**RESEARCH PROJECT:**
**CENTENNIAL ANNIVERSARY "CIVIL AND COMMERCIAL CODE OF THAILAND"**

*for*
*Reassessment of the Contribution by the French Commissioners*
*in the Code Commission in Case of Book III "Specific Contracts"*

**DRAFT**
**CIVIL AND COMMERCIAL CODE FOR KINGDOM OF SIAM.**

# BOOK III
# ON
# SPECIFIC CONTRACTS.
# (APRIL 1924)

## TITLES I. — XXI.

**Reconstructed**
from the Documents in Vols. 86, 87, 88, and 89 of
**"The Archives of the History of Thai Codification"**

in comparison with
**"Draft Civil and Commercial Code of 1919"**

edited by
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## Overview



## Draft April 1924

# What is the “Draft April 1924”?

## A. Its Historical Background

At the beginning of the Archive ***“DRAFT CODE ON OBLIGATIONS, XV A”*** (***Vol. 46/1*** in ***“The Archives of the History of Thai Codification”***),[1] *Mr. Guyon* (probably) wrote as follows:

> From March to December 1924, and especially after the issue of *the printed Draft April 1924*, a final revision of the same has been undertaken by the Department of Legislative Drafting, in permanent connection with the High Revising Committee. […]
>
> **[highlighted by the quoter]**

It was the final draft for the part of ***“Specific Contracts”*** in the ***“Civil and Commercial Code for the Kingdom of Siam”***. According to the original concept of the French advisers to the Siamese Government at time (see ***“Draft Civil and Commercial Code of 1919”***), the Code would consist of the following tree books:

1. ***Book on Obligations***
2. ***Book on Capacity of Persons***
3. ***Book on Things***

Besides of the general provisions on obligations (***Preliminary*** and ***Division I - VI***), the 1st book also included the “Specific Contracts” in its ***Division VII***.

### *a. Division of the Book on Obligations*

In the period of 25 มิถุนายน 2462 – 3 พฤษภาคม 2463, the initial Thai translation of the Book on Obligations (***Vol. 66***) was accomplished by the following translators:

1. Preliminary and Division Division I – VI (Secs. 1 – 387) by พระยามานวราชเสวี (ปลอด ณ สงขลา)
2. Division VII, Title I – XXI (Secs. 388 – 1128) by พระยาเทพวิถุรพหุลศรุตาบดี (บุญช่วย วณิกกุล)

In the same period, the Commission of Codification probably started to discuss a new request from its Siamese members to divide the Code into two Books. In regard with this issue, Mr. René Guyon wrote in his ***"NOTE for the Committee of Translation"*** of 24th August 1920 as follows:

> […] I remind that sections 1 to 39 of the present Draft Code of Obligations are general ones; if a Civil Code could have been published at one and the same time, *section 1 to 39 would come in the beginning of such a Code*, and the Book on Obligations would have begun by section 40. […]
>
> **[highlighted by the quoter]**

Indeed, this request was officially approved, and the translation dated กันยายน 2464 (September 1921) introduced the ***“Book I on General Provisions”*** as follows (***Vol. 71***):

1 The list of the archives is available under: http://openlegaltextbook.info/Centennial/data/uploads/microfilms/digital-collection-thai-codification.pdf

1. “บรรพ ๑ บททั่วไป” contains Secs. 1 – 39.
2. “บรรพ ๒ พันธะธรรม ภาค ๑ ถึง ๖” contains Secs. 40 – 387.

At this stage, ***“Division VII. — Specific Contracts”*** was still included in the ***“Book II on Obligations”***, but its Thai translation was undertaken separately from the foregoing parts. In its version from the period of 20 สิงหาคม 2464 – 26 สิงหาคม 2465, ***Division VII, Titles I – XXI*** was called as follows (***Vol. 72***):

3. “ภาค ๗ สัญญาเฉภาะเรื่อง” contains Secs. 388 – 1128.

At the next stage, however, this part was separated from the Book II and called the ***“Book III Specific Contracts”***. Its Thai translation from the period of 1922 (probably October 1922; provided that this text is identical with the text in ***Vol.84***) was called as follows (***Vol. 73***):

3. “บรรพ ๓ ปริเฉทะสัญญา” contains Secs. 388 – 1128.

Furthermore, ***Title XXII. — Partnerships and Companies*** and ***Title XXIII. — Associations*** were translated separately from the other Titles once again. Its version from the period 2 กันยายน 2465 — 18 ตุลาคม 2466 was called as follows (***Vol. 74***):

4. “ประมวลกฎหมายแพ่งและพาณิชย์ (มาตรา 1129 ถึง 1464) ต้นฉบับตรวจแก้ครั้งที่ ๑”

### *b. Integration of the Book on Capacity of Persons*

In parallel to this issue of “Division of the Code”, the Commission of Codification discussed another alteration to the ***Draft 1919***; namely integration of the part “Capacity of Persons” and “Juristic Persons” into the Book I. As a result, the contents of the Book I show a clear similarity to the German and Japanese Civil Codes. The ***"RECORD of the Meeting of the Commission of Codification"*** of 16th October 1922 reported as follows (***Vol. 36/75***):

> According the directions of His Majesty, the Commission of Codification have considered the introduction of *the Part of the Civil Code concerning Capacity of Persons* by the beginning of the present Draft.
>
> They are of opinion that this comes practically to introduce in Book I (General Provisions) additional Titles concerning:
>
> Personality (including Age, Name, Residence, Disappearance).
> Capacity (including General Principles on Incapacitated Persons).
> Juristic Persons.
>
> This is exactly the policy which has been followed in several modern Codes, namely the German, Swiss and Japanese ones where the Book I (General Provisions) contains all these matters.
>
> The Commission of Codification remind that all the above matters are already drafted and included in a Draft "Book on Capacity of Persons" which was printed in 1919 (after a preliminary revision made as soon as 1913). […]
>
> **[highlighted by the quoter]**

After this alteration was approved, the following new versions of Thai translation of the extended Book I and II were accomplished (***Vol. 76*** dated 12th July 1923 and ***Vol. 77*** undated). In these versions, the section numbers were recounted as follows:

1. "บรรพ ๑ บทเบ็ดเสร็จทั่วไป" contains Secs. 1 – 105.
2. "บรรพ ๒ ว่าด้วยหนี้" contains Secs. 106 – 452.

### *c. Suspension of the Recounting*

Accordingly, the section numbers in the Book III had to be recounted now starting from Sec. 453. The document in ***Vol.84*** shows that the Commission of Codification did it using the Thai translation of ***Vol. 73*** "บรรพ ๓ ปริเฉทะสัญญา". At the same time, the members of the Commission began to note many remarks on the text; namely not only for improving the translation, but also *for the purpose of revising the text itself*. However, these operations were suddenly suspended at Sec. 611. What could be a reason for this happing? Probably, the Commission decided for a comprehensive revision of the provisions in the Book III. This decision was presumed to be made in the period of July to November 1923. Indeed, a new Title of "Hire-Purchase" shall be introduced, and many provisions in the Titles "Insurance" and "Bills" shall be newly composed.

