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THE CIVIL CODE OF JAPAN

H: 45

Book I. General Provisions

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Book I

General Provisions

Article 1. All of the private rights conform to the public welfare. The exercise of rights and the performance of duties must be done truly with faithfulness. The abuse of rights is not recognized.

Article 1-2. This Code shall be construed from the standpoint of the individual dignity and the essential equality of the sexes.

Chapter I

Persons

Section I. Enjoyment of Private Rights

Article 1-3. The enjoyment of private rights commences at birth.

Article 2. Aliens enjoy private rights except in cases where it is prohibited by laws, ordinances or treaties.

Section II. Capacity

Article 3. Majority is attained on the completion of the twentieth year of age.

Article 4. A minor must obtain the consent of his legal representative for doing any juristic act, unless it is an act by which he is merely to acquire a right or to be relieved from a duty.

An act which is contrary to the provisions of the preceding paragraph may be avoided.

Article 5. A minor, who has been permitted by his legal representative to dispose of property for a purpose specified by the latter, may within the scope of such purpose dispose of it at his pleasure; he may do likewise in regard to property of which he has been permitted to dispose without any purpose being specified.

Article 6. A minor who has been permitted to carry on one or more kinds of business has the same capacity in relation to such business as a person of full age.

If, in the case contemplated in the preceding paragraph, there are facts showing that the minor is not yet capable of carrying on the business, his legal representative may, in accordance with the provisions of the Book on Relatives, revoke or restrict the permission.

Article 7. A person in a habitual condition of mental unsoundness may be adjudged incompetent by the Court of Domestic Relations on the application of the person himself, his spouse, any relative within the fourth degree of relationship, the guardian or the curator, or of a Public Procurator.

Article 8. A person adjudged incompetent shall be placed under guardianship.

Article 9. The acts of a person adjudged incompetent may be avoided.

Article 10. When the cause for incompetency has ceased to exist, the Court of Domestic Relations must on the application of any of the persons mentioned in Article 7 revoke the adjudication.

Article 11. Feebleminded, deaf, dumb or blind persons or spendthrifts may be adjudged quasi-incompetent and placed under curatorship.

Article 12. A person adjudged quasi-incompetent must obtain the consent

of his curator for doing any of the acts mentioned below:

1. To receive or make use of capital;

2. To borrow money or become surety;

3. To do acts which have for their object the acquisition or the loss of rights relating to immovables or to movables of importance;

4. To undertake acts of procedure;

5. To make gifts, compromises or agreement for arbitration;

6. To accept or renounce a succession;

7. To refuse a gift or testamentary gift or to accept a gift or testamentary gift subject to a charge;

8. To undertake building, re-building or extension operations, or to effect extensive repairs;

9. To effect letting and hiring of things for periods longer than those specified in Article 602.

The Court of Domestic Relations may, according to circumstances, order that a person adjudged quasi-incompetent must obtain the consent of his curator even for acts which are not mentioned in the preceding paragraph.

An act contrary to the provisions of the preceding two paragraphs may be avoided.

Article 15. The provisions of Articles 7 and 10 shall apply with the necessary modifications to quasi-incompetency.

Articles 14 to 18. (Deleted).

Article 19. The other party to an act done by a person under disability

may, after the latter has become a person of full capacity, give a peremptory notice to him to make a definite answer within a period fixed by him, which shall not be less than one month, as to whether he ratifies the voidable act or not. If the person who was under disability fails to despatch a definite answer within such period, he shall be deemed to have ratified the act.

The same shall apply in cases where a peremptory notice under the preceding paragraph has been given to a legal representative in respect of an act within the scope of his authority before the person under disability has become a person of full capacity but no definite answer has been despatched within such period.

Any act for which special formalities are required shall be deemed to have been avoided, if notice that such formalities have been complied with is not despatched within such period.

A peremptory notice may be given to a person adjudged quasi-incompetent or that the act be ratified within the period specified in paragraph 1 with the consent of the curator. If the person adjudged quasi-incompetent does not despatch notice within such period that such consent has been obtained, the act shall be deemed to have been avoided.

Article 20. If a person under disability has used fraudulent means to induce the belief that he is a person of full capacity, he cannot avoid his act.

Section III. Permanent Residence

Article 21. The base and centre of the life of each person shall be

his permanent residence.

Article 22. If the permanent residence is unknown, the place of residence shall be deemed to be the permanent residence.

Article 23. The place of residence in Japan of a person having no permanent residence in Japan, whether he is a Japanese or an alien, shall be deemed to be his permanent residence; but this shall not apply in cases where, according to the provisions of the Law Concerning the Application of Laws, the law of his domicile is to govern.

Article 24. If, for the purpose of a certain act, a provisional residence has been chosen, that shall be deemed the permanent residence in relation to such act.

Section IV. Disappearance

Article 25. If a person has left his permanent residence or place of residence without appointing an administrator for his property, the Court of Domestic Relations may, on the application of any person interested or of a Public Procurator, order the adoption of such measures as may be necessary for the management of such property. The same shall apply when the authority of an administrator has come to an end during the absence of his principal.

If the principal subsequently appoints an administrator, the Court of Domestic Relations must annul its order on the application of such administrator or any person interested, or of a Public Procurator.

Article 26. If, in cases where an absentee has appointed an administrator, it is unknown whether such absentee is alive or dead, the Court of Domestic Relations may, on the application of any person interested or a Public Procurator,

appoint another administrator in his stead.

Article 27. An administrator appointed by the Court in accordance with the provisions of the preceding two Articles must prepare an inventory of the property he is to manage; but the expenses thereof are defrayed out of the property of the absentee.

If, in cases where it is unknown whether an absentee is alive or dead, an application has been made by any person interested or by a Public Procurator, the Court of Domestic Relations may also order an administrator appointed by such absentee to proceed as provided in the preceding paragraph.

In addition to the above, the Court of Domestic Relations may order an administrator to take such measures as it may deem necessary for the preservation of the property of an absentee.

Article 28. If an administrator finds it necessary to do acts in excess of the powers specified in Article 103, he may do so on obtaining the permission of the Court of Domestic Relations. The same shall apply in cases where an administrator finds it necessary to do acts in excess of the powers fixed by the absentee, when it is unknown whether such absentee is alive or dead.

Article 29. The Court of Domestic Relations may require an administrator to furnish adequate security for the management and return of the property.

The Court of Domestic Relations may award the administrator reasonable remuneration out of the property of the absentee, having regard to the relations between the administrator and the absentee and to other circumstances.

Article 30. If it has been unknown for seven years whether an absentee is alive or dead, the Court of Domestic Relations may, on the application

of any person interested, make a judicial declaration of disappearance.

The same shall apply to any person who has been at the seat of war, on board a vessel which has foundered, or who has met with any other peril which might have been the cause of death, if it has been unknown whether he is alive or dead for three years after the cessation of the war, the foundering of the vessel or the termination of the peril.

Article 31. A person against whom a judicial declaration of disappearance has been made shall be deemed to have died at the expiration of the periods specified in the preceding Article.

Article 32. If it has been proved that a person against whom a judicial declaration of disappearance has been made is alive or has died at a time different from that specified in the preceding Article, the Court of Domestic Relations must, on the application of the person himself or any person interested, annul the judicial declaration of disappearance; such annulment, however, shall not effect the validity of acts done in good faith after the judicial declaration of disappearance and previous to its annulment.

A person who has acquired property by reason of a judicial declaration of disappearance shall lose his rights by its annulment; he is, however, bound to return such property only to the extent that he is still enriched.

Chapter II

Juristic Persons

Section I. Formation of Juristic Persons

Article 33. No juristic person can come into existence otherwise than in accordance with the provisions of this Code or of other laws.

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Article 34. Associations or foundations relating to worship, religion, charity, science, art or otherwise relating to public interests and not having the acquisition of gain for their object, may be incorporated by permission of the competent authorities.

Article 35. Associations which have for their object the acquisition of gain may be incorporated in accordance with the conditions prescribed for the formation of trading companies.

All the provisions relating to trading companies shall apply with the necessary modifications to the incorporated associations contemplated in the preceding paragraph.

Article 36. With the exception of States, administrative divisions of States and trading companies, the existence of foreign juristic persons shall not be recognized; but this shall not apply to such juristic persons as are recognized by laws or treaties.

Foreign juristic persons recognized in accordance with the provisions of the preceding paragraph shall enjoy the same private rights as those of the same classes of juristic persons formed in Japan; but this shall not apply to such rights as aliens cannot enjoy, nor to those in respect of which any different provisions are contained in laws or treaties.

Article 37. The founders of an incorporated association must make articles of incorporation in which they shall state the following particulars:

1. The object;
2. The name;
3. The office;
4. Provisions as to its property;

5. Provisions as to the appointment and removal of directors;

6. Provisions as to the acquisition and the loss of qualifications for membership.

Article 38. The articles of incorporation of an incorporated association may be altered only with the consent of three-fourths or more of all the members unless it is otherwise provided by the articles of incorporation.

No alteration of the articles of incorporation shall be effective unless it has been approved by the competent authorities.

Article 39. The founder of an incorporated foundation must, by an act of endowment having for its object the creation of such foundation, make provision for the particulars enumerated in Article 37, numbers 1 to 5.

Article 40. If the founder of an incorporated foundation has died without determining its name, its office or the method of the appointment and removal of its directors, the Court must, on the application of any person interested or of a Public Procurator, determine the same.

Article 41. If an act of endowment is effected by a disposition inter vivos, the provisions relating to gifts shall apply with the necessary modifications.

If an act of endowment is effected by will, the provisions relating to testamentary gifts shall apply with the necessary modifications.

Article 42. If an act of endowment has been effected by a disposition inter vivos, the property given by way of endowment shall constitute the property of the juristic person as from the time when the permission for its creation has been granted.

If an act of endowment has been effected by will, the property so given

shall be deemed to have been vested in the juristic person as from the time when the will has become effective.

Article 43. A juristic person shall possess rights and assume duties subject to the provisions of laws and ordinances and within the scope of its objects as determined by the articles of incorporation or by the act of endowment.

Article 44. A juristic person is bound to repair any damage done to other persons by its directors or other representatives in the performance of their duties.

If any damage has been done to other persons by an act which is not within the scope of the objects of a juristic person, those members and directors who have supported a resolution for such matter and the directors and other representatives who have carried it out shall be jointly and severally liable for the reperation of such damage.

Article 45. A juristic person must, within two weeks from the date of its creation, effect registration at the seat of each of its offices.

The creation of a juristic person cannot be set up against other persons until it has been registered at the seat of its principal office.

If a new office has been established after the creation of a juristic person, it must be registered within one week.

Article 46. The particulars to be registered are as follows:

1. The object;
2. The name;
3. The office;
4. The date of permission for creation;

5. The period of duration, if such period has been fixed;

6. The total amount of the property;

7. The method of effecting contributions if such method has been determined;

8. The full name and permanent residence of each director.

In cases where any alteration has occured in any of the particulars mentioned in the preceding paragraph, registration thereof must be effected within one week; such alteration cannot, prior to its registration, be set up against other persons.

Article 47. If any of the particulars to be registered in accordance with the provisions of Article 45, paragraph 1 and of the preceding Article, requires also the permission of the authorities, the period for registration shall be computed from the time of the arrival of the permit in question.

Article 48. In cases where a juristic person has removed its office, the removal shall be registered at the former seat within one week, and the registration in accordance with Article 46, paragraph 1 shall be effected at the new seat within the same period.

In cases where an office has been removed from one place to another within the jurisdiction of the same Registry, only the removal need be registered.

Article 49. The provisions of Article 45, paragraph 3, Article 46, and the preceding Article shall also apply where a foreign juristic person has established an office in Japan; but with respect to matters which have taken place in a foreign country, the period for registration shall be computed from the time when notice thereof has arrived.

When a foreign juristic person has established an office in Japan for the first time, other persons may deny the existence of such juristic person until registration has been effected where such office is situated.

Article 50. The permanent establishment of a juristic person is at the seat of its principal office.

Article 51. A juristic person must, at the time of its creation and within the first three months of each year, prepare an inventory and keep the same in its office at all times; but in cases where a special business term is provided, an inventory must be made at the time of such creation and at the end of such business term.

