the foundation or for preserving its property, the Court may modify the organization of such foundation on the application of the competent authority, or the local body, or the founder, or any interested party.

Article 83. If the change of circumstances has made the object of a foundation obviously contrary to the original intention of the founder, the court may change the object or organization of such foundation on the application of the competent authority, or the local body, or the founder, or any interested party.

Article 84. During the existence of a foundation the directors are responsible for making an application for registration or a declaration of bankruptcy and for preparing an inventory of its assets.

Directors who have neglected to act in compliance with the preceding Section, or who have acted improperly, or who have disobeyed the supervising order or obstructed the inspection of the competent authority or the local body are liable to a fine of from 5 to 500 *Yuan*.

Article 85. Directors who have neglected to make registration as to the formation of the foundation or to apply for a declaration of bankruptcy thereby causing damage to a third party are jointly responsible for the payment of damages.

Article 86. A foundation is dissolved *ipso jure* under any one of the following circumstances:—

1. By the happening of any cause of dissolution specified in the Act of Endowment;
2. By the completion or the impossibility of completion of the undertaking which forms the object of the foundation;
3. By bankruptcy.

Article 87. If the object of a foundation was, or has on account of the change of circumstances turned out to be, contrary to law or good manners, the court may declare the dissolution of such foundation upon the institution by the competent authority, or the local body, or the public procurator, or any interested party of an action to that effect.

Fourth Paragraph

FOREIGN JURISTIC PERSONS

Article 88. With the exception of Foreign States, the administrative divisions of Foreign States, and foreign

companies, the existence of foreign juristic persons is not recognized unless they be specially recognised by Law or Treaty.

Foreign juristic persons whose existence is recognised possess the same legal capacity and disposing capacity as Chinese juristic persons of the same nature, with the exception, however, of such rights as are withheld from the former either by law or by treaty as well as those withheld from aliens in general.

Article 89. The provisions in Sub-Section 1 of Article 34, Article 35, Article 51 and Article 79 apply *mutatis mutandis* to a foreign juristic person which has established an office in China.

Article 90. When a foreign juristic person for the first time establishes an office in China, a third party may not recognize its existence before it has registered itself at the place where it has established its office.

Article 91. When a foreign juristic person establishes an office in China, it shall appoint an agent to reside in China and to represent the juristic person externally for the transaction of all of its business.

Article 92. The provisions of Article 61, Article 62, Article 84 and Article 85 apply *mutatis mutandis* to the agent of a foreign juristic person.

Article 93. If a foreign juristic person acts contrary to law or good manners, or has done anything beyond the

scope of its object, the court may cause the office of such foreign juristic person to be closed upon the institution by the public procurator or any interested party of an action to that effect.

Article 94. When a foreign juristic person whose existence has not been recognized enters into a juristic act with a third party in the name of the juristic person, the persons who have entered into this act shall be jointly responsible therefor.

Second Chapter

THINGS

Article 95. Things are corporeal objects.

Natural forces which are susceptible of appropriation in law are deemed corporeal objects.

Article 96. Immovables are land and buildings.

Article 97. The essential component parts of a thing are those which cannot be separated from one another without changing the nature of the thing or destroying the thing.

The essential component parts of a thing alone cannot be taken as the object of real rights.

Article 98. The essential component parts of an immovable are things which are firmly affixed thereto, or the products of the immovable so long as they are not separated therefrom, or which are permanently attached to or connected with the immovable.

Seeds upon being sown, a plant upon being planted, respectively constitute essential component parts of the immovable.

Things which are attached to or connected with an immovable only for temporary purpose do not constitute its component parts.

Article 99. Accessories are things which, without being component parts of the principal thing, are intended to serve the purpose of the principal thing and belong to the same owner. But this rule is not applicable if there is a special custom prevailing in trade.

The disposal of the principal thing affects its accessories.

Article 100. Natural fruits are the produce reaped in the productive use of the thing.

Juristic fruits are the produce reaped by virtue of a legal relation.

Article 101. A person who is entitled to receive the natural fruits of a thing receives them upon their separation from the thing during the existence of his right.

A person who is entitled to receive the juristic fruits of a thing receives them in proportion to the number of days during which his right exists.