### *d. A new Draft for the Book on Specific Contracts*

For this reason, the Commission of Codification began to compile a new draft for the Book III presumably soon after the promulgation of the Book I and II in November 1923. This new draft for the Book III was accomplished in April 1924 and officially published according to the words of *Mr. Guyon cited above*. This is the ***"Draft April 1924"***. However, several circumstances suggest that this Draft covered the Titles I – XXI. The Titles XXII and XXIII were probably not included in it (☞ see the comment to the ***Vol. 87***). The Commission performed its final revision in the period of April to December 1924. Then, it was promulgated on 1st January 1925.

## B. How could the Draft April 1924 be reconstructed?

Unfortunately, this original English text of the Draft April 1924 is not included in the ***"The Archives of the History of Thai Codification"***, or lost. Is there any possibility to know of its original English text? The Archives offer following materials to presume the original text:

1. ***Vol. 86***: The Thai translation of the Draft April 1924, Titles I – XXI (Secs. 453 – 1179). It has also many revising remarks exactly corresponding to the final alterations of the Draft April 1924.
2. ***Vol. 89***: The records or reports of the final alterations of the Draft April 1924 (บันทึก ที่ ๑ ถึง ๔๑). This document shows which sections were deleted, improved, replaced with new wordings, or newly inserted. For the *most* cases of improvement, replacement, and insertion, each Report has reference text which shows the positions and contents of alterations. There are totally 604 issues. The most alterations regard the Titles I – XXI. The alterations regarding the Titles XXII and XXIII are only 8 issues. There must have been further reports of alterations for the last two Titles. Unfortunately, they are not discovered yet.
3. ***Vol. 88***: The final result of the alterations in the period of April – December 1924. It covers all the Titles from I to XXIII (Secs. 453 – 1297). Its Thai translation was promulgated on 1st January 1925.
4. ***Vol. 87***: This document includes firstly the reference texts annexed to the Reports of the alterations for the Titles XV – XXI. Secondly, the Titles XXII and XXIII of the ***Draft 1919*** (Secs. 1129 -1464) are treated once again and remarked with the final alterations from the period of April – December 1924. However, the recounted section number starts with 1012 and ends with 1297. This fact suggests that the Commission had firstly ac-

complished the revision of Secs. 453 – 1179 of the Draft April 1924 and recounted them. The new section number for the Titles I – XXI starts with 453 and ends with 1011. Then, the Commission started the revision of the Titles XXII and XXIII with the text from the ***Draft 1919***. Then, the Commission recounted the finalized sections starting with 1012 and ended with 1297. If this presumption is correct, then it would mean that these two Titles were not included in the Draft April 1924.

The following steps were applied to these documents.

***Step 1***
Firstly, the Thai translation in the ***Vol. 86*** was to be compared with the text of the ***Draft 1919***, and the recognized correspondences between them were listed in a long table ("Correspondence table").

***Step 2***
Each alteration recorded in the ***Vol. 89*** was entered into the line of the section in question in the "Correspondence table", and remarked with its kind of alteration (improvement, delation, or insertion). "Replacement" was described as combination of delation and insertion in one and same alteration.

***Step 3***
Additionally, the finalized section numbers in the ***Vol. 88*** were entered into the lines of sections in question. In this way, the table ***"Tracing the Alteration Process"*** was created (***PDF***).

***Step 4***
According to the first table just mentioned above, the second larger table was created, which lists contents of all the *reference texts* annexed to the "Reports (บันทึก)" of alterations in the ***Vol. 89*** together with the contents of the *corresponding sections* from the ***Draft 1919, Division VII***. In cases where the Reports do not contain information enough, then *supplementary information* was entered from the ***Vols. 45, 86,*** or ***87*** if they have any.

***Step 5***
Additionally, the *finalized texts of the finished sections* in Vol. 88 were entered into the lines of sections in question together with *their Thai translation* in the Book III (January 1925). In this way, the table ***"Visualization of the Alteration Process"*** was created (***PDF***).

***Step 6***
The contents of the sections in the Draft April 1924 could be reconstructed by way of comparison between three main columns in the table ***"Visualization of the Alteration Process"***; namely (1) the sections of the ***Draft 1919***, (2) the reference texts from the ***Reports***, and (3) the finalized texts in the ***Draft December 1924***. Following several samples show the methods to reconstruct the original text of the Draft April 1924:

(a) **Sample 1** shows a case where **Sec. 399** in the ***Draft 1919*** was adopted to **Sec. 461** in the ***Draft December 1924*** without any changes;

**[ Sample 1 ]**

| Draft of 1919 | Alterations & Location (Vol.86, 87, or 89) | Altered Draft of B.E. 2467 (Vol.88) |
|---|---|---|
| **DUTIES AND LIABILITIES OF THE SELLER. [Part] I. — DELIVERY.** | | **DUTIES AND LIABILITIES OF THE SELLER. PART I. DELIVERY.** |
| ***Ob.399*** | **[Vol.86] 464 (86/12)** | **[Vol.88] Section 461. (88/3)** |
| The seller is bound to deliver to the buyer the property sold. | **<== No alteration to Draft 1919 ==>** | The seller is bound to deliver to the buyer the property sold. |

Accordingly, ***Sec. 464*** *in the* ***Draft April 1924*** *must have the same text*. In such a case, there was no utterance to this section in the Reports.

(b) **Sample 2** shows a case where **Sec. 410** in the ***Draft 1919*** was once adopted to **Sec. 475** in the ***Draft April 1924*** *without any changes*. Then, it was adopted to **Sec. 474** in the ***Draft December 1924*** *with improvement* reported in the ***"Report No.15, Term No.1"***;

**[ Sample 2 ]**

| ***Ob.410*** | **[Vol.89] 15(01); 475 (89/70)** | **[Vol.88] Section 474. (88/7)** |
|---|---|---|
| The liability for a defect is extinguished by prescription one year after the discovery of the defect. | ~~The~~ No action for liability for ~~a~~ defect ~~is extinguished by prescription~~ can be entered later than one year after the discovery of the defect. | No action for liability for defect can be entered later than one year after the discovery of the defect. |

Accordingly, ***Sec. 475*** *in the* ***Draft April 1924*** *must have the same text as in the* ***Draft 1919***.

(c) **Sample 3** shows a case where **Sec. 439** in the ***Draft 1919*** was adopted to **Sec. 500** in the ***Draft December 1924*** *with some improvements*. However, there is neither utterance to this section nor record about the alterations in question in the ***Reports***;

**[ Sample 3 ]**

| ***Ob.439*** | **[Vol.86] 504 (86/25)** | **[Vol.88] Section 500. (88/14)** |
|---|---|---|
| Costs of the sale borne by the buyer must be reimbursed together with the price.<br>Costs of redemption must be borne by the person who redeems. | Costs of the sale borne by the buyer must be reimbursed together with the price.<br>Costs of redemption ~~must be~~ are borne by the person who redeems.<br>*** No record of alterations in the Reports (บันทึก)** | Costs of the sale borne by the buyer must be reimbursed together with the price.<br>Costs of redemption are borne by the person who redeems. |

In such a case, it is reasonable to presume that *the alterations in question were already done in* ***Sec. 504*** *in the* ***Draft April 1924***. However, this presumption must be re-confirmed through comparison with the Thai translation of **Sec. 504** in the ***Vol. 86***.