An incorporated association must keep a list of members and revise it whenever an alteration takes place in its membership.

Section II. Administration of Juristic Persons

Article 52. A juristic person shall have one or more directors.

In case there are two or more directors, the affairs of a juristic person shall be decided by a majority of the directors, unless it is otherwise provided by the articles of incorporation or the act of endowment.

Article 53. The directors shall each represent the juristic person in all its affairs, but they must not contravene the provisions of the articles of incorporation or the purport of the act of endowment. In the case of an incorporated association they must also comply with the resolutions of general meetings.

Article 54. No restriction imposed upon the power of representation of any director can be set up against a third person acting in good faith.

Article 55. Directors may delegate to other persons their power of representation for specified acts in those cases only where it is not forbidden by the articles of incorporation, by the act of endowment or by a resolution of a general meeting.

Article 56. If, in cases where a vacancy occurs among the directors, there is an apprehension that damage may ensue from delay, the Court shall appoint a provisional director on the application of any person interested or of a Public Procurator.

Article 57. Directors shall have no power of representation in respect of matters in which the interest of the juristic person and their own interest conflict. In such cases a special representative shall be appointed in accordance with the provisions of the preceding Article.

Article 58. A juristic person may, by the articles of incorporation, by the act of endowment or by a resolution of a general meeting, constitute one or more persons as supervisors.

Article 59. The duties of supervisors are as follows:

1. To supervise the state of the property of the juristic person;
2. To supervise the manner in which its affairs are administered by the directors;
3. To report to a general meeting or the competent authorities, if they discover any irregularities in the state of the property or the administration of affairs;
4. To convene a general meeting, if it is necessary to do so for making the report mentioned in the preceding head.

Article 60. The directors of an incorporated association must convene

an ordinary general meeting of the members at least once a year.

Article 61. The directors of an incorporated association may convene an extraordinary general meeting whenever they deem it necessary to do so.

The directors shall convene an extraordinary general meeting, when a demand stating the matters forming the object of the meeting has been made by one-fifth or more of all the members; but this proportion may be increased or decreased by the articles of incorporation.

Article 62. The convening of a general meeting must be effected by indicating at least five days in advance the matters forming the object of the meeting and in conformity with the method provided by the articles of incorporation.

Article 63. All the affairs of an incorporated association, with the exception of those delegated by the articles of incorporation to the directors or other officers, shall be administered in accordance with the resolution of general meetings.

Article 64. Except as otherwise provided by the articles of incorporation, a resolution may be adopted at a general meeting only with regard to matters of which previous notice has been given in accordance with the provisions of Article 62.

Article 65. The vote of each member shall be of equal value.

Members who do not attend a general meeting may vote in writing or by proxy.

The provisions of the preceding two paragraphs shall not apply if it is otherwise provided by the articles of incorporation.

Article 66. In cases where a resolution is to be voted on concerning the relations between the incorporated association and one of its members, such member shall have no vote.

Article 67. The affairs of a juristic person are subject to the supervision of the competent authorities.

The competent authorities may of their own motion inspect at any time the state of the affairs and of the property of a juristic person.

Section III. Dissolution of Juristic Persons

Article 68. A juristic person shall be dissolved for any of the following causes:

1. The happening of any cause of dissolution specified in the articles of incorporation or the act of endowment;
2. The completion of the undertaking which forms the object of the juristic person or the impossibility of such completion;
3. Bankruptcy;
4. The annulment of the permission for creation.

In addition to the cases enumerated in the preceding paragraph, an incorporated association shall be dissolved for any of the following causes:

1. A resolution of a general meeting in that behalf;
2. Where no member remains.

Article 69. Unless otherwise provided by the articles of incorporation, an incorporated association cannot adopt a resolution for dissolution except with the concurrence of three-fourths or more of all the members.

Article 70. If a juristic person has become incapable of discharging

its obligations in full, the Court shall, on the application of a director or of a creditor or of its own motion, make an adjudication of bankruptcy.

In the case of the preceding paragraph, the directors must immediately apply for an adjudication of bankruptcy.

Article 71. If a juristic person carries on undertaking which is outside the scope of its objects or contravenes the conditions under which permission for its creation was procured or otherwise commits acts which are likely to prejudice public interests, the competent authorities may annul such permission.

Article 72. The property of a juristic person which has been dissolved, devolves on the persons designated in the articles of incorporation or the act of endowment.

If no person on whom the property is to devolve is designated in the articles of incorporation or the act of endowment, or if the method by which such person is to be determined is not specified therein, the directors may, with the permission of the competent authorities, dispose of the property for objects similar to those of the juristic person; in the case of an incorporated association, however, a resolution of a general meeting is required.

Any property which is not disposed of in accordance with the provisions of the preceding two paragraphs shall devolve on the National Treasury.

Article 73. For the purposes of liquidation, a juristic person which has been dissolved shall be deemed to continue its existence until the liquidation has been completed.

Article 74. Where a juristic person has been dissolved, the directors

shall become the liquidators except in the case of bankruptcy; but this shall not apply if the articles of incorporation or the act of endowment contains any contrary provisions, or if other persons have been appointed at a general meeting.

Article 75. If there exist no persons to become liquidators in accordance with the provisions of the preceding Article, or if there is an apprehension that damage will be sustained because of a vacancy among the liquidators, the Court may appoint liquidators on the application of any person interested or of a Public Procurator or of its own motion.

Article 76. Where any grave reason exists, the Court may remove a liquidator on the application of any person interested or of a Public Procurator or of its own motion.

Article 77. Except in the case of bankruptcy, liquidators must within one week of the dissolution, effect the registration of their full names, permanent residences, the cause and date of dissolution, and in all cases they must also make a report thereon to the competent authorities.

Liquidators who have assumed office in the courts of the liquidation must, within one week of such assumption of office, effect the registration of their full names and permanent residences and also make a report thereon to the competent authorities.

Article 78. The duties of liquidators are as follows:

1. To wind up pending business;
2. To obtain performance of obligations and to perform them;
3. To distribute surplus assets.

Liquidators may do all acts necessary for performing the duties specified

in the preceding paragraph.

Article 79. Liquidators must, within two months from the day on which they assumed office, give at least three public notices to creditors calling upon them to present their claims within a specified period which must not be less than two months.

An additional statement must be included in the public notices mentioned in the preceding paragraph to the effect that the claims of creditors who do not present them within the period will be excluded from liquidation; but the liquidators cannot exclude creditors known to them.

Liquidators must give separate peremptory notices to each creditor known to them to present his claim.

Article 80. Creditors who have presented their claims after the expiration of the period specified in the preceding Article may claim against such property only as has not yet been delivered to the persons on whom the property is to devolve after the obligations of the juristic person have been fully satisfied.

Article 81. When it has become clear in the course of liquidation that the assets of the juristic person are insufficient fully to satisfy its obligations, the liquidators shall immediately apply for an adjudication of bankruptcy and give public notice thereof.

The duties of the liquidators shall come to an end when they have handed over the affairs to the administrator in bankruptcy.

If, in the case mentioned in this Article, anything has already been paid to creditors or delivered to any of the persons on whom the property is to devolve, the administrator in bankruptcy may demand it back.

Article 82. The dissolution and liquidation of a juristic person are subject to the supervision of the Court.

The Court of its own motion may conduct at any time any examination necessary for the purposes of the supervision mentioned in the preceding paragraph.

Article 83. When the liquidation has been completed, the liquidators shall make a report thereon to the competent authorities.

Section IV. Penal Provisions

Article 84. Directors, supervisors and liquidators of a juristic person shall be liable to an administrative penalty of not less than five yen and not exceeding two hundred yen in any of the following cases:

1. If they have neglected to effect any of the registrations prescribed in this Chapter;
2. If they have contravened the provisions of Article 51, or have made false statements in the inventory or in the list of the members;
3. If they have obstructed an examination by the competent authorities or the Court in the cases mentioned in Articles 67 and 82;
4. If they have made untrue statements to, or have concealed facts from, the authorities of a general meeting;
5. If, in contravention of the provisions of Articles 70 and 81, they have neglected to apply for an adjudication of bankruptcy;
6. If they have neglected to give any of the public notices

prescribed in Articles 79 and 81, or have given a false public notice.

Chapter III

Things

Article 85. A thing within the meaning of this Code is a corporeal thing.

Article 86. Land and things firmly affixed thereto are immovables. All other things are movables.

Obligations to bearer shall be deemed to be movables.

Article 87. If the owner of a thing has attached thereto another thing owned by him in order permanently to facilitate the use of such thing, the thing so attached is an accessory.

An accessory follows the disposition of the principal thing.

Article 88. Products acquired from a thing in conformity with the use for which the thing is intended are natural fruits.

Money and other things to be acquired as consideration for the use of a thing are legal fruits.

Article 89. Natural fruits belong to the person who has the right to acquire them at the time of their severance from the principal thing.

Legal fruits are acquired in proportion to the number of days during which the right to acquire them continues.

Chapter IV

Juristic Acts

Section I. General Provisions

Article 90. A juristic act which has for its object such matters as are contrary to public policy or good morals is null and void.

Article 91. If the parties to a juristic act have declared any intention which differs from any provisions of laws or ordinances which are not concerned with public policy, such intention shall prevail.

Article 92. If, in cases where there is a custom which differs from any provisions of laws or ordinances which are not concerned with public policy, it is to be recognized that the parties to a juristic act have intended to conform to such custom, that custom shall prevail.

Section II. Declaration of Intention

Article 93. The validity of a declaration of intention shall not be affected by the fact that the declarant has made it knowing such declaration not to be his real intention; but such declaration of intention shall be void if the other party was aware, or should have been aware, of the real intention of the declarant.

Article 94. A fictitious declaration of intention made in collusion with the other party is null and void.

The nullity of a declaration of intention as mentioned in the preceding paragraph cannot be set up against a third person acting in good faith.

Article 95. A declaration of intention shall be void if made under a mistake in regard to any essential elements of the juristic act; but if there has been gross negligence on the part of the declarant, he cannot himself assert its nullity.

Article 96. A declaration of intention induced by fraud or duress may be avoided.

If a third person has been guilty of fraud in respect of a declaration of intention made to a person, such declaration of intention may be avoided only in cases where that other party was aware of the fact.

The avoidance of a declaration of intention induced by fraud cannot be set up against a third person acting in good faith.

Article 97. A declaration of intention made inter absentes shall be effective as from the time when notice thereof has reached the other party.

The validity of a declaration of intention shall not be affected even if the declarant dies or loses his capacity after he has despatched the notice.

Article 97-2. In case the declarant of intention is unable to know the other party or his whereabouts, such declaration may be made by means of publication.

The publication specified in the preceding paragraph, according to the provisions of the Code of Civil Procedure relating to the service of publication, shall be made on the notice board of the Court and the fact of having made such publication shall be made known at least once in the Official Gazette and newspapers. However, in case the Court recognizes its propriety, order may be given that such publication shall be made, instead of in the Official Gazette and newspapers, on the notice board of a city, town or village office, or any other similar establishment.

A declaration of intention by publication shall be deemed to have reached the other party at the time which marks the passage of two weeks

reckoning from the date on which it last appeared in the Official Gazette and newspapers or publication on the notice board was commenced in substitution for press advertisement. However, the reaching of intention to the other party shall be devoid of its effect in case there is negligence on the part of the declarant as to his ignorance of the other party or of the whereabouts.

The procedure concerning publication, in case the other party is unknowable, shall belong to the jurisdiction of the Summary Court at the place of permanent residence of the declarant of intention and, in case the whereabouts of the other party is unknown, of the Summary Court at the last place of permanent residence of the other party.

The Court shall require the declarant of intention to prepay the costs of publication.

Article 98. If the person to whom a declaration of intention has been made is a minor or a person adjudged incompetent at the time when he receives it, the declaration of intention cannot be set up against him until his legal representative has become aware of it.

Section III. Representation

Article 99. A declaration of intention made by a representative within the scope of his authority and disclosing the fact that he is acting for the principal, shall be effective directly as against his principal.

The provisions of the preceding paragraph shall apply with the necessary modifications to a declaration of intention made by a third person to a representative.