Third Chapter

JURISTIC ACTS

First Title

DISPOSING CAPACITY

Article 102. The declaration of intention of a person incapable of disposing is void. A declaration is also void which is made by a person who, though not incapable of disposing, is in a condition of unconsciousness or morbid disturbance of the mental activity.

Article 103. The statutory agent of a person incapable of disposing makes or receives a declaration of intention in his behalf.

Article 104. The declaration of intention of a person limited in disposing capacity requires the approval of his statutory agent or guardian, unless in the case of the mere acquisition of a legal advantage.

Article 105. If a person limited in disposing capacity enters into a contract without the approval of his statutory agent or guardian, the contract shall be enforced only upon its ratification by the statutory agent or guardian.

Article 106. The other party to the contract may fix a period of at least one month and demand the statutory agent or guardian to answer definitely whether or not he ratifies.

If the statutory agent or guardian does not give definite answer within the above-mentioned period the ratification is deemed to have been refused.

Article 107. When the cause for which a person's disposing capacity is limited has disappeared, his ratification has the same validity as that of his statutory agent or guardian.

The provisions of the preceding Article apply *mutatis mutandis* to the case provided for in the preceding Section.

Article 108. Before ratification of the contract the other party is entitled to revoke it, except where he knew, at the time it was entered into, that the approval had not been given.

Article 109. A unilateral juristic act which the person limited in disposing capacity enters into without the approval of his statutory agent or guardian is void, unless the other party is aware that it was not approved or voluntarily waits for the ratification in future by his statutory agent or guardian or the person himself.

The provisions of Articles 105 to 107 apply *mutatis mutandis* to the case provide for in the preceding Section.

Article 110. If a person limited in disposing capacity has employed any trick so as to induce others to believe that he is capable of disposing, or that the approval of his statutory agent or guardian was obtained, the statutory agent or guardian may not refuse to ratify the contract or unilateral juristic act, as the case may be.

Article 111. If the statutory agent or guardian of a person limited in disposing capacity has authorised the latter to dispose of a certain property, either for a fixed object previously specified or otherwise, such person has disposing capacity in so far as the said property is concerned.

Article 112. If the statutory agent or guardian of a person limited in disposing capacity has authorised the latter to carry on a business independently, such person has full capacity in so far as the said business is concerned.

The authorization may be revoked or restricted by the statutory agent or guardian, if the person limited in disposing capacity proves himself to be incapable of carrying on the business thus authorised.

Article 113. If the statutory agent or guardian of a person limited in disposing capacity has authorised the latter to enter into the service or employment of another person, he then has the full capacity to do such acts as relate to the entry into or the cessation of the relation of service or employment.

The provisions of the second Section of the preceding Article apply *mutatis mutandis* to the case provided for in the preceding Section.

Second Title

DECLARATION OF INTENTION

Article 114. A declaration of intention is not void by reason of the fact that the declarant did not intend to make the declaration; provided that such declaration is void if made to a person who is aware of such circumstance.

Article 115. A declaration of intention not seriously intended, which is made by the declarant in the expectation that it will be understood not to be seriously intended, is void.

Article 116. When a declarant, acting in collusion with the other party, makes a fictitious declaration of intention, the declaration is void, but the fact of its being void cannot be set up against a *bona fide* third party.

If some other juristic act is implied in the fictitious declaration of intention, such implied act is still valid.

Article 117. A person who, when making a declaration of intention, was under a mistake as to its purport may avoid the declaration. A mistake concerning any

characteristics of the person or thing which are regarded in ordinary dealings as essential is also a mistake concerning the purport of the declaration.

The provision of the preceding Section applies *mutatis mutandis* to the case where the declarant would not have made the declaration if he had been aware of the state of affairs.

Article 118. A declaration of intention which has been incorrectly transmitted by the person employed for its transmission may be avoided under the provision of Section 1 of the preceding Article.

Article 119. In the cases provided for in the preceding two Articles the avoidance shall be made without delay after the person entitled to avoid has obtained knowledge of the grounds for avoidance.

The right of avoidance is barred if three years have elapsed since the making of the declaration of intention.

Article 120. If a declaration of intention is void under Article 115, or avoided under Articles 117 and 118, the declarant shall compensate the other party or any third party for any damage which the other party or the third party has sustained by relying upon the validity of the declaration, unless the injured party knew of, or had the means of knowing, the ground on which the declaration was void or voidable.