(d) **Sample 4** shows another case where a section in the ***Draft 1919*** was adopted to a section in the ***Draft December 1924*** *with some improvements*. However, the reference text to the Reports does not have any information what and how the text was changed;

**[ Sample 4 ]**

| ***Ob.425*** | **[Vol.89] 03(02); 490 (89/16)** | **[Vol.88] Section 485. (88/10)** |
|---|---|---|
| A non-liability clause cannot exempt the seller from the consequences of :<br>1) Facts which he knew at the time of the sale and concealed.<br>2) Rights which he created in favour of, or transferred to, third persons subsequently to the sale. | A non-liability clause cannot exempt the seller from the consequences of :<br>~~1) Facts which he knew at the time of the sale and concealed.~~<br>~~2) Rights which he created in favour of, or transferred to, third persons subsequently to the sale~~<br>his own acts or of facts which he knew and concealed.<br>*** No record of alterations, only the altered text.** | A non-liability clause cannot exempt the seller from the consequences of his own acts or of facts which he knew and concealed. |

In this case, **Sec. 490** in the reference text to the ***"Report No.3, Term No.2"*** is simply the same one as in **Sec. 485** in the ***Draft December 1924***. Under such circumstances, *it is hardly possible to determine the time point of the alterations*. At the end, we must check the

Thai translation of Sec. 490 in the *Vol. 86*.to know whether the alterations had been already done in the *Draft April 1924* or not.

(e) **Sample 5** shows a case where Sec. 547 in the *Draft April 1924* was replaces with a new text according to the *"Report No.8, Term No.4"*;

**[ Sample 5 ]**

| Ob.481 | [Vol.89] 08(04); 547 (89/33) | [Vol.88] Section 532. (88/22) |
|---|---|---|
| If the donee is convicted by a final judgment of having intentionally and unlawfully caused the death of the donor, the heirs of the donor are entitled to claim cancellation of the gift by the Court. | The heir of the donor can claim revocation only if the donee has intentionally and unlawfully killed the donor or prevented him from revoking the gift,<br>However, the heir may continue an action which has been duly entered by the donor.<br>* Adoption of a new text. | The heir of the donor can claim revocation only if the donee has intentionally and unlawfully killed the donor or prevented him from revoking the gift,<br>However, the heir may continue an action which has been duly entered by the donor. |

On the other hand, there is no information about the original text of Sec. 547 in the *Draft April 1924*. It could be presumed that *Sec. 547 in the Draft April 1924. had originally the same text as Sec. 481 in the Draft 1919*, however, there is no evidence for this presumption. For this reason, it is necessary to reconfirm it through comparison with the Thai translation of Sec. 481 in the *Vol. 86*.

(f) **Sample 6** shows a similar case to **Sample 5**, but this time, there is no entry in the column for the *Draft 1919*. However, the table *"Tracing Alteration Process"* indicates that there was another Sec.493 which corresponded to Sec. 428 in the *Draft 1919* as follows;

**[ Sample 6 ]**

| - | [Vol.89] 04(01); 493 (89/18) | [Vol.88] Section 490. (88/11) |
|---|---|---|
| [No corresponding section in Draft 1919] | If a time is fixed for the delivery of the property sold it is presumed that the same time is fixed for the payment of the price.<br>* Adoption of a new text. | If a time is fixed for the delivery of the property sold it is presumed that the same time is fixed for the payment of the price. |

**[ Information about Sec. 493 from the Table "Tracing Alteration Process" ]**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 420 | -- | 492 ter. (89/12) | ins. | 02(07) | 89/7 | | 489 |
| ~~428~~ | ~~493~~ | | del. | 03(04) | 89/15 | | |
| -- | -- | 493 (89/18) | ins. | 04(01) | 89/17 | | 490 |

Accordingly, it could be presumed that the original Sec.493 had the same text as Sec. 428 in the *Draft 1919*. Of course, this presumption must be reconfirmed through comparison with the Thai translation of Sec. 493 in the *Vol. 86*.

(g) In cases where sections in the *Draft April 1924* were deleted through the final alterations, there is absolutely no information about original texts of such sections in the *Draft April 1924* because the Reports in the *Vol. 89* contain no utterance to them. Under these circumstances, *the Thai translation in the Vol. 86 is the only source* to reconstruct such sections in the *Draft April 1924*, for instance;

**[ Sample 7 ]**

| ส่วนที่ ๓ คำมั่นในการซื้อขาย | | | | | | | |
|---|---|---|---|---|---|---|---|
| ~~396~~ | ~~461~~ | | del. | 01(05) | 89/2 | | |
| ~~397~~ | ~~462~~ | | del. | 01(05) | 89/2 | | |
| ~~398~~ | ~~463~~ | | del. | 01(05) | 89/2 | | |

In case some differences are identified between sections in the ***Draft 1919*** and the Thai translation of the ***Draft April 1924*** in the ***Vol. 86***, such differences are remarked in their reconstruction, for instance;

**[ Reconstruction for Sample 7 ]**

~~396~~ **461**. — A promise of sale is a contract whereby one party agrees to sell or to buy a property, and the other party agrees that he will at his discretion either complete or not complete the sale.

บุคคลฝ่ายที่ได้ทำคำมั่นให้นั้น ชื่อว่าเปนผู้ให้คำมั่น และคำมั่นนั้นทำให้แก่ผู้ใด ผู้นั้นชื่อว่าเปนผู้รับคำมั่น

~~397~~ **462**. — If the other party notifies his intention to complete the sale, the promise of sale has the effect of a contract of sale as soon as the notification reaches the first party. **[86/12]**

~~398~~ **463**. — If no time is fixed for the notification, the party who made the promise can fix a reasonable time and call upon the other party to answer within that time whether he will complete the sale or not.

If he does not answer within that time, the contract is extinguished.

In this case, the Thai translation of **Sec. 461** in the ***Vol. 86*** has the second paragraph which does not exist in **Sec. 396** in the ***Draft 1919***. Under such circumstances, it would be reasonably presumed that *the second paragraph was added to the* **Sec. 461** *in the* ***Draft April 1924***. However, its original text in English is not discovered yet. Therefore, The <Thai translation> was added to the reconstruction of **Sec. 461**.

The main part of this paper, the reconstruction of the Draft April 1924 was compiled through such considerations as demonstrated in the samples above. In other words, this version of the reconstruction is still a provisional conclusion. It must be improved as soon as new information will be discovered in the ***Archives of the History of Thai Codification***.

# Preliminary Assessment

Nevertheless, using this provisional reconstruction, we could try a *basic assessment of the contribution by the French commissioners* to the codification of the Book III on Specific Contracts. We can distinguish following two stages of numerical assessments; namely in the first stage of the ***Draft April 1924***, and in the second stage of the ***Draft December 1924***.