Article 100. A declaration of intention made by a representative without disclosing that he is acting for his principal shall be deemed to have been made on his own behalf; but the provisions of paragraph 1 of the preceding Article shall apply with the necessary modifications, if the other party was aware, or should have been aware, that it was made on behalf of the principal.

Article 101. If the validity of a declaration of intention is to be affected by reason of absence of intention or fraud or duress, or by reason of the knowledge or negligent ignorance of any circumstance, the existence or non-existence of the fact shall be determined by reference to the representative.

If a representative, in cases where he has been commissioned to do a specific juristic act, has done such act in conformity with his principal's instructions, the principal may not assert ignorance on the part of the representative of any circumstance of which he himself was aware; the same shall apply in respect of any circumstance of which he was unaware through his own negligence.

Article 102. A representative need not be a person of full capacity.

Article 103. A representative whose authority is not specified has authority to do only the following acts:

1. Acts of preservation;
2. Acts for making use of or improving the thing or the right which forms the subject-matter of the representation, but only in so far as the nature of such thing or right is not altered thereby.

Article 104. A representative created by mandate may not appoint a sub-representative, except in cases where he has obtained the consent of the principal or where an unavoidable reason exists.

Article 105. If, in the case mentioned in the preceding Article, a representative has appointed a sub-representative, he shall be responsible to the principal in respect of the appointment and for supervision.

If a representative has appointed a sub-representative in compliance with a designation made by the principal, he shall incur no responsibility unless he knows such sub-representative to be unfit or untrustworthy and has nevertheless neglected to notify the principal thereof or to remove the sub-representative.

Article 106. A legal representative may, on his own responsibility, appoint a sub-representative, but he shall incur only the responsibility specified in paragraph 1 of the preceding Article, in cases where an unavoidable reason exists.

Article 107. A sub-representative represents the principal in respect of acts within the scope of his authority.

A sub-representative has the same rights and duties as a representative towards the principal and third persons.

Article 108. No person may in one and the same juristic act be a representative of the other party or a representative of both parties, but this shall not apply in respect of the performance of an obligation.

Article 109. A person who has indicated to a third person that he has conferred the power of representation on another person shall be responsible for acts done between such other person and the third person within the scope

of such power of representation.

Article 110. If, in cases where a representative has done an act in excess of his authority, a third person had just reason to believe that the representative had authority to do such act, the provisions of the preceding Article shall apply with the necessary modifications.

Article 111. The power of representation shall be extinguished by any of the following causes:

1. Death of the principal;
2. Death, adjudication of incompetence or bankruptcy of the representative.

The power of representation created by mandate shall also be extinguished by the termination of the mandate.

Article 112. The extinction of the power of representation cannot be set up against a third person acting in good faith unless the third person was unaware of such fact through negligence.

Article 113. If a person having no power of representation makes a contract as the representative of another, such contract shall not be effective as against the principal unless it has been ratified by the principal.

A ratification or its refusal cannot be set up against the other party unless it has been made to him, but this shall not apply in cases where the other party is aware of such fact.

Article 114. In the case mentioned in the preceding Article the other party may give a peremptory notice to the principal to make within a reasonable period fixed by the former a definite answer as to whether he will

ratify or not. If the principal does not make a definite answer within such period, he shall be deemed to have refused to ratify.

Article 115. A contract made by a person having not power of representation may be avoided by the other party so long as it has not been ratified by the principal, but this shall not apply where the other party was aware at the time the contract was made that such person had no power of representation.

Article 116. In the absence of any declaration of intention to the contrary, ratification shall be effective retroactively as from the time the contract was made; but the rights of third persons may not be prejudiced thereby.

Article 117. If a person who has made a contract as the representative of another cannot establish his power of representation and has not obtained its ratification by his principal, he shall be liable to the other party at the latter's option either for the performance or in damages.

The provisions of the preceding paragraph shall not apply if the other party was aware, or was unaware through his own negligence, that such person had no power of representation, nor if the person who made the contract as representative had not the capacity for entering into such contract.

Article 118. The provisions of the preceding five Articles shall apply with the necessary modifications to a unilateral act, only in cases where at the time the act was done the person to whom the act is addressed consented to its being done without any power of representation by the person holding himself out to be a representative or did not contest his power of representation. The same shall apply where a unilateral act has been done to a

person having no power of representation with his consent.

Section IV. Nullity and Avoidance

Article 119. A void act does not become effective by ratification; but if the parties have ratified it with knowledge of its nullity, they shall be deemed to have done a new act.

Article 120. A voidable act may be avoided only by a person under disability or a person who has made a defective declaration of intention or by the representative or successor in title of such a person.

Article 121. An act which has been avoided shall be deemed to have been void ab initio, but a person under disability shall be liable to effect restoration only to the extent that he is still enriched by reason of such act.

Article 122. If a voidable act is ratified by the persons mentioned in Article 120, it shall be deemed to have been valid ab initio; but the rights of third persons may not be prejudiced thereby.

Article 123. Where the other party to a voidable act is a determinate person, an avoidance or ratification shall be effected by a declaration of intention made to him.

Article 124. A ratification does not become effective unless it is made after the circumstances forming the ground for avoidance have ceased to exist.

If a person adjudged incompetent has become aware of his act after he has recovered his capacity, he may ratify such act only after he has become aware of it.

The provisions of the preceding two paragraphs shall not apply in cases where ratification is effected by a legal representative.

Article 125. If any of the following facts has taken place with regard to a voidable act after the time when it became possible to effect ratification in accordance with the provisions of the preceding Article, the act shall be deemed to have been ratified, in the absence of any reservation of objection:

1. Performance in full or in part;
2. Demand for performance
3. Novation;
4. Furnishing of security;
5. Transfer, in whole or in part, of the rights acquired by the voidable act;
6. Compulsory execution.

Article 126. The right of avoidance shall be extinguished by prescription if it is not exercised within five years from the time when it became possible to effect ratification, or if twenty years have elapsed from the time of the act.

Section V. Conditions and Time

Article 127. A juristic act subject to a suspensive condition becomes effective upon the fulfilment of the condition.

A juristic act subject to a resolutive condition ceases to be effective upon the fulfilment of the condition.

If the parties have declared an intention that the effect of the fulfilment, such intention shall prevail.

Article 128. Neither party to a juristice act subject to a condition

may, during the period pending the fulfilment of the condition, do anything to impair any benefit which the other party might derive from such act upon the fulfilment of the condition.

Article 129. The rights and duties of the parties during the period pending the fulfilment of the condition may be disposed of, inherited, preserved or secured in accordance with the general rules.

Article 130. If a party to whose disadvantage the fulfilment of a condition would operate has intentionally obstructed the fulfilment of such condition, the other party may treat the condition as having been fulfilled.

Article 131. If a condition has already been fulfilled at the time of a juristic act, such juristic act shall be unconditional if the condition is a suspensive condition, and null and void if it is a resolutive condition.

If the non-fulfilment of a condition was already certain at the time of a juristic act, such juristic act shall be void if the condition is a suspensive condition, and unconditional if it is a resolutive condition.

So long as the parties are unaware of the fulfilment or non-fulfilment of a condition in the cases contemplated in the preceding two paragraphs, the provisions of Articles 128 and 129 shall apply with the necessary modifications.

Article 132. A juristic act subject to an unlawful condition shall be null and void; the same shall apply to an act subject to a condition to abstain from doing an unlawful act.

Article 133. A juristic act subject to an impossible suspensive condition shall be null and void.

A juristic act subject to an impossible resolutive condition shall be unconditional.

Article 134. A juristic act subject to a suspensive condition shall be null and void, if the condition is dependent solely upon the will of the obligor.

Article 135. If a juristic act is subject to a time of commencement, the performance of the juristic act cannot be demanded until such time has arrived.

If a juristic act is subject to a time of termination, the validity of the juristic act shall be extinguished when such time arrives.

Article 136. Time shall be presumed to be stipulated for the benefit of the obligor.

The benefit of time may be waived, butthe interests of the other party may not be prejudiced thereby.

Article 137. The obligor cannot claim the benefit of time in the following cases:

1. If the obligor has been adjudged bankrupt;
2. If the obligor has destroyed or diminished the security;
3. If the obligor has not furnished security in cases where he is bound to do so.

Chapter V

Periods of Time

Article 138. The method of computing periods of time shall be governed by the provisions of this Chapter unless it is otherwise provided by laws or ordinances, by a judicial order or by a juristic act.

Article 139. If a period of time has been fixed by the hour, it shall

be computed as from the given moment.

Article 140. If a period of time has been fixed by the day, week, month or year, the first day of such period shall not be included in the computation; but this shall not apply if the period begins at midnight.

Article 141. In the cases mentioned in the preceding Article, the period of time shall mature upon the expiration of the last day of such period.

Article 142. If, in cases where the last day of a period of time falls on a national holiday, Sunday or any other holiday, it is customary not to do business on such day, the period of time shall mature on the following day.

Article 143. If a period of time has been fixed by the week, month or year, it shall be computed according to the calendar.

If a period of time is not computed from the beginning of a week, month or year, such period of time shall mature on the day in the last week, month or year preceding the day corresponding to that from which the computation is made; but if, in cases where the period of time has been fixed by the month or year, there is no corresponding day in the last month, the last day of the month shall be the day of maturity.

Chapter VI

Prescription

Section I. General Provisions

Article 144. The effect of prescription relates back to the day from which its period is computed.

Article 145. Unless the party concerned avails himself of the benefit of prescription, the Court cannot base its decisions thereon.

Article 146. The benefit of prescription may not be waived in advance.

Article 147. Prescription shall be interrupted by any of the following causes:

1. Demand;

2. Attachment, provisional attachment of provisional disposition;

3. Acknowledgment.

Article 148. The interruption of prescription mentioned in the preceding Article shall be effective only as between the parties themselves and their successors in title.

Article 149. A demand by way of judicial proceedings shall not have the effect of interrupting prescription in cases where the action is dismissed or withdrawn.

Article 150. An order for payment shall not have the effect of interrupting prescription if it ceases to be effective because the obligee fails to apply for provisional execution within the period of time prescribed by law.

Article 151. A summons for the purpose of reaching a compromise shall not have the effect of interrupting prescription, unless an action is brought within one month, in cases where the other party does not appear or the compromise is not arrived at. The same shall apply, if in a case of a voluntary appearance a compromise has not been arrived at.

Article 152. Intervention in bankruptcy proceedings shall not have the effect of interrupting prescription, if it is withdrawn by the obligee or if

his claim is dismissed.

Article 153. A peremptory notice shall not have the effect of interrupting prescription, if a demand by way of judicial proceedings a summons for the purpose of effecting a compromise or a voluntary appearance for the same purpose, intervention in bankruptcy proceedings, an attachment, a provisional attachment or a provisional disposition is not made within six months.

Article 154. An attachment, a provisional attachment or a provisional disposition shall not have the effect of interrupting prescription, if annulled on the application of the person entitled or by reason of non-compliance with any provision of law.

Article 155. An attachment, a provisional attachment or a provisional disposition, if not effected against the person in whose favour prescription is running, shall not have the effect of interrupting prescription until after such person has been notified thereof.

Article 156. In order to effect an acknowledgment that will produce the effect of interrupting prescription, no capacity or authority for disposition in respect of the rights of the other party is required.

Article 157. Prescription which has been interrupted begins to run anew from the time when the cause of such interruption ceases.

Prescription which has been interrupted by a demand by way of judicial proceedings begins to run anew from the time when the decision thereon has become finally binding.

Article 158. If a minor or a person adjudged incompetent has been without a legal representative within six months preceding the maturity of

the period of prescription, prescription shall not become complete against him for a period of six months from the time when he becomes a person of full capacity or a legal representative assumes office.

Article 159. In respect of the rights that a person under disability possesses against his father, or mother, or guardian, who manages his property, prescription shall not become complete for a period of six months from the time when he becomes a person of full capacity or a succeeding legal representative assumes office.

Article 159-2. In respect of the rights that one spouse has against the other, prescription shall not become complete for six months from the time of the dissolution of the marriage.