Article 121. A person who has been induced to make a declaration of intention by fraud or by threats may avoid the declaration. But if the fraud was committed by a third party, avoidance may be made only if the other party knew the fraud or had the means of knowing it.

The avoidance of a declaration of intention on account of fraud can not be set up against a *bona fide* third person.

Article 122. The avoidance of a declaration of intention voidable under the preceding Article shall be made by the person entitled to avoid within the period of one year from the moment of the discovery of the fraud or the cessation of the coercion.

The right of avoidance is barred if ten years have elapsed since the making of the declaration of intention.

The provisions of Article 215 to Article 217 apply *mutatis mutandis* to the running of the period mentioned in the first Section of this Article.

Article 123. A juristic act which is contrary to a statutory prohibition is void, unless it is otherwise provided by law.

Article 124. A juristic act which is contrary to good manners is void.

Article 125. A juristic act is void if a person, profiting by the difficulties, indiscretion or inexperience of another, causes the act to be done in such a manner that, having regard to the circumstances, the unfairness is obvious.

Article 126. If a juristic act is contrary to a statutory prohibition or a judgment against alienation which aims at the protection of particular persons, it is void, unless the person benefited by such alienation, due to no fault on his part, is unaware of the fact.

Article 127. A juristic act which is not in the form prescribed by law is void.

Article 128. A juristic act which is not in the form prescribed by contract is void, unless it is otherwise agreed upon between the parties.

Article 129. A declaration of intention *inter praesentès* becomes effective at the moment when the person to whom the declaration is made understands it.

Article 130. A declaration of intention *inter absentes* becomes effective at the moment when the notification of the declaration reaches the person for whom it is intended, except in the case where the notification of its revocation has reached him previously or reaches him simultaneously.

The effect of the declaration is not affected by the fact that the declarant dies or becomes incapable of disposing,

or is limited in disposing capacity after the issuance of the notification of the declaration.

Article 131. If a declaration of intention is made to a person incapable of disposing or limited in disposing capacity, it shall be made to the statutory agent or guardian. But if a declaration of intention merely brings a legal advantage to a person limited in disposing capacity, or if the statutory agent or guardian has authorised him to receive it, the declaration may be made to the person limited in disposing capacity.

Article 132. The notification of a declaration of intention may be effected by its being served by a process-server in accordance with the provisions of the Regulations relating to Civil Procedure.

Article 133. If a declarant, due to no fault on his part, is ignorant of the name and residence of the person to whom the declaration is to be made, the notification of such declaration may be effected by service by public notice in accordance with the provisions in the Regulations relating to Civil Procedure governing service by public notice.

Article 134. In the interpretation of a declaration of intention the true intention is to be ascertained without regard to the literal meaning of the expression.

Third Title

CONTRACT

Article 135. If a person offers to another the making of a contract he is bound by the offer, unless he has at the time of offer excluded this obligation.

Article 136. An offer ceases to be binding if it is declined.

Article 137. An offer ceases to be binding if it is not accepted in due time according to the provisions of the following three Articles.

Article 138. An offer made to a person who is present shall be accepted at once.

Article 139. An offer made to a person who is not present shall be accepted within the time when the offerer must wait for an answer under ordinary circumstances.

Article 140. If the offerer has fixed a period of time for acceptance of the offer, the acceptance shall take place within that period.

Article 141. If an acceptance arrives out of time though it has been transmitted to the offerer in such manner that it would have arrived in due time, the offerer shall without delay notify the acceptor of the delay.

If the offerer neglects so to notify the acceptor as provided for in the preceding Section, the acceptance is deemed not to have been out of time.

Article 142. If the acceptance of an offer arrives out of time, it is deemed to be a new offer.

An acceptance with amplifications, limitations, or other alterations is deemed to be a refusal coupled with a new offer.

Article 143. A contract is concluded when a fact has occurred which may be considered as an acceptance of the offer, if a communication of its acceptance is not to be expected according to ordinary usage.

The provision of the preceding Section applies *mutatis mutandis* to the case where the offerer has at the time of offer waived the communication of the acceptance.

In the cases of the preceding two Sections, the moment at which the offer ceases to be binding is determined according to the intention either expressed by the offerer in the offer or to be inferred from other circumstances.