## The First Stage

The original ***Draft of Book on Obligations (1919), Division VII, Titles I — XXI,*** contain **741** sections (Secs. 388 — 1128). These sections experienced following alteration in the ***Draft April 1924***:

- **22** sections were deleted, in other words, ***719*** *sections have survived the revision;*
  - Secs. 676, 677, 769, 770, 771, 772, 773, 774, 775, 782, 805, 828, 829, 888, 940, 942, 953, 976, 1088, 1089, 1110, 1120 in the ***Draft 1919***.
- **40** sections were integrated to **20** sections;
  - Secs. 931 & 932 in the ***Draft 1919*** were integrated together to Sec. 1001 in the ***Draft April 1924***.

  - Secs. 1009 – 1027 & 1055 – 1073 in the ***Draft 1919*** were respectively integrated together to Secs. 1116 – 1134 in the ***Draft April 1924***.
- **3** sections were divided into **6** sections;
  - Secs. 882, 944, 1109 in the ***Draft 1919***.were respectively divided into Secs. 941 & 942, 988 & 1017, and 1159 & 1160 in the ***Draft April 1924***.
- **25** new sections were introduced;
  - Secs. 612, 613, 614, 762, 886, 887, 888,986, 991, 992, 993, 996, 997, 998, 1000, 1004, 1009, 1010, 1011, 1012, 1013, 1138, 1139, 1170, 1171 in the ***Draft April 1924***.

As a result, among **727** sections in the ***Draft April 1924*** (Secs. 453 – 1179), totally **702** sections had their origin in the ***Draft 1919***. In a simple numerical calculation, it is more than 96%. Accordingly, we could say that *the influence of the original Draft 1919 was still quite dominant* in this stage.

## The Second Stage

Through the final alterations during May – November 1924, these **702** sections experienced following deep changes:

- Only **347** sections from the ***Draft 1919*** could survive the revision in the ***final Draft of December 1924***. Among them;
  - **110** sections were adopted without any changes;
  - **237** sections were adopted with improvements;
  - Other **355** sections from the ***Draft 1919*** were ultimately deleted.
- Further **212** sections were newly introduced;
  - **18** sections had been already introduced in the stage of the ***Draft April 1924***;
  - **194** sections were newly introduced in the ***final Draft of December 1924***.

Accordingly, among **559** sections in the ***final Draft of December 1924*** (Secs. 453 – 1011), **347** sections had still their origin in the ***Draft 1919***. In a simple numerical calculation, it is 62%. Compared to the stage of the ***Draft April 1924***, the influence of the ***Draft 1919*** was drastically reduced. However, *more than 60% of the sections in the **Book III of 1925** had still their origin in the **Draft 1919***. These sections could be called the ***"Heritage of the French Commissioners in the Book III"***.

## Another Question:

# Coordination of Book III with Book I and II

### A. "Old Text" or "New Text"?

Regarding the codification of the Book III in the period of April — December 1924, there is another basic question; namely whether the Book III of January 1925 was coordinated with Book I & II of November 1923 (***"Old Text"***) or rather with the Book I & II of November 1925 (***"New Text"***).

Until the stage of the ***Draft April 1924***, the leading concepts of the Book III followed the original plans of the French commissioners. In this sense, this Draft was apparently closely coordinated with the Book I & II of November 1923.

However the revision in the period of May — November 1924 has fundamentally reworked the sections in the Draft as described in the "Preliminary Assessment". Accordingly, it could be reasonably presumed that the Book III in the stage of the ***Draft December 1924*** was *closely coordinated rather with the coming new version of the Book I & II of November 1925*.

Unfortunately, there is no direct evidence for this presumption. In this regard, the leading drafter of the ***"New Text"***, พระยามานวราชเสวี, once made following utterances:

> **อ.แสวง** ผมใคร่จะเรียนถามปัญหาอาจารย์อีกประการหนึ่ง คือ ประมวลแพ่ง บรรพ ๑ บรรพ ๒ ซึ่งเราเอามาจากเยอรมันแล้วนั้น บรรพ ๓ คือกฎหมายพาณิชย์ เรานำมาจากไหนครับ?
>
> **พระยามานวราชเสวี** อ๋อ *เอามาจากที่เดียวกัน เราเอามาจากญี่ปุ่นด้วยกันทั้งนั้น* คือต้นตอมาจากเยอรมันนั่นเอง
>
> **[highlighted by the quoter]**

∗ ภาควิชานิติศึกษาทางสังคม ปรัชญา และประวัติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ***บันทึกคำสัมภาษณ์ พระยามานวราชเสวี***, วิญญูชน พ.ศ.๒๕๕๗ น.๔๐

According to these words, the Book III was compiled with the same methods as the Book I & II of 1925 (***"New Text"***), but it was quite uncertain if he meant the Book III in the version of *January 1925* or in the version of *January 1929*.

Above all, there are some circumstances which support the presumption that the Book III of January 1925 belongs to the ***"New Text"***. As follows:

#### *a. Reports No.1 — 9*

As cited at the beginning of this Notes, *Mr. Guyon* reported that a final revision of the ***Draft April 1924*** has been undertaken by the Department of Legislative Drafting from March to December 1924. these final alterations to the Draft were described in the ***"Reports (บันทึก) No. 1 to 41"***, which are recorded in the Archive ***Vol.89***. Among them, the ***Reports No.1 — No.9*** (Page 89/1 – 89/42) were submitted under the name of พระยามานวราชเสวี. These Reports cover the revision work in the

period of May — July 1924 and the sections in the Titles I "Sale" — IV "Hire of Property". It means that *the revision work of the **Draft April 1924** was started and conducted by พระยามานวราชเสวี*. After that, he left this task to other persons, and he himself moved to other tasks; namely publication of the "Illustration" and "Commentary" of the Book I & II of 1923.

At the same time, however, *he must have already started the drafting work of the coming **"New Text"***. It would be surely quite optimal if all the three Books — a new version of the Book I& II and the Book III — could be promulgated at once. But in reality, the drafting work of the ***"New Text"*** was not so easy as he had expected ("มันง่ายดี แล้วก็เร็วดี" — ***บันทึกคำสัมภาษณ์ พระยามานวราชเสวี*** น.๔).

If such a description of the development during this period would be correct, then it means that the revision of the ***Draft April 1924*** and the preparation for the ***"New Text"*** started and proceeded almost simultaneously. In this case, the both operations must have been coordinated and harmonized.

### *b. The Royal Edict of 1st January 1925*

When the final revision of the ***Draft April 1924*** was finished, it was quite clear that the drafting work for the ***"New Text"*** would not be ready by 1st January 1925; namely the day of promulgation of the Book III. Under such circumstances, the postponement of implementation of the Book I & II was unavoidable in order to acquire a necessary time for accomplishment of the Draft for the ***"New Text"***.

On 15th December 1924, the Department of Legislative Redaction issued the following ***"MEMORANDUM"*** (***Vol.47/260 – 261***):

> After the revision of Book III of the Draft Civil and Commercial Code which has been approved by the High Revising Committee, it seems desirable *to have a final touch of Book I and II*, so as to improve and put it in working harmony with the former. In order to effect this, the postponement of the operation of Book I and II should be made. […]
>
> The provisions of three Books are so closely connected that it is not advisable to separate their operation on different dates. […]
>
> For these reasons the Department beg to propose the postponement of the operation of Book I and II to the same date as the enforcement of Book III, i.e. the 1st day of January B.E. 2468 *[1st Jan. 1926]*.
>
> **[highlighted by the quoter]**

Accordingly, the postponement of implementation of the Book I & II was necessary for the purpose *to adjust and harmonize these Codes with the Book III* (!) However, this would be a perverted logic because the Book I and II establish the basic principles in civil law, and the Book III would be the application of these principles. Principally, the Book III should be adjusted to the Book I and II.