Article 160. In respect of an estate of inheritance prescription shall not become complete for a period of six months from the time when a successor is determined, an administrator appointed or an adjudication of bankruptcy made.

Article 161. If, at the time of the maturity of the period of prescription, it is impossible to interrupt prescription because of a natural calamity or any other inevitable contingency, prescription shall not become complete for a period of two weeks from the time when such obstacle ceases to exist.

Section II. Acquisitive Prescription

Article 162. A person who has for twenty years peaceably and openly held possession of a thing belonging to another with an intention to own it shall acquire the ownership thereof.

A person who has for ten years peaceably and openly held possession

of an immovable belonging to another with an intention to own it shall acquire the ownership of such immovable, if at the beginning of such possession he acted in good faith and without negligence.

Article 163. A person who exercises peaceably and openly any property right other than ownership with an intention to do so on his own behalf, shall acquire such right after twenty or ten years respectively according to the distinction mentioned in the preceding Article.

Article 164. The prescription mentioned in Article 162 shall be interrupted, if the possessor voluntarily discontinues his possession, or if he is deprived of his possession by another.

Article 165. The provisions of the preceding Article shall apply with the necessary modifications to the cases mentioned in Article 163.

Section III. Extinctive Prescription

Article 166. Extinctive prescription begins to run from the time when the right is capable of being exercised.

The provisions of the preceding paragraph shall not prevent acquisitive prescription from running in favour of a third person possessing the subject matter of a right subject to a time of commencement or to a suspensive condition, as from the time when he has taken possession of such thing; but the person entitled may at any time demand an acknowledgment from the possessor in order to interrupt the prescription.

Article 167. A claim shall be extinguished if it is not exercised for ten years.

A property right other than a claim or ownership shall be extinguished if it is not exercised for twenty years.

Article 168. A claim for money required to be paid periodically shall be extinguished if it is not exercised for twenty years from the time appointed for the first payment; the same shall apply if it is not exercised for ten years from the time appointed for the last payment.

An obligee in respect of money required to be paid periodically may at any time demand a written acknowledgment from the obligor in order to obtain evidence of an interruption of prescription.

Article 169. A claim which has for its object the delivery of money or other things fixed by the year or any shorter period shall be extinguished if not exercised for five years.

Article 170. Claims mentioned below shall be extinguished if not exercised for three years:

1. Claims by medical practitioners, midwives and apothecaries in respect of medical treatment, professional services and the preparation of medicines;
2. Claims by engineers, master carpenters and contractors in respect of the execution of works; the prescription in this case being computed as from the time of the completion of the works undertaken.

Article 171. Attorneys-at-law, notaries and bailiffs shall be relieved of their responsibilities in respect of documents received in connection with their duties after the lapse of three years, as regards attorneys-at-law from the time of the completion of the particular case, and as regards notaries and bailiffs from the time when they have performed their duties.

Article 172. The claims of attorneys-at-law, notaries and bailiffs

relating to their duties shall be extinguished, if not exercised for two years from the time of the completion of the case out of which they have arisen; but if five years have elapsed from the time of the completion of each matter included in the case, claims relating to such matter shall be extinguished even though the above-mentioned period has not yet expired.

Article 173. Claims mentioned below shall be extinguished if not exercised for two years:

1. The price of products and merchandise sold by producers or by wholesale and retail traders;
2. Claims of artisans working at home and manufacturers in respect of their work;
3. Claims of school proprietors, keepers of boarding schools, teachers and masters in respect of the education, clothing, food and lodging of pupils and apprentices.

Article 174. Claims mentioned below shall be extinguished if not exercised for one year:

1. Salaries of employees fixed by the month or any shorter period;
2. Wages of manual workers and public performers and the price of articles supplied by them;
3. Charges for transport;
4. Charges made at inns, restaurants, assembly-rooms for hire and places of amusement for lodging, refreshment, hire of rooms, admittance, and the price of articles of consumption, as well as for disbursements;
5. Rent for the hire of movables.

Article 174-2. Prescription for a right as established by an irrevocable

decision, even if the prescription therefor is fixed by law as a period shorter than ten years, shall be ten years. The same shall apply to a right as established by compromise made before the court, conciliation or any other act of procedure equivalent in effect to an irrevocable decision.

The provisions of the preceding paragraph shall not apply to claims for which the time of payment was not yet due at the time when the decision became irrevocable.

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BOOK II

REAL RIGHTS

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BOOK II

REAL RIGHTS

CHAPTER I

GENERAL PROVISIONS

Article 175. No real rights can be established other than those provided for in this Code or in other laws.

Article 176. The creation and transfer of real rights shall take effect through a mere declaration of intention by the parties.

Article 177. The acquisition or loss of, or any alteration in a real right over an immovable cannot be set up against a third person until it has been registered in accordance with the provisions of law concerning registration.

Article 178. The assignment of a real right over a movable cannot be set up against a third person until the movable has been delivered.

Article 179. When the ownership of, and any other real right over one and the same thing have become vested in one and the same person, such other real right shall be extinguished; but this shall not apply if the thing or the real right forms the subject of a right belonging to a third person.

If a real right other than ownership and any other right having such real right for its subject have become vested in one

and the same person, such other right shall be extinguished; in such case the latter part of the preceding paragraph shall apply with the necessary modifications.

The provisions of the preceding two paragraphs shall not apply to possessory rights.

CHAPTER II

POSSESSORY RIGHTS

Section I

Acquisition of Possessory Rights

Article 180. A possessory right is acquired by holding a thing with the intention of doing so on one's own behalf.

Article 181. A possessory right may be acquired through a representative.

Article 182. The assignment of a possessory right is effected by delivery of the thing possessed.

Where the assignee or his representative actually holds a thing, the assignment of a possessory right may be effected by a mere declaration of intention by the parties.

Article 183. When a representative has declared his intention that a thing in his possession shall thereafter be possessed on behalf of his principal, the principal shall thereby acquire a possessory right.

Article 184. If, in a case where a thing is possessed through representative, the principal directs the representative to hold possession of the thing thereafter on behalf of a third

person and the third person gives his consent thereto, such third person shall acquire a possessory right.

Article 185. Where the nature of his title precludes any intention of holding as owner on the part of a possessor, the nature of such possession shall not be altered unless he declares to the person who put him into possession that he intends to hold as owner, or unless he commences a new possession under a new title with the intention of holding as owner.

Article 186. A possessor shall be presumed to be in possession with the intention of holding as owner, in good faith, peaceably and openly.

If there is proof of possession at two different times, possession shall be presumed to have been continuous throughout the intermediate time.

Article 187. The successor in title of a possessor may at his option assert either his own possession only or his own possession together with that of his predecessor.

In case the possession of a predecessor is asserted together with his own, he shall succeed also to any defects attaching to the former.

Section II

Effect of Possessory Rights

Article 188. A possessor shall be presumed to hold lawfully the right which he exercises over the thing possessed.

Article 189. A possessor in good faith acquires the fruits derived from the thing possessed.

If a possessor in good faith fails in an action on title, he shall be deemed to have been a possessor in bad faith as from the time of the commencement of the action.

Article 190. A possessor in bad faith is bound to return the fruits and to make compensation for the value of fruits which have already been consumed by him, or have been damaged by his fault, or have not been collected through his neglect.

The provisions of the preceding paragraph shall apply with the necessary modifications to possessors by force or in secret.

Article 191. In case a thing possessed has been lost or damaged by any cause for which the possessor is responsible, a possessor in bad faith shall be liable to make good to the person entitled to restoration the entire damage and a possessor in good faith shall be liable to the extent that he is still enriched by reason of such loss or damage; a possessor who has no intention of holding as owner, however, must repair the entire damage even though he may have been acting in good faith.

Article 192. If a person has peaceably and openly commenced to possess a movable, acting in good faith and without negligence, he shall immediately acquire the right which he purports to exercise over such movable.

Article 193. If in the case mentioned in the preceding Article the thing possessed is a stolen or lost article, the

injured party or the loser may demand restoration of the article from the possessor within two years from the time when the article was stolen or lost.

Article 194. If the possessor of a thing stolen or lost has bought it in good faith at a sale by auction, in a public market or from a trader selling things of the same kind, the injured party or the loser cannot recover the thing unless he reimburses the possessor for the price paid for it.

Article 195. A person who has possession of an animal, other than a domestic animal, formerly kept by another person shall acquire the right which he purports to exercise over the animal, if at the commencement of the possession he was acting in good faith and no demand for restoration has been made by the former keeper within one month from the time of its escape.

Article 196. When a possessor restores the thing possessed he is entitled to reimbursement from the person claiming restoration for the amount expended on its preservation and for any other necessary expenses; but in case the possessor has acquired the fruits, any ordinary necessary expenses shall be borne by himself.

In regard to any amount expended on the improvement of a thing possessed and to any other advantageous expenses, a possessor is, to the extent that the increase in value remains subsisting, entitled to reimbursement either of the amount expended or of the amount by which the value of the thing has

been increased, at the option of the person claiming restoration. Against a possessor in bad faith, however, the Court may, upon the application of the person claiming restoration, allow him reasonable time.

Article 197. A possessor may bring possessory actions in accordance with the provisions of the following five articles. The same shall apply to a person who possesses on behalf of another person.

Article 198. If a possessor is disturbed in his possession, he may be an action for maintenance of possession demand discontinuance of the disturbance as well as reparation in damages.

Article 199. If there exists an apprehension that his possession may be disturbed, a possessor may by an action for preservation of possession demand the prevention of such disturbance or security for damages.

Article 200. If a possessor has been deprived of his possession, he may by an action for recovery of possession demand the return of the thing as well as reparation in damages.

No action for recovery of possession may be brought against a singular successor in title of a dispossessor, unless such successor in title was aware of the fact of dispossession.

Article 201. An action for maintenance of possession must be brought during the continuance of the disturbance or within one year after it has ceased; but in case the thing

possessed has been damaged by any structural works, the action may not be brought after one year has elapsed since the commencement of such works, nor after the completion thereof.

An action for preservation of possession may be brought so long as the danger of disturbance exists; but if there exists an apprehension that damage may be done to the thing possessed by any structural works, the latter part of the preceding paragraph shall apply with the necessary modifications.

An action for recovery of possession must be brought within one year from the time of the dispossession.

Article 202. Possessory actions and actions on title shall not exclude each other.

Possessory actions may not be decided upon grounds relating to the proprietary title.

Section III

Extinction of Possessory Rights

Article 203. A possessory right is extinguished if the possessor abandons the intention to possess, or if he loses the custody of the thing; but this shall not apply in cases where the possessor brings an action for recovery of the possession.

Article 204. In case possession is held through a representative, a possessory right is extinguished by any of the following causes:

1. If the principal abandons his intention that the representative shall hold possession.

2. If the representative declares to the principal his intention thereafter to hold the thing possessed on his own behalf or on behalf of a third person.

3. If the representative loses the custody of the thing possessed.

A possessory right shall not be extinguished by the mere extinction of the power of representation.

Section IV

Quasi-Possession

Article 205. The provisions of this Chapter shall apply with the necessary modifications in cases where a person exercises a property right with the intention of doing so on his own behalf.

CHAPTER III

OWNERSHIP

Section I

Limits of Ownership

Article 206. An owner has the right, subject to limitation by laws or ordinances, freely to use, to take the profits of, and to dispose of the thing owned.

Article 207. Subject to limitation by laws or ordinances, the ownership of land extends both above and below its surface.

Article 208. If a building is divided between two or more persons and each owns a part thereof, those portions of the building and its appurtenances which are used in common shall be presumed to be in their co-ownership.

The expenses of repair and other charges relating to the portions used in common shall be divided in proportion to the value of the part owned by each.

Article 209. The owner of land may, insofar as is necessary for the construction or repair of walls or buildings on or near the boundary, demand the use of the adjacent land; but he may not enter the dwelling house of an adjacent occupier without his consent.

If in the case mentioned in the preceding paragraph an adjacent occupier sustains damage, he may demand compensation for it.

Article 210. If a piece of land is surrounded by the land of others and has no passage to a public road, the owner of such land may pass over the surrounding land to reach a public road.