Article 144. The conclusion of a contract is not prevented by the fact that the offerer dies or becomes incapable of disposing or limited in disposing capacity before acceptance, unless a contrary intention of the offerer is clearly to be inferred.

Article 145. If authentication of the contemplated contract has been agreed upon between the parties, it is inferred that the contract is not concluded until the authentication has taken place.

Article 146. At an auction a contract is not concluded until the hammer falls.

A bid ceases to be binding if a higher bid is made or the auction is closed before the hammer falls.

Fourth Title

CONDITION-LIMITATION OF TIME

Article 147. A juristic act subject to a condition precedent takes effect on the fulfilment of the condition.

A juristic act subject to a condition subsequent loses effect on the fulfilment of the condition.

Article 148. If, according to the special agreement of the parties, the consequences incident to the fulfilment of the condition are to become operative as from an earlier time, then on the fulfilment of the condition the parties shall be bound to perform reciprocally what they would have been bound to perform, if the consequences had become operative at the earlier time.

Article 149. In the case of a juristic act entered into subject to a condition precedent, the person who has during the time pending the fulfilment committed a damaging act, thereby destroying or impairing the right of the other party dependent upon the condition, shall be held liable to pay damages therefor. In the case of a juristic act entered into subject to a condition subsequent, the person in whose favour the previous legal position is restored has like claim, if his right is destroyed or impaired in consequence of a damaging act done by the other party.

Article 150. If a person has disposed of an object subject to a condition precedent, every further disposition which he makes of the thing pending the fulfilment of the condition is void on the fulfilment of the condition in so far as it would destroy or impair the operative effect dependent upon the condition.

The provision of the preceding Section applies *mutatis mutandis* to a disposition which is effected, pending the fulfilment of a condition precedent, by means of compulsory execution or distraint, or by a trustee in bankruptcy.

The provisions regarding the benefit of those who derive rights from a person without title apply *mutatis mutandis* to the cases of the two preceding Sections.

Article 151. The provisions of the preceding Article apply *mutatis mutandis*, in the case of a condition subse-

quent, to the dispositions of a person whose right is extinguished upon the fulfilment of the condition.

Article 152. If the fulfilment of a condition is prevented in bad faith by the party to whose disadvantage it would operate, the condition is deemed to have been fulfilled.

If the fulfilment of a condition is brought about in bad faith by the party to whose advantage it would operate, the condition is deemed not to have been fulfilled.

Article 153. A juristic act subject to a time of commencement becomes operative when the time arrives.

A juristic act subject to a time of ending ceases to be operative when the time arrives.

In the cases of the preceding two Sections, the provisions of Article 149 to Article 152 apply *mutatis mutandis*.

Fifth Title

AGENCY

Article 154. An agency by law is an agency in which the delegated authority is conferred by virtue of a provision of law.

An agency by mandate is an agency in which the delegated authority is conferred by virtue of a declaration of intention of the party.

Article 155. A declaration of intention which an agent makes in the name of the principal within the scope of a delegated authority takes effect both in favour of and as against the principal.

The declaration need not be made expressly in the name of the principal: it is sufficient if it appears from the circumstances that declaration was manifestly made in his name.

The provisions of the preceding two Sections apply *mutatis mutandis* if a declaration of intention required to be made to the principal is made to his agent.

Article 156. If the intention to act in the name of another does not appear manifest, the agent is considered to have acted in his own name.

Article 157. The validity of a declaration of intention made by or to an agent is not impaired by the fact that he is limited in disposing capacity unless it is otherwise provided by law regarding the qualifications of a statutory agent.

Article 158. In so far as the legal effectiveness of a declaration of intention is vitiated by defective intention, by fraud, by unlawful threats, or by knowledge or culpable

ignorance of certain circumstances, the question of fact shall be determined in accordance with the position in the matter concerned of the agent. But if an appointed agent has acted in accordance with definite instructions of the principal, the latter may not deny the act by setting up the ignorance of the agent with regard to such circumstances as he himself knew or did not know by reason of culpable ignorance.

Article 159. Except where the parties have made a special declaration of intention to the contrary, an agent may not enter into a juristic act in the name of his principal with himself in his own name, or as agent of both principals, unless the juristic act consists exclusively in the fulfilment of an obligation.

Article 160. When several persons act as agents they shall act jointly, unless there is a special provision in law or a special declaration of intention of the parties to the contrary.