In reality, this postponement was planned not for their simple adjustment of the Book I & II, but for their replacement with new Codes which should be well coordinated with the Book III.

According to the proposal of the Department of Legislative Redaction, the ***"Royal Edict of 1st January 1925"*** was issued for the promulgation of the Book III and the postponement of implementation of the Book I and II as follows:

> **ประกาศพระราชกฤษฎีกา**
> ให้ใช้บรรพ ๓ และเลื่อนเวลาใช้บรรพ ๑ และ ๒
> แห่งประมวลกฎหมายแพ่งและพาณิชย์
> ———————
>
> มีพระบรมราชโองการ ในพระบาทสมเด็จพระรามาธิบดีศรีสินทรมหาวชิราวุธ พระมงกุฎเกล้าเจ้าอยู่หัว ดำรัสเหนือเกล้า ฯ ให้ประกาศจงทราบทั่วกันว่า
>
> การชำระประมวลกฎหมายได้ดำเนิรมาโดยลำดับ ทรงพระราชดำริห์ว่าบัดนี้สมควรจะเพิ่มบทบัญญัติในบรรพ ๓ ซึ่งชำระสำเร็จแล้วเข้าอีกส่วนหนึ่งในประมวลกฎหมายแพ่งและพาณิชย์ได้
>
> แต่*เพราะเหตุที่บรรพ ๑, ๒ และ ๓ แห่งประมวลกฎหมายแพ่งและพาณิชย์ มีเนื้อความเกี่ยวโยงเนื่องกัน ควรจะใช้ให้พร้อมกันทั้ง ๓ บรรพ* ทรงพระราชดำริห์ว่าสมควรที่จะเลื่อนเวลาใช้บรรพ ๑ และ ๒ ที่ได้กำหนดไว้ ให้ใช้ในวันที่ ๑ มกราคม พ.ศ. ๒๔๖๗ นั้น ออกไปใช้พร้อมกับบรรพ ๓
>
> จึ่งทรงพระกรุณาโปรดเกล้า ฯ ให้ตราพระราชกฤษฎีกาไว้ดังต่อไปนี้ [...]
>
> **[highlighted by the quoter]**

In accordance with the Royal Edict of 1st January 1925, the revised the Book I & II were promulgated on 11th November 1925 and implemented on 1st January 1926 together with the Book III of January 1925. Under such circumstances, it is quite reasonable to presume that the revision of the Draft April 1924 was closely coordinated and harmonized with the revision of the Book I & II.

## B. Evidence (I): Rescission of Contract

One evidence for the presumption of the coordination could be seen in the concepts of "Rescission of Contract".

### *a. Original Concept of the French Commissioners*

*Mr. Guyon* and other French commissioners had developed an original concept for "Remedies for Non-performance" in the ***Draft 1919, Division IV — Effects of Obligation, Title II — Rights of the Creditor, Chapter II — Non-Performance, Part II — Remedies of the Creditor***. Its Sec. 262 provided as follows:

> **Sec. 262. Draft 1919**
>
> From the time when the debtor is in default, the creditor may claim specific performance of the obligation.
>
> If the obligation arose out of a contract, the creditor may claim *cancellation of the contract*, except when the law provides that his remedy is to *determine the contract*.
>
> The creditor is also entitled to compensation for any injury caused to him by the non-performance, except in the cases provided by Part IV of this Chapter.
>
> **[highlighted by the quoter]**

This provision is really very interesting and even quite modern. In any way, in its 2nd paragraph, The French advisers to the Siamese Government at the time attempted to compromise two different concepts about "Rescission of Reciprocal Contract"; namely the French scheme and German one. For this purpose, they distinguished "*Cancellation*" and "*Determination*" of contract.

(a) **"Cancellation of Contract"** seems to be adopted from the ***French Civil Code (1804)***. Its **Article 1184** provided as follows;

> **Article 1184. French Civil Code (1804)**
>
> A resolutory condition is always implied in synallagmatic [=reciprocal] contracts, in case one of the two parties does not carry out his obligation.
>
> In such a case, *the contract is not rescinded as a matter of law*. The party complaining of the non-performance of the obligation may either compel the other party to carry out the agreement when it is possible or *demand its resolution with damages and interest*.
>
> **[highlighted by the quoter]**

According to this French concept, the contract may not be automatically rescinded even if a "resolutory condition" is fulfilled with non-performance by one of the parties to the contract. The other party must sue the untrue party and demand rescission of contract by the Court. In this way, *a formal lawsuit and approving judgment by Court is necessary to rescind a contract*. The French advisers decided for this French concept as a *general remedy for non-performance*. For instance, the ***Draft 1919***, **Sec. 450 in the Title "Sale"**, provided as follows;

> **Sec. 450. Draft 1919**
>
> Sale of immovable property.
>
> In case of deficiency or excess not exceeding five per cent of the total area specified in the contract, the buyer is bound to accept the property and pay the proportionate price at so much per unit.
>
> In case of deficiency or excess exceeding five per cent, the buyer has the option either to accept the property and pay the proportionate price, or to *claim cancellation of the contract*.
>
> **[highlighted by the quoter]**

(b) On the other side, **"Determination of Contract"** seems to be adopted from the ***German Civil Code (1896)***. Its **Sec. 349** provided as follows;

> **§ 349. German Civil Code (1896)**
>
> Rescission is effected *by declaration to the other party*.
>
> **[highlighted by the quoter]**

According to this German concept, the rescission of contract is simply effected when the one party declares his intention to rescind the contract. Neither formal lawsuit nor court decision is necessary. The French commissioners planed to introduce this German scheme *exclusively for cases of continuous contract*. For instance, the ***Draft 1919***, **Sec. 500 in the Title "Hire of Property"**, provided as follows;

> **Sec. 500. Draft 1919**
>
> In case of delivery in unsuitable condition, the lessee may *determine the contract*.
>
> **[highlighted by the quoter]**

### *b. Book II of November 1923*

The first version of the Book II (***"Old Text"***) adopted the original concept of the French commissioners for rescission of contract. Its **Sec. 328** provided as follows;

> **มาตรา ๓๒๘ บรรพ ๒ (พ.ศ. ๒๔๖๖)**
>
> ตั้งแต่เวลาลูกหนี้ผิดนัด เจ้าหนี้จะเรียกให้ชำระหนี้โดยเฉภาะเจาะจงก็ได้
>
> ถ้าหนี้นั้นเกิดแต่มูลสัญญาไซร้ เจ้าหนี้จะเรียกให้*เพิกถอนสัญญา*ได้ เว้นแต่ในคดีที่กฎหมายบัญญัติว่าทางแก้ของเจ้าหนี้นั้นจะพึง*เลิกสัญญา*เสียเอง
>
> เจ้าหนี้ยังชอบที่ได้ค่าสินไหมทดแทนที่ต้องเสียหายอย่างใด ๆ อันเกิดขึ้นแก่ตนด้วยการไม่ชำระหนี้ เว้นแต่ในบทที่บัญญัติไว้ในหมวด ๔ แห่งลักษณนี้
>
> **[highlighted by the quoter]**

"Cancellation of Contract" and "Determination of Contract" were translated respectively as **"เพิกถอนสัญญา"** and **"เลิกสัญญา"**.