The same shall apply in cases where no outward passage can be had except over a pond or marsh, river or canal, or by the sea, or where owing to a steep slope considerable disparity in level exists between the land and a public road.

Article 211. In the cases mentioned in the preceding Article, the place and the method of passage must be so chosen as to meet the requirements of the person having the right of passage and yet cause the least possible damage to the surrounding land.

The person having the right of passage may, if necessary, construct a road for passage.

Article 212. The person having the right of passage must pay compensation for any damage done to the land passed over. Such compensation, except for damage arising from the construction of a road for passage, may be paid annually.

Article 213. If in consequence of partition a piece of land has lost its passage to a public road, the owner of such land may, in order to reach a public road, pass over only the land belonging to the other participants in the partition; in such case no compensation need be paid.

The provisions of the preceding paragraph shall apply with the necessary modifications in cases where the owner of land has assigned a part of the land.

Article 214. The owner of land may not interfere with the natural flow of water coming from the adjacent land.

Article 215. When by accident the course of water has been obstructed on lower land, the owner of higher land may at his own expense construct works necessary for its drainage.

Article 216. When by the disruption or obstruction of works constructed on land A for the purpose of collecting, discharging or drawing water, damage has been done, or there is an apprehension of damage to land B, the owner of the land B may require the owner of the land A to effect repair or to drain off the water, and if necessary, to construct protective works.

Article 217. If in the cases mentioned in the preceding two Articles any different custom exists as to who shall bear the expense, such custom shall prevail.

Article 218. The owner of land may not construct any roof or other structure which may cause rain-water to fall directly on adjacent land.

Article 219. The owner of a ditch, canal or other water-course may not alter its course or width, if the land on the opposite bank belongs to another person.

If the land on both banks belongs to the owner of a water-course, such owner may alter its course and width, provided that the water shall be restored to its natural course at the lower exit.

If there exists any custom different from the provisions of the preceding two paragraphs, such custom shall prevail.

Article 220. For the purpose of draining land which is under water or of discharging surplus water from household, agricultural or industrial uses, the owner of higher land may conduct the water to lower land until it reaches a public road,

public water-way or drain; but the place and the method must be so chosen as to cause the least possible damage to the lower land.

Article 221. The owner of land may, for the purpose of conducting water from his land, use any works constructed by the owner of higher or lower land.

Where in the case mentioned in the preceding paragraph a person uses works belonging to another person, he must bear his share of the expense of the construction and maintenance of such works in proportion to the benefit he derives therefrom.

Article 222. If there is any need for the construction of a dam, the owner of a watercourse may attach it to the opposite bank; but he must pay compensation for any damage caused thereby.

If a part of a watercourse belongs to the owner of the opposite bank, he also may use the dam; but he must bear his share of the expense in accordance with the provisions of the preceding Article.

Article 223. The owner of land may at the joint expense of himself and the owner of the adjacent land set up things to mark the boundary.

Article 224. The expense of the construction and maintenance of boundary marks shall be borne by the immediate neighbors in equal proportions, but the expense of a survey shall be apportioned according to the area of the land.

Article 225. If two buildings belong to different owners and an open space exists between them, either owner may at the

joint expense of himself and the other owner construct a fence along the boundary.

If no agreement can be reached between the parties, the fence mentioned in the preceding paragraph shall be a board or bamboo fence which shall be six shaku in height.

Article 226. The expense of the construction and maintenance of the fence shall be borne by the immediate neighbors in equal proportions.

Article 227. Either of the immediate neighbors may construct a fence using better materials or making it higher than is specified in Article 225, para. 2, but he must bear the additional expense caused thereby.

Article 228. If there exists any custom different from the provisions of the preceding three Articles, such custom shall prevail.

Article 229. Boundary marks, fences, walls, ditches and canals set on the boundary line are presumed to be in the co-ownership of the immediate neighbors.

Article 230. The provisions of the preceding Article shall not apply to walls on a boundary line which form part of a building.

The same shall apply to that portion of a wall dividing buildings of unequal height which rises above the lower building, unless it is a fire-prevention wall.

Article 231. Either of the immediate neighbors may increase the height of a wall in their co-ownership; but if the wall is

unable to support the strain of such work, he must at his own expense strengthen or reconstruct the wall.

The new portion of the wall which has been heightened in accordance with the provisions of the preceding paragraph shall belong exclusively to the person who has effected the work.

Article 232. If a neighbour has sustained damage in the case mentioned in the preceding Article, he may demand compensation for it.

Article 233. If the branches of bamboos or trees on adjacent land extend over the boundary line, the owner of such bamboos or trees may be required to lop the branches.

If the roots of bamboos or trees on adjacent land extend across the boundary line, they may be lopped.

Article 234. In constructing a building a distance of not less than one shaku and five sun must be left from the boundary line.

When a person is constructing a building in contravention of the provisions of the preceding paragraph, the owner of the adjacent land may cause the construction to be discontinued or modified; but if one year has elapsed since the commencement of the construction work, or if the construction work has been completed, only a demand for damages may be made.

Article 235. A person who constructs at a distance of less than three shaku from the boundary line a window or verandah which overlooks the grounds of another person, must keep

attached a screen thereto.

The distance mentioned in the preceding paragraph shall be determined by a line drawn at right angles to the boundary line from that point of the window or verandah which is nearest to the adjacent land.

Article 236. If there is any custom different from the provisions of the preceding two Articles, such custom shall prevail.

Article 237. In digging a well, cistern, sink or manure pit a distance of not less than six shaku, and in digging a pond, cellar or privy vault a distance of not less than three shaku, must be left from the boundary line.

In laying water-pipes underground and in digging ditches and canals a distance of not less than one half of their depth must be left from the boundary line; but it need not exceed three shaku.

Article 238. If the work mentioned in the preceding Article is conducted in the neighbourhood of a boundary line, the necessary precautions must be taken to prevent the collapse of earth and sand or the infiltration of water and filthy liquids.

Section II

Acquisition of Ownership

Article 239. The ownership of a movable which is without an owner is acquired by taking possession of it with the intention of holding it as owner.

An immovable which is without an owner shall vest in the National Treasury.

Article 240. The ownership of a lost article is acquired by the finder if its owner is not discovered within one year after public notice has been given in accordance with the provisions of special laws.

Article 241. The ownership of treasure-trove is acquired by the finder if its owner is not discovered within six months after public notice has been given in accordance with the provisions of special laws; but the ownership of treasure-trove found in a thing belonging to another person is acquired by the finder and the owner of the thing in equal shares.

Article 242. The owner of an immovable acquires the ownership of any thing united thereto as accessory; but this shall not affect the rights of another person who has attached such thing by virtue of a title.

Article 243. If two or more movables belonging to different owners are so united together that they can no longer be separated without damage, the ownership of the composite thing belongs to the owner of the principal movable. The same shall apply if their separation would entail excessive expense.

Article 244. If in regard to movables united together no distinction of principal and accessory can be made, the owners of the several movables shall be co-owners of the composite thing in proportion to the value of the movables at the time they were united together.

Article 245. The provisions of the preceding two Articles shall apply with the necessary modifications, if things belonging to different owners are mixed together so as to be no longer distinguishable from each other.

Article 246. When a person has performed work upon a movable belonging to another person, the ownership of the thing created by the work shall belong to the owner of the materials; but if the value arising out of such workmanship considerable exceeds that of the materials, the person who has performed work shall acquire the ownership of the thing.

If a person who has performed work has furnished a part of the materials, he shall acquire the ownership of the thing only if the value of the materials so furnished together with the value arising out of his workmanship exceeds the value of the materials furnished by the other person.

Article 247. If the ownership of a thing is extinguished in accordance with the provisions of the preceding five Articles, all other rights which exist over the thing shall also be extinguished.

If the owner of the thing mentioned above has become the sole owner of the composite thing, the mixture of the thing created by work, the other rights mentioned in the preceding paragraph shall exist thenceforward over the composite thing, the mixture of the thing created by work; and if he has become a co-owner thereof they shall exist over his share therein.

Article 248. A person who has sustained loss by reason of

the application of the provisions of the preceding six Articles may demand compensation in accordance with the provisions of Articles 703 and 704.

Section III

Co-ownership

Article 249. Each co-owner is entitled in proportion to his own share to make use of the whole of the thing in co-ownership.

Article 250. The shares of the co-owners shall be presumed to be equal.

Article 251. No co-owner may make any alteration in the thing co-ownership without the consent of the other co-owners.

Article 252. Except in the case mentioned in the preceding Article all matter relating to the administration of the thing in co-ownership shall be determined by a majority of the co-owners based on the value of the share of each co-owner; but each co-owner is entitled to effect acts of preservation.

Article 253. Each co-owner shall pay the expenses of administration and bear all other charges relating to the thing in co-ownership in proportion to his share.

If a co-owner fails to perform the duty mentioned in the preceding paragraph for one year, the other co-owners may acquire his share upon payment of a reasonable compensation.

Article 254. An obligation which one of the co-owners has against another in respect of the thing in co-ownership, may be exercised against the singular successor in title of the latter.

Article 255. If one of the co-owners renounces his share, or dies without a successor, his share devolves on the other co-owners.

Article 256. Each co-owner may demand at any time a partition of the thing in co-ownership, but it may be provided by contract that no partition shall be made for a period not exceeding five years.

This contract may be renewed, but its duration cannot exceed five years from the time of renewal.

Article 257. The provisions of the preceding Article shall not apply to things in co-ownership as mentioned in Articles 208 and 229.

Article 258. If no agreement can be reached among the co-owners, an application for partition may be made to the Court.

If, in the case mentioned in the preceding paragraph, partition of the property itself cannot be effected, or if there is an apprehension that the property may considerably depreciate in value as a result of partition, the Court may order a sale thereof by official auction.

Article 259. If one of the co-owners has an obligation against another co-owner in relation to the co-ownership, he may upon partition require performance to be effected out of that portion of the thing in co-ownership which is to accrue to his obligor.

If for the purpose of obtaining performance it is necessary to sell that portion of the thing in co-ownership which is to accrue to the obligor, the obligee may demand such sale.

Article 260. A person who has a right over the thing in co-ownership and an obligee of each co-owner may at his own expense intervene in the partition

If, notwithstanding that a demand for intervention has been made in accordance with the provisions of the preceding paragraph, partition has been effected without waiting for such intervention, such partition cannot be set up against the person who has demanded intervention..

Article 261. Each co-owner shall in proportion to his share bear the same liability for warranty as that of a seller in regard to the things which the other co-owners have acquired by partition.

Article 262. When partition has been completed, each participant must preserve all documents relating to the things he has acquired.

Documents relating to the thing partitioned among all or several of the co-owners must be preserved by the person who has acquired the largest portion of the thing.

If in the case mentioned in the preceding paragraph no one has acquired a preponderant portion, the participants shall by mutual agreement determine who shall preserve documents; if no agreement has been reached, such person shall be nominated by the Court.

The custodian of the documents must, upon demand by any other participant, allow the use of the documents.

Article 263. With regard to irisaiken in the nature of co-ownership, the provisions of this Section shall apply subject to the custom of each locality.

Article 264. The provisions of this Section shall apply with the necessary modifications in cases where a property right other than ownership is held by two or more persons, except as otherwise provided by laws or ordinances.

CHAPTER IV

SUPERFICIES

Article 265. A superficiary is entitled to use the land of another person for the purpose of owning structures or bamboos or trees thereon.

Article 266. Where a superficiary is bound to pay rent periodically to the owner of the land, the provisions of Articles 274 to 276 shall apply with the necessary modifications.

With regard to the rent, the provisions relating to leases shall also apply with the necessary modifications.

Article 267. The provisions of Articles 209 to 238 shall apply with the necessary modifications as between superficiaries and as between a superficiary and the landowner, but the presumption mentioned in Article 229 shall apply with the necessary modifications to superficiaries only in respect of works constructed after the creation of the superficies.

Article 268. If the duration of a superficies has not been determined by the act of creation, the superficiary may at any time renounce his right in the absence of any different custom; but if he is bound to pay rent, he must give one year's previous notice or pay one year's rent which has not yet accrued.