Article 161. A power of agency is conferred by declaration to the person who is to exercise the power, or to the third party with whom the business delegated is to be transacted.

Article 162. The power of agency is terminated according to the legal relation upon which its creation is based.

In the absence of express agreement with regard to the legal relation on the basis of which a power of agency is created, the principal may revoke it during the subsistence of the legal relation.

The provision of the preceding Article applies *mutatis mutandis* to the revocation of a power of agency.

Article 163. If a power of agency is conferred by declaration to a third party, it remains in force in respect to him until he is notified of its termination by the principal.

Article 164. If a written power of agency is conferred to an agent, the agency remains in force until the written power of agency is returned to the principal or is declared invalid by him.

The agent has no right of lien on the written power of agency which shall be returned to the principal.

If the agent has lost the written power of agency or on account of other reasons it is impossible for him to return the same to the principal, the principal may apply for a declaration of invalidity according to the provisions relating to the public summons.

Article 165. The provisions of Article 163 and Section 1 of Article 164 do not apply, if the third party knew or ought to have known of the termination of the agency at the time when the juristic act was entered into.

Article 166. If a person has announced by notice to a third party or by public notification that he has given a power of agency to another, a juristic act entered into by the third party with the latter operates in favour of or as against the principal, regardless of whether or not the power of agency has been conferred.

The provision of the preceding Section applies *mutatis mutandis*, where the agent has produced the written power of agency of another to the third party.

Article 167. The provisions of the preceding Article do not apply, if the third party knew or ought to have known of the absence of the power of agency at the time when the juristic act was entered into.

Article 168. If a person enters into a contract in the name of another without authority, the contract does not operate in favour of or as against the principal until he ratifies.

The ratification under the preceding Section may be declared to the unauthorized agent, but it shall be made to the other party if he has demanded that the principal declare whether or not he ratifies.

Article 169. The other party may fix a reasonable period and demand that the principal declare whether or not he ratifies.

If the ratification is not declared by the principal within the period under the preceding Section, it is deemed to have been refused.

Article 170. When a contract is concluded by an unauthorized agent the other party may revoke it before ratification, unless he knew of the absence of authority at the time when the contract was entered into.

The revocation under the preceding Section may be declared to the unauthorized agent.

Article 171. A person who has entered into a contract as agent is, in the absence of proof of his authority and upon the refusal of the principal to ratify, bound to the other party at his election either to carry out the contract or to pay damages.

In the case of the preceding Section, if the agent did not know that he had no authority, the other party can only demand the payment of damages, not, however, beyond the value of the interest which the other party has in the validity of the contract.

Article 172. The agent is not liable under the preceding Article, if the other party knew or ought to have known of the absence of authority. The agent is also not liable if he is limited in disposing capacity, unless he had acted with the consent of his statutory agent.

Article 173. A unilateral juristic act done by a person in the name of another without authority is void, unless at the time of entering into the act the other party consented to the agent acting without authority or failed to ascertain whether the agent had the authority, in which case the provisions relating to contracts made with an unauthorized agent apply *mutatis mutandis*. The same rule applies if a unilateral juristic act be entered into with an unauthorized agent with his assent.

Sixth Title

INVALIDITY, VOIDABILITY, APPROVAL AND RATIFICATION.

Article 174. If part of juristic act is void the whole juristic act is void, unless it is to be presumed that it would equally have been entered into if the void part had been omitted.

Article 175. If a void juristic act satisfies the requirements of a different juristic act, the latter is valid if it is to be presumed that its validity would have been intended by the parties on knowing of the invalidity of the former.

Article 176. If a void juristic act is confirmed by the person who entered into it, the confirmation is deemed to be a renewed undertaking.

Article 177. If a party at the moment when a void juristic act was entered into knew or ought to have known that it was void, he is bound to restore the legal relation subsisting prior to entering into the act.

Article 178. If a voidable juristic act is avoided it is deemed to have been void *ab initio*. If its voidability was known or ought to have been known, the provision of Article 177 applies *mutatis mutandis* to its avoidance.

Article 179. The avoidance is effected by declaration to the person subject to avoidance.

If the person subject to avoidance is known, he is the person to whom the declaration of avoidance is to be made. If a third person has acquired a right directly through the voidable act, he is the person to whom such declaration is to be made.