### *c. Draft April 1924*

As already mentioned in the "Preliminary Assessment, the First Stage", the ***Draft April 1924*** mostly maintained the original concepts of the French commissioners. Also in the concept for "Rescission of Contract", the distinction between **"เพิกถอนสัญญา"** and **"เลิกสัญญา"** remained without any changes:

- Following sections contain the wording **"Cancellation of Contract (เพิกถอนสัญญา)"**;
  - Sale: 515, 516
  - Gift: 541, 546, 547, 548, 550
  - Hire of Property: 608, 639, 641
  - Compromise: 970, 971
  - Current Account: 977
  - Insurance: 1017
- Following sections contain the wording **"Determination of Contract (เลิกสัญญา)"**;
  - Gift: 536
  - Hire of Property: 565, 566, 568, 569, 577, 585, 594, 595, 601, 603, 607, 608, 610
  - Hire-Purchase: 613, 614
  - Hire of Services: 619, 620, 622, 623, 624, 626, 627
  - Hire of Work: 652, 653
  - Loan: 705
  - Suretyship: 777
  - Agency: 928, 940, 942, 945, 947, 948

- Current Account: 980
- Insurance: 996, 1000, 1019

### *d. The final Draft of December 1924*

During the final revision of the ***Draft April 1924***, however, most of the sections about **"Cancellation of Contract (เพิกถอนสัญญา)"** were removed. Only four sections remained with this wording in the ***Draft December 1924***; namely **Secs. 571, 596, 857**, and **892**:

> **Sec. 571. Draft December 1924** (← from Sec. 608 Draft April 1924)
>
> If a hire of paddy land is extinguished, determined or *cancelled* after the hirer has planted the paddy, the hirer is entitled to remain in possession till the harvest is finished, on paying the rent.
>
> **มาตรา ๕๗๑ บรรพ ๓ (พ.ศ. ๒๔๖๗)**
>
> ถ้าสัญญาเช่าที่นาระงับลง ฤๅเลิก ฤๅ*เพิกถอน* เมื่อผู้เช่าได้เพาะปลูกข้าวแล้วไซร้ ท่านว่าผู้เช่าย่อมมีสิทธิที่จะครองนานั้นต่อไปจนกว่าจะเสร็จการเกี่ยวเก็บ แต่ต้องเสียค่าเช่า
>
> **Sec. 596. Draft December 1924** (← from Sec. 639 Draft April 1924)
>
> If the work is delivered after the time fixed in the contract, the employer is entitled to a reduction of remuneration or when time is of essence of the contract to *cancellation*.
>
> **มาตรา ๕๙๖ บรรพ ๓ (พ.ศ. ๒๔๖๗)**
>
> ถ้าผู้รับจ้างส่งมอบการที่ทำไม่ทันเวลาที่ได้กำหนดไว้ในสัญญาก็ดี ฤๅถ้าไม่ได้กำหนดเวลาไว้ในสัญญา เมื่อล่วงพ้นเวลาอันควรแก่เหตุก็ดี ผู้ว่าจ้างชอบที่จะได้ลดสินจ้างลง ฤๅถ้าสาระสำคัญแห่งสัญญาอยู่ที่เวลา ก็ชอบที่จะ*เลิกสัญญา*ได้
>
> **Sec. 857. Draft December 1924** (← from Sec. 977 Draft April 1924)
>
> The entry of a bill in a current account is presumed to be made on condition that the bill will be paid. If the bill is not paid, the entry may be cancelled.
>
> **มาตรา ๘๕๗ บรรพ ๓ (พ.ศ. ๒๔๖๗)**
>
> การนำตั๋วเงินลงเปนรายการในบาญชีเดิรสพัดนั้น ท่านให้สันนิษฐานไว้ก่อนว่าได้ลงด้วยเงื่อนไขว่าจะมีผู้ชำระเงินตามตั๋วนั้น ถ้าและตั๋วนั้นมิได้ชำระเงินไซร้ จะ*เพิกถอน*รายการอันนั้นเสียก็ได้
>
> **Sec. 892. Draft December 1924** (← from Sec. 1017 Draft April 1924)
>
> In case of *cancellation* of the contract under Section 865, the insurer has to return to the assured or to his heirs the redemption value of the policy.
>
> **มาตรา ๘๙๒ บรรพ ๓ (พ.ศ. ๒๔๖๗)**
>
> ในกรณี*เพิกถอนสัญญา*ตามความในมาตรา ๘๖๕ ผู้รับประกันภัยต้องคืนเงินให้แก่ผู้เอาประกันภัย ฤๅทายาทของผู้นั้น เปนค่าไถ่ถอนกรมธรรม์ประกันภัย
>
> **[highlighted by the quoter]**

Indeed, the wording **"Cancellation of Contract (เพิกถอนสัญญา)"** itself remained yet. However, it could be easily recognized that *there is no substantial provisions of "Cancellation of Contract" any more* as follows:

1. **Sec. 571** simply contains the wording "if a hire of paddy land is […] cancelled". It has *no substantial provision* about **"Cancellation of Contract"**.
2. **Sec. 596** is a *genuine provision about "Cancellation of Contract"*, but the wording **"เพิกถอนสัญญา"** was replaced with the wording **"เลิกสัญญา"** in the final Thai translation.
3. **Sec. 857** is a provision about **"Cancellation of *an entry in a current account*"**, but not about **"Cancellation of *Contract*"**.
4. **Sec. 892** is a provision about "**Cancellation of Contract *due to a Voidable Act (โมฆียะกรรม)***", but not about **"Cancellation of Contract *due to Non-performance*"**.

In such a manner, all the substantial provisions about **"Cancellation of Contract"** were completely eliminated from the ***Draft December 1924***.

### *e. Book II of 1925*

After those necessary preparation works were done, พระยามานวราชเสวี introduced the concept of "Rescission of Contract" from the ***Revised Civil Code of Japan (1896)***.

In the part of "Reciprocal Contract", the Japanese drafters preferred the German concept to the French concept. However, they did not directly introduce the German provisions due to the special "Impossibility Theory" in the German provisions.[2] For this reason, they developed their own concept (**Arts. 540 — 548**) based on the ***1st Draft of German Civil Code (1888)*** and the ***Swiss Federal Code of Obligations (1881)***.