If a superficiary does not renounce his right in accordance with the provisions of the preceding paragraph, the Court shall on the application of the party concerned determine the period for its duration at not less than twenty years and not more than fifty

years, taking into account the nature and condition of the structures or bamboos or trees, as well as the circumstances existing at the time when the superficies was created.

Article 269. On the termination of a superficies, the superficiary may on restoring the land to its original condition, take away his structures, bamboos or trees, but if the owner of the land, tendering the current price, notifies him that he intends to purchase them, the superficiary may not refuse such tender without just reason.

If there exists any custom different from the provisions of the preceding paragraph, such custom shall prevail.

CHAPTER V

EMPHYTEUSIS

Article 270. An emphyteuta is entitled to cultivate the land of another person or rear live-stock thereon upon payment of a rent.

Article 271. An emphyteuta may not effect any alteration which will cause permanent damage to the land.

Article 272. An emphyteuta may assign his right to another person or lease the land within the duration of his right for the purpose of cultivation or the rearing of live-stock, unless this is prohibited by the act of creation.

Article 273. The provisions relating to leases shall apply with the necessary modifications to the duties of an emphyteuta, in addition to the provisions of this Chapter and any which are contained in the act of creation.

Article 274. An emphyteuta may not, even if he has sustained loss in regard to the returns by vis major, demand a remission or reduction of his rent.

Article 275. If through vis maior an emphyteuta has received no returns at all for three consecutive years or more, or has received returns which are less than his rent for five consecutive years or more, he may renounce his right.

Article 276. If an emphyteuta has neglected to pay rent for two consecutive years or more, or has been adjudged bankrupt, the landowner may demand the termination of the emphyteusis.

Article 277. If there exists any custom different from the provision of the preceding six Articles, such custom shall prevail.

Article 278. The duration of an emphyteusis shall not be less than twenty years nor more than fifty years. If it has been created for a period longer than fifty years, such period shall be reduced to fifty years.

The creation of an emphyteusis may be renewed, but the period may not exceed fifty years from the time of renewal.

If the duration of an emphyteusis has not been determined by the act of creation, it shall be thirty years in the absence of any different custom.

Article 269. The provisions of Article 269 shall apply with the necessary modifications to emphyteusis.

CHAPTER VI

SERVITUDES

Article 280. A person having a servitude is entitled to apply the land of another person to the convenience and benefit of his own land in conformity with the object specified in the act of creation but he must not contravene those provisions of Chapter III, Section 1 which concern public policy.

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Article 281. A servitude is transferred along with the ownership of the dominant as appurtenant thereto and is subject to any other rights existing over the dominant land, unless it is otherwise provided by the act of creation.

A servitude may neither be assigned nor be made the subject of any other rights apart from the dominant land.

Article 282. One co-owner of land cannot extinguish as to his own share a servitude existing for the benefit of or over such land.

If land is partitioned or a part thereof is assigned, the servitude shall continue to exist for the benefit of or over each part, unless according to the nature of the servitude it relates only to a part of the land.

Article 283. A servitude may be acquired by prescription only if it is continuous and apparent.

Article 284. If one co-owner acquires a servitude by prescription, it shall also be acquired by the other co-owners.

An interruption of prescription as against co-owners shall not be effective unless it is made against each co-owner who exercises the servitude.

In cases where there are two or more co-owners exercising the servitude, the prescription shall run in favour of all the co-owners, even if there be cause for the suspension of prescription against one of them.

Article 285. If the water on land subject to a servitude for the use of water is not sufficient to meet the requirements of both the dominant and the servient lands, it shall according to the

requirements of each piece of land first be appropriated to domestic use and the remainder to other uses; but his shall not apply if it has been otherwise provided by the act of creation.

If two or more servitudes for the use of water have been created over one and the same land, the person having a subsequent servitude may not interfere with the use of the water by the person having a prior servitude.

Article 286. If the owner of servient land has assumed, either by the act of creation or by special contract, a duty to construct structures or to effect repairs thereon at his own expense in furtherance of the exercise of a servitude, such duty shall also be assumed by singular successors in title of the owner of the servient land.

Article 287. The owner of servient land may at any time relieve himself of the burden contemplated in the preceding Article by surrendering to the person holding the servitude the ownership of that portion of the land which is necessary for the servitude.

Article 288. The owner of servient land may use the structures on the servient land constructed for the exercise of the servitude, in so far as this does not interfere with such exercise.

In the case mentioned in the preceding paragraph the owner of the servient land must bear his share of the expense of the construction and maintenance of the structures in proportion to the benefit which he derives therefrom.

Article 289. If the possessor of servient land has been in possession so as to fulfil the conditions necessary for acquisitive prescription, the servitude shall be extinguished thereby.

Article 290. The extinctive prescription mentioned in the preceding Article shall be interrupted by the exercise of the servitude by the person holding the servitude.

Article 291. The period for extinctive prescription specified in Article 167, paragraph 2 shall be computed, in respect of a non-continuous servitude from the time when the servitude was last exercised, and in respect of a continuous servitude from the time when a fact interfering with its exercise occurred.

Article 292. If, in cases where the dominant land is the co-ownership of two or more persons, an interruption or suspension of prescription occurs in favour of one of them, such interruption or suspension shall enure to the benefit of the other co-owners.

Article 293. If the person who holds a servitude fails to exercise some part of his right, such part only shall be extinguished by prescription.

Article 294. With regard to iriaikan not partaking of the nature of co-ownership, the provisions of this Chapter shall apply with the necessary modifications, subject to the custom of each locality.

CHAPTER VII

RIGHT OF RETENTION

Article 295. If the possessor of a thing belonging to another person has any obligation which has arisen in respect of such thing, he may retain it until the obligation has been satisfied; but this shall not apply if the obligation is not yet due.

The provisions of the preceding paragraph shall not apply if the possession originated from an unlawful act.

Article 296. A person having a right of retention may exercise his right over the whole of the thing retained until his obligation has been fully satisfied.

Article 297. A person having a right of retention may collect the fruits produced by the thing retained and may appropriate them to the satisfaction of his obligation in preference to other obligees.

The fruits mentioned in the preceding paragraph must first be appropriated to the interest on the obligation and the surplus, if any, to the principal.

Article 298. A person having a right of retention must possess the thing retained with the care of a good manager.

A person having a right of retention may not without the consent of the obligor use or let the thing retained or give it as security; but this shall not apply to such use of the thing as is necessary for its preservation.

If a person having a right of retention contravenes the provisions of the preceding two paragraphs, the obligor may demand the extinction of the right of retention.

Article 299. If a person having a right of retention has incurred necessary expenses in respect of the thing retained, he may require the owner to effect reimbursement.

If a person having a right of retention has incurred advantageous expenses in respect of the thing retained, he may so long as an

increase in value remains subsisting, require reimbursement either of the amount incurred or the amount which its value has been increased by at the option of the owner; but the Court may upon the application of the owner allow him reasonable time.

Article 300. The exercise of a right of retention shall not prevent extinctive prescription from running against the obligation.

Article 301. The obligor may demand the extinction of a right of retention on furnishing adequate security.

Article 302. A right of retention shall be extinguished by the loss of possession; but this shall not apply in cases where the the thing retained has been let or pledged in accordance with the provisions of Article 298, paragraph 2.

CHAPTER VIII

PREFERENTIAL RIGHTS

Section 1

General Provisions

Article 303. A person having a preferential right has, in accordance with the provisions of this Code or other laws, a right to obtain satisfaction of his obligation out of the property of his obligor in preference to other obligees.

Article 304. A preferential right may also be exercised against money or other things which the obligor is entitled to receive by reason of the sale, letting, or loss of, or of damage sustained by, the subject matter of such right; but the person having such preferential right must levy an attachment thereon prior to their payment or delivery.

The same shall apply to the consideration for a real right created by the obligor over the subject matter of a preferential right.

Article 305. The provisions of Article 298 shall apply with the necessary modifications to preferential rights.

Section II

Classes of Preferential Rights

Sub-Section 1

General Preferential Rights

Article 306. A person who has any of the obligations which have arisen from any of the causes mentioned below has a preferential right over the whole property of the obligor:

1. Expenses for the common benefit;
2. Funeral expenses;
3. Wages of employees;
4. Supplies of daily necessities.

Article 307. The preferential right arising from expenses for the common benefit exists in respect of expenses relating to the preservation, liquidation or distribution of the obligor's property incurred for the common benefit of each obligee.

In respect of any of the expenses mentioned in the preceding paragraph which has not been for the benefit of all the obligees, the preferential right exists only as against those obligees benefited thereby.

Article 308. The preferential right arising from funeral expenses exists in respect of the expenses of a funeral conducted according to the station in life of the obligor.

The preferential right mentioned in the preceding paragraph also exists in respect of the expense of a funeral conducted according to the station in life of a relative whom the obligor was bound to support.

Article 309. The preferential right arising from the wages of employees exists in respect of wages for the last six months receivable by employees of the obligor; but the amount thereof is limited to fifty yen.

Article 310. The preferential right arising from the supply of daily necessities exists in respect to supplies for the last six months of the food and drink, fire-wood, charcoal and oil necessary for the livelihood of the obligor, and of his relatives who live with him and whom he is bound to support, and of the servants.

Sub-Section II

Preferential Rights over Movables

Article 311. A person who has any of the obligations which have arisen from any of the causes mentioned below has a preferential right over the specific movables of the obligor:

1. Lease of immovables;
2. Lodging at an inn;
3. Carriage of passengers or goods;
4. Negligence of public officers in the performance of their duties;
5. Preservation of movables;
6. Sale of movables
7. Supply of seeds, seedings or fertilizers;
8. Agricultural or industrial labour.

Article 312. The preferential right arising from the lease of immovables exists over movables of the lessee in respect of the rent and other obligations of the lessee which have arisen out of such lease.

Article 313. The preferential right of the lessor of land exists over movables installed on the land leased or in the out-buiildings sub-servient to the use thereof, over movables devoted to the use of such land, and over the fruits of such land which are in the possession of the lessee.

The preferential right of the lessor of a building exists over movables installed in the building by the lessee.

Article 314. In the case of an assignment of a lease or sub-lease, the preferential right of a lessor shall extend to movables of the assignee or sub-lessee. The same shall apply to any money which the assignor or sub-lessor is to receive.

Article 315. In case a general liquidation of the property of a lessee is effected, the preferential right of a lessor exists only in respect of rent and other obligations of the last previous, the current and the next ensuing terms and for the reparation of such damage as has arisen during the last previous and the current terms.

Article 316. In case a lessor has received a deposit he has a preferential right only over such portion of his obligation as to which he cannot obtain satisfaction out of the deposit.

Article 317. The preferential right arising from lodging at an inn exists over luggage at the inn in respect of the charges for

the lodging of and for food and drink supplied to a traveller, his attendants and his cattle and horses.

Article 318. The preferential right arising from the carriage exists over goods in the hands of the carrier in respect of the charges for the carriage of passengers or goods and incidental expenses.

Article 319. The provisions of Articles 192 and 193 shall apply with the necessary modifications to the preferential rights mentioned in the preceding seven Articles.

Article 320. The preferential right against the caution-money of a public officer exists over such caution-money in respect of obligations which have arisen from negligence in the performance of his duties on the part of the public officer who has furnished the caution-money.

Article 321. The preferential right arising from the preservation of a movable exists over such movable in respect of the expenses of its preservation.

The preferential right mentioned in the preceding paragraph also exists in respect of the expenses required for the preservation ratification or realization of rights relating to a movable.

Article 322. The preferential right arising from the sale of a movable exists over the movable in respect of the price and interest thereon.

Article 323. The preferential right arising from the supply of seeds, seedlings of fertilizers exists in respect of the price of such seeds, seedlings or fertilizers, and interest thereon, over the fruits derived from the land on which such seeds, seedlings, or fertilizers have been used, within one year after their use.

The preferential right mentioned in the preceding paragraph also exists in respect of the supply of silkworm eggs or mulberry leaves used for feeding silkworms over the things derived from the silkworm eggs or mulberry leaves.

Article 324. The preferential right arising from agricultural or industrial labour exists over the fruits or manufactured goods produced by such labour in respect of wages for the last one year in the case of agricultural workers and for the last three months in the case of industrial workers.