If the person subject to avoidance is unknown, the person who has acquired a right directly through the voidable act is the person to whom the declaration of avoidance is to be made.

Article 180. If a voidable juristic act is ratified by the person entitled to avoid, it is deemed to be valid *ab initio*,

but it can not be set up against a *bona fide* third person.

Article 181. The provisions of Article 179 apply *mutatis mutandis* to ratification.

Article 182. If the validity of a contract depends upon the consent of a third party, the giving or refusal of consent may be declared as well to the one as to the other party.

If the validity of a unilateral juristic act which purports to be entered into with another depends upon the consent of a third party, the provision of the preceding Section applies *mutatis mutandis*.

Article 183. Precedent consent (i.e., approval) is revocable until the juristic act has been entered into, unless such consent cannot be revoked according to the nature of the legal relation by virtue of which the approval is given.

The revocation may be declared as well to the one as to the other party.

Article 184. Subsequent consent (i.e., ratification) operates as from the moment when the juristic act was entered into, unless it is otherwise provided.

Dispositions affecting the object of the juristic act which before the ratification have been made by the party ratifying, or which have been effected by means of compulsory

execution or distraint or by a trustee in bankruptcy, are not affected by the provision of the preceding Section.

Article 185. A disposition affecting any object which is made by a person without title is valid upon the ratification of the person entitled.

The disposition is valid *ab initio* if the person without title acquires title to the object after having made the disposition.

Article 186. In the case provided in the second Section of the preceding Article, if several incompatible dispositions have been made, only the earliest disposition is effective.

Fourth Chapter.

CALCULATION OF TIME-LIMITS.

Article 187. The rule for fixing time-limits is to be determined in accordance with the provisions of this Chapter except as otherwise provided by laws, ordinances, judicial decisions or juristic acts.

Article 188. A period described by hours is to be calculated as from the given moment.

A period described by days, weeks, months or years is to be calculated from the beginning of the following day, unless the event occurs from the point of time in the forenoon of the day.

Article 189. A period described by days, weeks, months or years ends with the expiration of the last day of the period.

A period which begins to run not at the beginning of a week, month or year, expires on the day preceding the day in the last week, month or year corresponding to the day on which it commenced to run; but if there is no such corresponding day in the last month in the case of a period fixed by months or years, it expires on the last day of the last month.

Articles 190. If, within a given period, a declaration of intention is to be made or any act of performance to be done, and if the last day of the given period falls on a Sunday, holiday or any day on which it is customary not to do business, the period expires at the last moment of the following day.

Article 191. The provision of the preceding Article applies *mutatis mutandis* to a declaration of intention to be made or an act of performance to be done on a given day.

Article 192. A period described by months or years is to be fixed according to the calendar.

Article 193. A period described by the beginning of a month, the middle of a month, or the end of a month is understood to be the first day, the fifteenth day, or the last day of the month.

Article 194. A period described by a half-month is understood to be fifteen days calculated from the beginning of such period; by a quarter, three months; by a half-year, six months.

Article 195. Age is reckoned from the day of birth.

Fifth Chapter

EXTINCTIVE PRESCRIPTION

Article 196. A right of claim is extinguished if not exercised for thirty years. But if its term is longer than thirty years, it is extinguished after the lapse of ten years from the latest day when the claim may be made.

Article 197. If a right of claim consists of the payment of money due at stated intervals of one year or a shorter period, the right coming into existence at each interval is extinguished if not exercised for five years.

Article 198. Any right of claim specified in the following Sub-Sections is extinguished if not exercised for three years:

1. Charges for lodging or food and drink, hire for rooms or seats, the price of articles for consumption and monetary advances in inns, restaurants and places of amusement.

2. Fees for transportation or money advanced by carriers.

3. Rent due to a person who carries on a business of letting movables.

4. Fees and remuneration for medical practitioners and midwives as well as money advanced by them for medicines and other things supplied.

5. Remuneration and fees for attorneys, notaries and bailiffs.

6. Restoration of things received from the parties to an action by attorneys, notaries and bailiffs.

Article 199. Extinctive prescription begins to run from the moment when the claim comes into being. If the claim is to a forbearance, the prescription begins to run from the moment when the right is first contravened.

Article 200. Extinctive prescription is interrupted if the obligor acknowledges the claim of the opposite party.