พระยามานวราชเสวี introduced these Japanese provisions into the ***Book II of 1925***, **Secs. 386 — 394**, without any essential changes. The first section in this part declares the principle of "Rescission of Contract *by way of "Declaration of Intention"*:

> **Art. 540, Revised Civil Code of Japan**
>
> If in virtue of a contract or by the provisions of the law, one of the parties concerned has the right of rescission, rescission is effected *by an expression of intention to the other party*.
>
> The expression of intention of the preceding Paragraph cannot be annulled.
>
> **มาตรา ๓๘๖ บรรพ ๒ (พ.ศ. ๒๔๖๘)**
>
> ถ้าคู่สัญญาฝ่ายหนึ่งมีสิทธิเลิกสัญญาโดยข้อสัญญาหรือโดยบทบัญญัติแห่งกฎหมาย การเลิกสัญญาเช่นนั้นย่อมทำ*ด้วยแสดงเจตนาแก่อีกฝ่ายหนึ่ง*
>
> แสดงเจตนาดังกล่าวมาในวรรคก่อนนั้น ท่านว่าหาอาจจะถอนได้ไม่
>
> **[highlighted by the quoter]**

2 About the development of the German concepts, see ***"Materials: Rescission of Contract -Its Origin and Drafting Process in the German Law"***, available under: http://www.openlegaltextbook.info/LA275/index.php?id=special

## C. Evidence (II): Prescription

The second evidence for the coordination between three Books would be a basic change in the understanding of the effect of prescription (อายุความ).

### *a. Original Concept of the French Commissioners*

As is commonly known, there are two different concepts about the effect of prescription; namely the substantial extinction of a right on the one side, and the procedural limitation of an action on the other side. The French commissioners at the time apparently followed the understanding of prescription as "extinction of a right". According to this concept, they proposed the general provisions about it in the ***"Book on Obligations, Division VI. Title V. Prescription"*** (Secs. 360 – 387) in the ***Draft 1919***. These general provisions were adopted into the Book II of 1923 as "**มาตรา ๔๒๕ ถึง ๔๕๒**". Its first section provided as follows:

> **Sec. 360. Draft 1919**
>
> A right is *extinguished by prescription* if the creditor does not exercise it during the time provided by law.
>
> **มาตรา ๔๒๕ บรรพ ๒ (พ.ศ. ๒๔๖๖)**
>
> ถ้าเจ้าหนี้ไม่ใช้สิทธิในระหว่างเวลาที่กฎหมายบัญญัติไว้ไซร้ ท่านว่าสิทธินั้น*สิ้นไปโดยอายุความ*
>
> **[highlighted by the quoter]**

Besides the general provisions, there were a lot of *special provisions* in the ***"Book on Obligations, Division VII. Specific Contracts"***, which mostly provided shorter period of time for prescription.

### *b. Draft April 1924*

The most of such special provisions were further adopted into the ***Draft April 1924*** as following 20 sections:

- Sale: 475, 486, 508, 517
- Gift: 547, 550
- Hire of Property: 570, 579, 597
- Hire of Work: 645
- Carriage: 675
- Loan: 715
- Deposit: 744, 751
- Pledge: 859
- Current Account: 983
- Insurance against Loss: 1007
- Bills: 1125, 1127, 1164

For instance, **Sec. 475** had a following wordings:

> **Sec. 475. Draft April 1924**
>
> The liability for a defect is *extinguished by prescription* one year after the discovery of the defect.

### *c. The final Draft of December 1924*

During the revision and alterations between May and December 1924, however, 8 of 20 special provisions were removed, and the following 12 sections remained:

- Sale: 474, 481, 504
- Hire of Property: 563
- Hire of Work: 601
- Carriage: 624

- Loan: 649
- Deposit: 671, 678
- Pledge: 763
- Insurance against Loss: 882
- Bills: 1001

Moreover, the formulation and wordings of these sections were basically changed. For instance, Sec. 474 has now a following formulation:

> **Sec. 474. Draft December 1924**
>
> *No action* for liability for defect *can be entered* later than *one year after* the discovery of the defect.

In such a manner, the wording *"be distinguished by prescription"* has been completely removed from the sections in ***Book III on Specific Contract***.

Also in the **Title XXII "Partnerships and Companies"**, which was apparently not included in the ***Draft April 1924***, the ***Draft 1919*** contained 6 sections with the concept of rights "*extinguished by prescription*"; namely Secs. 1155, 1184, 1188, 1265, 1303, and 1409. The ***Draft December 1924*** maintained these sections but completely recomposed them according to the concept of actions "*barred by prescription*"; namely Secs. 1038, 1067, 1068, 1133, 1170, and 1272. This point shows that the coordination with the parallelly drafted new version of the Book I and II (***"New Text"***) was one of the main policies for the revision of this Title.[3]

### *d. Book I of 1925*

Apparently, it was one of the basic policies of พระยามานวราชเสวี to replace the existing general provisions on prescription with the German ones. ***The German Civil Code*** ("BGB") of 1896 has following provisions:

> **§ 194. BGB**
>
> The right to demand an act or forbearance from another is subject to prescription.
>
> **§ 218. BGB**
>
> *A claim* established by a non-appellable judgment *is barred by prescription* in thirty years, even if it is itself subject to a shorter period of prescription. […]
>
> [Translation by Chung Hui Wang] **[highlighted by the quoter]**

According to the German understanding, prescription does not affect the existence of legal rights at all. It put the exercise of rights ("claim") simply under a temporal limitation. In this sense, the German law shares the same understanding with the Common law ("Statute of limitations").

Sec. 163, ***Book I of 1925***, borrowed the text formulation from Sec. 425, ***Book II of 1923***, but its substantial meaning was replaced with the German concept as follows:

> **Sec. 163. Book I of 1925**
>
> *A claim is barred by prescription* if it has not been enforced within the period of time fixed by law.

3 This description was subsequently added after the publication of the research material ***"Visualization of the Alteration Process (Titles 22 – 23)"*** on 18 June 2024.

> **มาตรา ๑๖๓ บรรพ ๑ (พ.ศ. ๒๔๖๘)**
>
> อันสิทธิเรียกร้องใดๆ ถ้ามิได้ใช้บังคับเสียภายในระยะเวลาอันกฎหมายกำหนดไว้ ท่านว่าตกเป็นอัน*ขาดอายุความ ห้ามมิให้ฟ้องร้อง*
>
> **[highlighted by the quoter]**

In such a way, the transition from the French concept to the German one regarding prescription was accomplished also in the general provisions. It was possible because the particular provisions in Book III on Specific Contracts had been already transformed to a style of limitation of action through the revision during May – December 1924.

## D. Conclusion

As these two samples clearly show, certain key concepts were transformed between Book I & II of 1923 and Book I & II of 1925. In between these ***"Old Text"*** and ***"New Text"***, Book III of 1925 was compiled. Especially, the revision of the Draft April 1924 was just the stage where such transformation works were performed.

Regarding "Rescission of Contract", all the procedures were now unified with the German concept. There was no necessity to distinguish between "Cancellation" and "Determination" any more. In regard with "Prescription", its effect was now described as a procedural limitation of action instead of "extinction of rights".

In this way, the ***Book III of January 1925*** had been already prepared and coordinated with the new concepts in the ***"New Text"***. This is an important ground for the presumption that the ***Book III of January 1925*** belongs to the ***"New Text"***. In other words, the ***Draft April 1924*** was the final stage of the ***"Old Text"***.

***17 May 2024***

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[86/8]

# BOOK III.

# SPECIFIC CONTRACTS.

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## TITLE I.