Sub-Section III

Preferential Rights Over Immovables

Article 325. A person who has any of the obligations which have arisen from any of the causes mentioned below has a preferential right over the specific immovables of the obligor:

1. Preservation of immovables;
2. Work on immovables;
3. Sale of immovables.

Article 326. The preferential right arising from the preservation of an immovable exists over such immovable in respect of the expense of its preservation.

The provision of Article 321, paragraph 2 shall apply with the necessary modifications to the case mentioned in the preceding paragraph.

Article 327. The preferential right arising from work on an immovable exists, in respect of the cost of work performed in relation

to the immovable of the obligor by artisans, technical experts and contractors, over such immovable.

The preferential right mentioned in the preceding paragraph exists, in cases where the increase in value of the immovable due to such work still subsists, only over such increased value.

Article 328. The preferential right arising from the sale of an immovable exists over the immovable in respect of the price and interest thereon.

Section III

Rank of Preferential Rights

Article 329. In the case of the concurrence of general preferential rights, their rank of priority shall be determined by the order in which they are mentioned in Article 306.

In the case of the concurrence of general preferential rights and special preferential rights, special preferential rights shall take precedence over general preferential rights; but a preferential right arising from expenses for the common benefit shall be preferred as against all obligees benefited thereby.

Article 330. In the case of the concurrence of special preferential rights over one and the same movable, the rank of their priority shall be as follows:

1. The preferential right arising from a lease of immovables, lodging at an inn, and carriage;

2. The preferential right arising from the preservation of movables, but if there have been two or more preservers, a later preserver shall take precedence over an earlier one;

3. The preferential right arising from the sale of a movable, the supply of seeds, seedlings or fertilizers, and agricultural and industrial labour.

If a person having a preferential right of the first rank was aware at the time of the acquisition of his obligation of the existence of a person having a preferential right of the second or third rank, he may not exercise his right of priority as against such person; the same shall apply as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

With regard to fruits, agricultural workers shall have the first rank, suppliers of seeds, seedlings or fertilizers the second, and lessors of land the third.

Article 331. In the case of the concurrence of special preferential rights over one and the same immovable, the rank of their priority shall be determined by the order mentioned in Article 325.

If there have been successive sales of one and the same immovable, the rank of priority of the sellers as between themselves shall be determined by the order of the sales in point of time.

Article 332. If two or more persons have preferential rights of the same rank over the same subject matter, they shall receive performance in proportion to the amount of their respective obligations.

Section IV

Effect of Preferential Rights

Article 333. After the obligor has delivered his movable to a third person who is a purchaser, no preferential right may be exercised in respect of such movable.

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Article 334. In the case of the concurrence of a preferential right and a pledge of a movable, the pledge of such movable shall have the same rights as the person having a preferential right of the first rank as mentioned in Article 330.

Article 335. A person having a general preferential right may not receive performance out of immovables, unless he has first resorted to property other than immovables without obtaining full satisfaction.

With regard to immovables performance must first be received out of those which are not the subject of a special security.

If a person having a general preferential right neglects to intervene in the distribution in accordance with the preceding two paragraphs, he may not, to the extent of what he would have received through such intervention, exercise his preferential right against a third person who has effected registration.

The provisions of the preceding three paragraphs shall not apply in cases where distribution is to be effected of the price of an immovable prior to that of other property, or where distribution is to be effected of the price of an immovable which is the subject of a special security prior to that of other immovables.

Article 336. A general preferential right, even if no registration has been effected in respect of an immovable, can be set up against an obligee who has no special security; but this shall not apply to a third person who has effected registration.

Article 337. A preferential right arising from the preservation of immovables shall preserve its effect by registration being effected

immediately after the act of preservation has been completed.

Article 338. A preferential right arising from work on immovables shall preserve its effect by the registration before the commencement of the work of an estimated amount of such work; but if the cost of the work exceeds the estimated amount, the preferential right shall not exist in respect of the amount in excess.

The amount of increase in value of immovables arising from the work performed must be estimated by an expert appointed by the Court at the time of the intervention in the distribution.

Article 339. A preferential right of which registration has been effected in accordance with the preceding two Articles may be exercised in preference to a hypothec.

Article 340. A preferential right arising from the sale of immovables shall preserve its effect by registration being effected simultaneously with the contract of sale to the effect that the price or interest thereon has not been paid.

Article 341. The provisions relating to hypothecs shall apply with the necessary modifications to the effect of a preferential right, in addition to the provisions of this Section.

CHAPTER IX

PLEDGE

Section I

General Provisions

Article 342. A pledgee is entitled to hold possession of the thing which he has received from the obligor or a third person as security for his obligation, and to obtain satisfaction of his

obligation out of the thing in preference to other obligees.

Article 343. A thing which is unassignable cannot be made the subject of a pledge.

Article 344. The creation of a pledge shall be effected by the delivery to the obligee of the subject matter of the pledge.

Article 345. A pledgee cannot let the pledgor hold possession of the thing pledged on his behalf.

Article 346. Unless it is otherwise provided by the act of creation, a pledge shall secure the principal, interest, penalty, expense of enforcement of the pledge, expense of preservation of the thing pledged, and the reparation of damage arising from the non-performance of the obligation or from latent defects in the thing pledged.

Article 347. A pledgee may retain the thing pledged until he obtains satisfaction of his obligation mentioned in the preceding Article; but this right cannot be set up against any obligee who has priority to him.

Article 348. A pledgee may within the duration of his own right sub-pledge the thing pledged on his own responsibility; in such case he shall be responsible even for any damage due to vis major which would not have occurred, if the sub-pledge has not been effected.

Article 349. A pledgor may not, either by the act of creation or by a contract effected before the time when the obligation becomes due, agree that the pledgee shall by way of satisfaction of his obligation acquire the ownership of the thing pledged or dispose of it otherwise than in the manner provided by law.

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Article 350. The provisions of Articles 298 to 300 and Article 304 shall apply with the necessary modifications to pledges.

Article 351. If a person who has created a pledge in order to secure an obligation of another discharges the obligation or loses the ownership of the thing pledged in consequence of the enforcement of the pledge, he is entitled to be indemnified by the obligor in accordance with the provisions relating to suretyship.

Section II

Pledge of Movables

Article 352. The pledgee of a movable cannot set up his pledge against a third person unless he continuously holds possession of the thing pledged.

Article 353. If the pledgee of a movable is deprived of his possession of the thing pledged, he can only recover it by an action for the recovery of possession.

Article 354. If the pledgee of a movable does not obtain satisfaction of his obligation, he may apply to the Court to have the thing pledged specifically appropriated to the discharge of the obligation according to the valuation of an expert, provided that there is just reason for doing so. In such case the pledgee must give notice of the application in advance to the obligor.

Article 355. If several pledges have been created by one and the same movable to secure two or more obligations, their rank of priority shall be determined by the order of their creation.

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Section III

Pledge of Immovables

Article 356. The pledgee of an immovable may use and take the profits of the immovable forming the subject of the pledge, in conformity with its ordinary use.

Article 357. The pledgee of an immovable shall pay the expenses of administration and bear all other charges upon such immovable.

Article 358. The pledgee of an immovable cannot demand interest on his obligation.

Article 359. The provisions of the preceding three Articles shall not apply, if it is otherwise provided by the act of creation.

Article 360. The period of duration of the pledge of an immovable cannot exceed ten years. If the pledge of an immovable is created for any longer period, the period thereof is reduced to ten years.

The creation of the pledge of an immovable may be renewed, but the period cannot exceed ten years from the time of renewal.

Article 361. The provisions of the next Chapter shall apply with the necessary modifications to pledges of an immovable, in addition to the provisions of this Section.

Section IV

Pledge of Rights

Article 362. A property Right may be made the subject of a pledge.

The provisions of the last three Sections shall apply with the necessary modifications to such pledges as are mentioned in the preceding paragraph, in addition to the provisions of this Section.

Article 363. If, in cases where an obligation is made the subject of a pledge, there exists a document evidencing such obligation, the creation of the pledge shall take effect by the delivery of the document.

Article 364. If an obligation with a named obligee has been made the subject of a pledge, the pledge cannot be set up against a garnishee or any other third person unless he has been notified of the creation of the pledge in accordance with the provisions of Article 467, or unless he has given his consent thereto.

The provisions of the preceding paragraph shall not apply to name shares.

Article 365. If a name debenture has been made the subject of a pledge, the pledge cannot be set up against the company or any other third person unless the creation of the pledge has been entered in the books of the company in accordance with the provisons relating to the transfer of the debenture.

Article 366. If an obligation to order has been made the subject of a pledge, the pledge cannot be set up against a third person unless its creation is indorsed on the instrument.

Article 367. A pledgee may directly obtain performance of the obligation which is the subject of the pledge.

If the subject matter of an obligation is money, the pledgee may only obtain payment of such portion thereof as corresponds to the amount of his own obligation.

If the obligation mentioned above has become due earlier than

the pledgee's obligation, the pledgee may require the garnishee to deposit the amount payable with the competent authorities. In such case the pledge shall exist over the money so deposited.

If the subject matter of an obligation is not money, the pledgee shall have a pledge over any thing received by way of performance.

Article 368. In addition to the method provided in the preceding Article a pledgee may enforce his pledge by way of compulsory execution as provided in the Code of Civil Procedure.

CHAPTER X

HYPOTHEC

Section I

General Provisions

Article 369. A hypothecary obligee is entitled to obtain satisfaction of his obligation in preference to other obligees out of an immovable which has been furnished by the obligor or a third person as security for the obligation without transferring its possession.

A superficies and an emphyteusis may also be made the subject of a hypothec. In such case the provisions of this Chapter shall apply with the necessary modifications.

Article 370. A hypothec shall extend to all things, except buildings on the land hypothecated which are affixed to and incorporated with the immovable which is the subject of the hypothec. But this shall not apply in cases where it is otherwise provided by the act of creation of where the obligee can avoid the act of the

obligor in accordance with the provisions of Article 424.

Article 371. The provisions of the preceding Article shall not apply to fruits, except after an attachment has been effected of the immovable hypothecated or after a third person who is a purchaser has received the notice mentioned in Article 381.

If a third person who is a purchaser has received the notice mentioned in Article 381 the latter part of the preceding paragraph shall apply in cases where an attachment of the immovable hypothecated has been effected within one year thereafter.

Article 372. The provisions of Articles 296, 304 and 351 shall apply with the necessary modifications to hypothecs.

Section II

Effect of Hypothec

Article 373. If several hypothecs have been created over one and the same immovable to secure two or more obligations, their rank of priority shall be determined by the order of their registration.

Article 374. If a hypothecary obligee is entitled to demand interest or any other money required to be paid periodically, he can enforce his hypothec only as regards the payments due in respect of the last two years; but if in regard to such payments due in respect of periods previous thereto special registration has been effected after they have matured, the right may also be exercised in respect of them as from the time of such registration.

If the hypothecary obligee has a right to demand the reparation of damage arising from the non-performance of the obligation, the

provisions of the preceding paragraph shall apply as regards so much thereof as is attributable to the last two years; but the damages together with interest and other periodical payments may not exceed the amount due in respect of the two years.

Article 375. A hypothecary obligee may make his hypothec security for another obligation or may assign or waive the hypothec or its rank of priority for the benefit of another obligee against the same obligor.

If in the case mentioned in the preceding paragraph the hypothecary obligee has disposed of his hypothec for the benefit of two or more persons the rank of priority of the rights of the persons benefited by such disposal shall be determined by the order in time of the additional entries effected in the registration of the hypothec.

Article 376. In the case mentioned in the preceding Article the disposal of the hypothec cannot be set up against the principal obligor surety, or hypothecator, or their successors in title unless the obligor has been notified of such disposal or has given his consent thereto in accordance with the provisions of Article 467.

If the principal obligor has recieved the notice or has given his consent, as mentioned in the preceding paragraph, no performance effected without the consent of the person benefited by the disposal of the hypothec can be set up against such person.

Article 377. If a third person who has bought the ownership of, or a superficies in, a hypothecated immovable pays its price to the hypothecary obligee upon the demand of the latter, the hypothec shall be extinguished in favour of such third person.