Article 201. Extinctive prescription is interrupted if an action is brought for the satisfaction of the claim.

The following are equivalent to bringing an action:—

(1) The service of an order for payment in a hortatory process;

(2) The service of a summons for the purpose of effecting a compromise;

(3) The presentation of the claim in bankruptcy proceedings;

(4) The notice of the pendency of an action;

(5) The institution of proceedings in execution or the presentation of an application for compulsory execution.

Article 202. Extinctive prescription is interrupted if, upon the bringing of an action, an application is presented for the designation of the competent court, except where no action has been brought within three months after such designation.

Article 203. Bringing action does not operate to interrupt prescription, if the action is withdrawn or dismissed as non-conformable to law by a judgment which has become absolute.

Article 204. Service of an order for payment does not operate to interrupt prescription, if the pendency of the action loses its effect.

Article 205. Service of a summons for the purpose of effecting a compromise does not operate to interrupt prescription, if the opposite party does not appear or if no compromise is arrived at.

Article 206. Presentation of a petition in bankruptcy proceedings does not operate to interrupt prescription, if the creditor withdraws the petition.

Article 207. Notice of the pendency of an action does not operate to interrupt prescription, if within six months after termination of the process no action is brought for satisfaction or establishment of the claim.

Article 208. Institution of proceedings in execution does not operate to interrupt prescription, if the proceedings are cancelled upon the application of the person entitled, or on account of the non-fulfilment of legal requirements.

Presentation of an application for compulsory execution does not operate to interrupt prescription, if the application is withdrawn or dismissed.

Article 209. Interruption by bringing action continues until the case is decided or otherwise disposed of without any right of appeal.

Article 210. Interruption by presentation of a petition in bankruptcy proceedings continues until the proceedings are ended.

Where, after the termination of the bankruptcy proceedings upon the lodgment of the amount of the claim under dispute, a case is pending in regard to the claim, the provision of the preceding Article applies *mutatis mutandis*.

Article 211. Interruption by notice of the pendency of an action continues until the case is decided or otherwise disposed of without any right of appeal.

Article 212. Prescription is interrupted by the arbitrator instituting the inquiry about the matter with the party to the dispute.

The provision of Article 209 applies *mutatis mutandis* to the case provided in the preceding Section.

Article 213. Prescription having been interrupted recommences to run upon the cessation of the cause of interruption.

Article 214. An interruption of prescription takes effect only as between the parties and their successors.

Article 215. If, at the time when the period for prescription would otherwise mature, the prescription can

not be interrupted owing to *vis major* or any other unavoidable cause, the prescription is not complete before the expiration of one month calculated from the time when such obstruction ceases.

Article 216. The prescription of a claim belonging to or running against property of a succession is not complete before the expiration of six months calculated from the time when the heir is determined, a manager is appointed or a declaration of bankruptcy is made.

Article 217. A prescription running against a person incapable of disposing or limited in disposing capacity is not complete, in case the person is left without a statutory agent or guardian, before the expiration of six months calculated from the time when such person becomes capable of disposing without limitation or from the time when his statutory agent or guardian enters upon his duties.

The provisions of the preceding Section do not apply where a person limited in disposing capacity is capable of suing and being sued.

Article 218. The prescription of claims of children against their parents is suspended during the continuance of the parental relationship.

The provision of the preceding Section applies *mutatis mutandis* to the prescription of claims of a protected person

against his protector (curator) and to the prescription of claims of a ward against his guardian.

Article 219. The prescription of claims of a wife against her husband is suspended so long as the marriage continues.

Article 220. After the lapse of the period of prescription the obliger is entitled to refuse performance.

If any act of performance is done in satisfaction of a claim barred by prescription, the value of such performance may not be demanded back on the ground that the performance has been effected in ignorance of the prescription. The same rule applies to a contractual acknowledgment of liability and to the giving of security by the obligor.

Article 221. The prescription of a claim for which there is a hypothec or a right of pledge does not prevent the obligee from satisfying himself out of the security.

The provision of the preceding Section does not apply to the case of prescription of claims for interest or other periodical acts of performance.

Article 222. Unless it is otherwise provided in this Code, the extinctive prescription of the principal claim affects claims accessory thereto.

Article 223. Extinctive prescription may neither be waived nor extended.

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First Book

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