Article 378. A third person who has acquired the ownership of, or a superficies or emphyteusis in, a hypothecated immovable may discharge the hypothec by paying/depositing with the competent authorities the amount tendered to the hypothecary obligee and consented to by the latter in accordance with the provisions of Articles 382 to 384.

Article 379. The principal obligor, surety and their successors in title cannot discharge a hypothec.

Article 380. A third person who is a purchaser subject to a suspensive condition cannot discharge a hypothec during the pendency of the condition.

Article 381. If a hypothecary obligee wishes to enforce his hypothec he must in advance give notice thereof to such third person as mentioned in Article 378.

Article 382. A third person who is a purchaser may discharge a hypothec at any time before receiving the notice mentioned in the preceding Article.

If a third person who is a purchaser has received the notice mentioned in the preceding Article, he cannot discharge the hypothec unless he effects the service mentioned in the following Article within one month.

A third person who has acquired any of the rights mentioned in Article 378 after the notice mentioned in the preceding Article has been given, can discharge the hypothec only within the period during which such purchaser as is mentioned in the preceding paragraph is entitled to do so.

Article 383. When a third person who is a purchaser wishes to discharge a hypothec, he must serve the following documents upon each of the registered obligees:

1. A document specifying the mode and date of acquisition, the names and permanent residences of the assignor and of the purchaser, the nature and location of the immovable hypothecated, and the price and other charges to be borne by the purchaser;

2. A copy of the Register relating to the immovable hypothecated provided that registrations relating to rights already extinguished need not be mentioned therein;

3. A document stating that in case the obligees do not within one month in accordance with the following Article demand a sale by official auction at a higher price, the third person who is the purchaser will pay or deposit with the competent authorities, in accordance with the rank of priority of the obligations, the price mentioned in No. 1 or an amount specially designated.

Article 384. If an obligee does not demand the sale by official auction at a higher price within one month after he has received the service mentioned in the preceding Article, he shall be deemed to have given his consent to the tender made by the third person who is the purchaser.

A demand for a sale by official auction at a higher price, must be made against the third person who is the purchaser and be accompanied by a statement to the effect that in case the immovable hypothecated cannot at the official auction be sold at a price not

less than ten percent higher than the amount tendered by the third person who is the purchaser, the obligee will himself purchase the immovable at a price ten percent higher.

In the case mentioned in the preceding paragraph, the obligee must furnish security for the price and expenses.

Article 385. When an obligee demands a sale by official auction at a higher price, he must within the period specified in the preceding Article give notice thereof to the obligor and to the assignor of the immovable hypothecated.

Article 386. An obligee who has demanded a sale by official auction at a higher price may not revoke demand without obtaining the consent of the other registered obligees.

Article 387. If the hypothecary obligee has not within the period specified in Article 382 received performance of the obligation or a notice of discharge from a third person who is a purchaser, he may demand a sale by official auction of the immovable hypothecated.

Article 388. If, in cases where the land and the building on it belong to one and the same owner, either the land only or the building only has been hypothecated, the hypothecator shall be deemed to have created a superficiesfor the case of sale by official auction; in such case the rent shall be determined by the Court on the application of any party concerned.

Article 389. When the hypothecator has constructed a building on the land hypothecated subsequent to the creation of the hypothec, the hypothecary obligee may sell such building by official auction

together with the land; but his right of priority may be exercised only in respect of the price of the land.

Article 390. A third person who is a purchaser may be a bidder at the official auction.

Article 391. If a third person who is a purchaser has incurred necessary or advantageous expenses in respect of the immovable hypothecated, he may obtain reimbursement out of the price of the immovable in preference to all others, according to the distinctions mentioned in Article 196.

Article 392. If, in cases where an obligee has a hypothec over two or more immovables as security for one and the same obligation, the proceeds are to be distributed at the same time, the burdens in respect of the obligation shall be divided in proportion to the value of each immovable.

If the proceeds of only one of the immovables are to be distributed, the hypothecary obligee may obtain full satisfaction of his obligation out of the proceeds; in such case the hypothecary obligee who is next in rank may enforce his hypothec by way of subrogation to the extent of the amount which the prior hypothecary obligee would have received out of the other immovables in accordance with the provisions of the preceding paragraph.

Article 393. A person who enforces a hypothec by subrogation may have an additional entry of such subrogation effected in the registration of the hypothec.

Article 394. A hypothecary obligee may obtain satisfaction of his obligation out of other property only in respect of that

portion of the obligation which has not been satisfied out of the price of the immovable hypothecated.

The provisions of the preceding paragraph shall not apply in cases where the proceeds of other property are to be distributed prior to the price of the immovable hypothecated; but each of the other obligees may demand, in order to cause the hypothecary obligee to obtain satisfaction in compliance with the provisions of the preceding paragraph, that the amount to be distributed to the hypothecary creditor be deposited with the competent authorities.

Article 395. A lease not exceeding the period mentioned in Article 602 can be set up against the hypothecary obligee even if registration has been effected after that of the hypothec; but if the lease would cause damage to the hypothecary creditor, the Court may on application of the latter order its rescission.

Section III

Extinction of Hypothec

Article 396. A hypothec shall not be extinguished by presciption in respect to the obligor and the hypothecator except simultaneously with the obligation which it secures.

Article 397. If a person other than the obligor or the hypothecator has held possession of the immovable hypothecated so as to fulfil the conditions necessary for acquisitive prescription, the hypothec shall be extinguished thereby.

Article 398. Even though a person who has hypothecated a superficies or emphyteusis may have renounced his rights, such renunciation cannot be set up against the hypothecary obligee.

THE CIVIL CODE OF JAPAN

BOOK III OBLIGATIONS

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CHAPTER I

GENERAL PROVISIONS

SECTION I

SUBJECT OF OBLIGATIONS

Article 399. An obligation may have for its subject even something which cannot be estimated in money.

Article 400. If the subject of an obligation is the delivery of a specific thing, the obligor is bound to preserve such thing with the care of a good manager until it is delivered.

Article 401. If, in cases where the subject matter of an obligation is indicated in species only, its quality cannot be determined by the nature of the juristic act or by the intention of the parties, the obligor is bound to deliver a thing of medium quality.

If in the cases mentioned in the preceding paragraph the obligor has performed all acts that are necessary for the delivery of a thing or has with the consent of the obligee designated a thing to be delivered, such thing shall thenceforth constitute the subject matter of the obligation.

Article 402. If the subject matter of an obligation is money, the obligor may at his option effect payment in currency of any kind; but this shall not apply in cases where the delivery of a specific kind of currency is made the subject of an obligation.

If the specific kind of currency which forms the subject of an obligation has ceased to be effective as legal tender at the time when the obligation becomes due, the obligor is bound to effect payment in some other currency.

The provisions of the preceding two paragraphs shall apply with the

necessary modifications in cases where the delivery of foreign currency is made the subject of an obligation.

Article 403. If the amount of an obligation is designated in foreign currency, the obligor may effect payment in Japanese currency at the rate of exchange current at the place of performance.

Article 404. If no different declaration of intention has been made in respect of an obligation bearing interest, the rate of interest shall be five per cent per annum.

Article 405. If, in cases where interest for one year or more is in arrears, the obligor fails to pay it notwithstanding that a peremptory notice has been given by the obligee, the latter may include such interest in the principal.

Article 406. If the subject of an obligation is to be determined by means of an election from among two or more acts of performance, the right of election shall vest in the obligor.

Article 407. The right of election mentioned in the preceding Article shall be exercised by a declaration of intention made to the other party.

The declaration of intention mentioned in the preceding paragraph cannot be revoked without the consent of the other party.

Article 408. If, in cases where an obligation is due, the party having a right of election fails, notwithstanding that the other party has given a peremptory notice by fixing a reasonable period, to effect the election with such period, the right of election shall vest in the other party.

Article 409. In cases where an election is to be made by a third person, such election shall be effected by a declaration of intention made either

to the obligee or to the obligor.

If the third person cannot effect the election or is unwilling to do so, the right of election shall vest in the obligor.

Article 410. If among the acts of performance which are to form the subject of an obligation some have either been impossible from the beginning or have subsequently become impossible, the obligation shall exist in respect of the remaining acts.

The provisions of the preceding paragraph shall not apply, if any act of performance has become impossible by reason of the fault of the party who has not the right of election.

Article 411. The election shall be effective retroactively as from the time when the obligation came into existence; but the rights of third persons may not be prejudiced thereby.

SECTION II

EFFECT OF OBLIGATIONS

Article 412. If a time certain has been fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time when such time has arrived.

If a time uncertain has been fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time when he has become aware of the arrival of such time.

If no time has been fixed for the performance of an obligation, the obligor shall be responsible for delay as from the time when a demand for performance has been made upon him.

Article 413. If an obligee refuses to accept performance of an obligation or is unable to accept it, such obligee shall be responsible for delay as from the time when the performance has been tendered.

Article 414. If an obligor does not voluntarily perform his obligation, the obligee may apply to the Court for compulsory performance thereof; but this shall not apply in cases where the nature of an obligation does not so admit.

If, in cases where the nature of an obligation does not admit of compulsory performance, the subject of the obligation is an act, the obligee may apply to the Court to have it effected by a third person at the expense of the obligor; but with regard to an obligation having a juristic act for its subject, a decision of the Court may be substituted for a declaration of intention by the obligor.

With regard to an obligation having forbearance for its subject, the obligee may demand that what has been done by the obligor be removed at the latter's expense and that proper measures be adopted for the future.

The provisions of the three preceding paragraphs shall not affect a demand for damages.

Article 415. If an obligor fails to effect performance in accord with the tenor and purport of an obligation, the obligee may demand damages; the same shall apply in cases where performance becomes impossible for any cause for which the obligor is responsible.

Article 416. A demand for damages has for its object the reparation by the obligor of such damage as would ordinarily arise from the non-performance of an obligation.

The obligee may demand compensation also for damage which has arisen through special circumstances, if the parties have foreseen or could have foreseen the circumstances.

Article 417. In the absence of any different indication of intention, the amount of damages shall be assessed in money.

Article 418. If there is any fault on the part of an obligee in regard to the non-performance of an obligation, the Court shall take it into account in determining whether or not a liability for damages exists and in assessing the amount of the damages.

Article 419. The amount of damages in respect of the non-performance of an obligation having money for its subject shall be determined by the legal rate of interest; but in case the rate agreed upon exceeds the legal rate it shall be determined by the former.

With regard to the damages mentioned in the preceding paragraph, the obligee is not bound to prove the damage nor may the obligor set up this as a defence.

Article 420. The parties may determine in advance the amount of damages payable in the event of the non-performance of an obligation; in such case the Court cannot increase or reduce the amount.

The determination in advance of the amount of damages shall not affect a demand for performance or for rescission.

A penalty shall be presumed to be a determination in advance of the amount of damages.

Article 421. The provisions of the preceding Article shall apply with the necessary modifications in cases where the parties have agreed beforehand that

something other than money shall be appropriated towards the compensation for damage.

Article 422. If an obligee has received by a way of damages the full value of the thing or right which forms the subject of his obligation, the obligor shall by operation of law be subrogated into the position of the obligee in respect of such thing or right.

Article 423. An obligee may, in order to protect his obligation, exercise rights belonging to the obligor; but this shall not apply in respect of such rights as are strictly personal to the obligor.

So long as the obligation is not yet due, the obligee cannot exercise the rights mentioned in the preceding paragraph except by dudicial subrogation; but this shall not apply in respect of an act of preservation.

Article 424. An obligee may apply to the Court for the avoidance of a juristic act effected by the obligor with knowledge that it would prejudice the obligee; but this shall not apply in cases where a person who has derived benefit from such act or a subsequent purchaser was, at the time of the act or of the subsequent purchase, unaware of the fact that it would prejudice the obligee.

The provisions of the preceding paragraph shall not apply to a juristic act which has not a property right for its subject.

Article 425. An avoidance effected in accordance with the provisions of the preceding Article shall take effect for the benefit of all the obligees.

Article 426. The right of avoidance mentioned in Article 424 shall be extinguished by prescription, if the obligee fails to exercise it within two years from the time when he became aware of the cause for avoidance; the same