## SALE.

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### CHAPTER I.

### NATURE AND ESSENTIALS OF THE CONTRACT OF SALE.

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#### Part I. — GENERAL PROVISIONS.

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~~388~~ **453**. — Sale is a contract whereby a person, called the seller, agrees to transfer to another person, called the buyer, the ownership of property, and the buyer agrees to pay to the seller a price for it.

~~389~~ **454**. — The property sold may be:

(1) A specific property, or

(2) A divided or undivided part of a specific property, or

(3) A property *in genere*, or

(4) A right.

~~390~~ **455**. — The time of the completion of the contract of sale is referred hereafter as the time of the sale. [86/10]

~~391~~ **456**. — A sale of immovable property is void unless made in accordance with the laws and regulations relating thereto.

The same rule applies to ships or vessels having displacement of and over six tons, steam-launches or motor boats having displacement of and over five tons, floating-houses and beasts of burden.

~~392~~ **457**. — Costs of a contract of sale must be borne by both parties equally.

### Part II. — TRANSFER OF OWNERSHIP.

~~393~~ **458**. — The ownership of the property sold is transferred from the seller to the buyer when the contract of sale is complete.

~~394~~ **459**.—If a contract of sale is subject to a condition or to a time clause, the ownership of the property is not transferred until the condition is fulfilled or the time has arrived. [86/11]

~~395~~ **460**. — In case of sale of a property *in genere*, the ownership is not transferred until the property has been numbered, counted, weighed, measured, or selected or its identity has been otherwise rendered certain.

### Part III. — PROMISE OF SALE.

~~396~~ **461**. — A promise of sale is a contract whereby one party agrees to sell or to buy a property, and the other party agrees that he will at his discretion either complete or not complete the sale.

บุคคลฝ่ายที่ได้ทำคำมั่นให้นั้น ชื่อว่าเปนผู้ให้คำมั่น และคำมั่นนั้นทำให้แก่ผู้ใด ผู้นั้นชื่อว่าเปนผู้รับคำมั่น

~~397~~ **462**. — If the other party notifies his intention to complete the sale, the promise of sale has the effect of a contract of sale as soon as the notification reaches the first party. [86/12]

~~398~~ **463**. — If no time is fixed for the notification, the party who made the promise can fix a reasonable time and call upon the other party to answer within that time whether he will complete the sale or not.

If he does not answer within that time, the contract is extinguished.

## CHAPTER II.
## DUTIES AND LIABILITIES OF THE SELLER.

### Part I. — DELIVERY.

~~399~~ **464**. — The seller is bound to deliver to the buyer the property sold.

~~400~~ **465**. — Delivery may be made by doing anything which has the effect of putting the property at the disposal of the buyer.

~~401~~ **466**. — If the contract provides that the property sold shall be forwarded from one place to another, delivery takes place at the moment when the property is delivered to the carrier. [86/13]

~~402~~ **467**. — The property sold must be delivered in such condition as it was at the time of the sale.

~~403~~ **468**. — When there is no time clause for payment of the price, the seller is entitled to retain the property sold until the price is paid.

~~404~~ **469**. — Even when there is a time clause for the payment, the seller is entitled to retain the property if the buyer either becomes bankrupt before delivery, or was bankrupt at the time of the sale without the seller knowing thereof, or impairs or reduces the securities given for payment.

~~405~~ **470**. — When the property is retained [ในมาตราทั้งหลายที่กล่าวมา], the buyer may at any time apply to the Court for an order to deliver the property, on the buyer giving security for the payment of the price. [86/15]

~~406~~ **471**. — When the buyer is in default, the seller who retains the property under the foregoing sections can, instead of using the ordinary remedies for non-performance, notify the buyer by registered letter to pay the price and accessories, if any, within a reasonable time to be fixed in the notice.

If the buyer fails to comply with the notice, the seller can sell the property by public auction.

~~407~~ **472**. — The seller must forth with deduct from the nett proceeds of the public auction the price and accessories due to himself and deliver the surplus, if any, to the buyer.

## Part II. — LIABILITY FOR DEFECTS.

[86/16]

~~408~~ **473**. — In case of any defect ~~existing~~ in the property sold ~~and impairing~~ which impairs either its value or its fitness for ordinary purposes or for the purposes ~~appearing from~~ of the contract, the buyer has the remedies described in this Code concerning non-performance.

The foregoing provision applies whether the seller knew or did not know of the existence of the defect.

~~409~~ **474**. — The seller is not liable in the following cases :

1) ~~Whenever~~ If the buyer knew of the defect at the time of the sale, or would have known of it if he had exercised such care as ~~may~~ might be expected from a person of ordinary prudence.

2) If the defect was apparent at the time of the delivery, and the buyer accepted the property without reservation.

3) If the property was sold by public auction.

~~410~~ **475**. — The liability for a defect is extinguished by prescription one year after the discovery of the defect. [86/17]

~~411~~ **476**. — When the seller is liable for defects in the property sold, the buyer is entitled to withhold such part of the price as has not yet been paid to the seller provided that the seller may at any time apply to the Court for an order either:

1) Restricting the exercise of this right to such part of the price as the Court may deem sufficient to cover any restitution or compensation which may become due from the seller to the buyer, or

2) Ordering the buyer to pay the price on the seller giving security for ultimate restitution or compensation.

## Part III. — LIABILITY FOR EVICTION.

~~412~~ **477**. — The seller is liable for the consequences of any disturbance caused to the peaceful possession of the buyer by any person having over the property sold a right existing at the time of the sale or derived from the seller after that time.

~~413~~ **478**. — The seller is not liable for a disturbance caused by a person whose rights were known to the buyer at the time of the sale. [86/18]

~~414~~ **479**. — In any case of disturbance where an action arises between the buyer and a third person, the buyer is entitled to summon the seller to appear in the action to be joint defendant or joint plaintiff with the buyer.

~~415~~ **480**. — The seller is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

~~416~~ **481**. — Whenever the seller is a party to the action the Court shall give judgment deciding on the merits of the case between the buyer and the third person and on the liability of the seller to the buyer.

~~417~~ **482**. — If in consequence of a claim of a third person the buyer is deprived of the whole of the property sold, he is said to suffer total eviction. [86/19]

If the buyer is deprived of part of the property sold, or if the property is declared to be subject to a right, the existence of which impairs its value or fitness, the buyer is said to suffer partial eviction.

~~418~~ **483**. — Whenever the seller is liable for total or partial eviction the buyer has the remedies described in this Code concerning non-performance.

~~419~~ **484**. — If immovable property is declared to be subject to a servitude established by law, the seller is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude.

~~420~~ **485**. — If an action in connection with a claim of a third person is entered, the buyer is entitled to withhold the price as provided by Section 411. [86/20]

~~421~~ **486**. — If the seller was not a party to the original action, or if the buyer has made a compromise with the third person, or has yielded to his claim, the liability of the seller is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the third person.

~~422~~ **487**. — The seller is not liable for eviction in the following cases :

1) If no action was entered and the seller proves that the rights of the buyer were lost on account of the fault of the buyer, or

2) If the buyer did not summon the seller to appear in the action, and the seller proves that he would have succeeded in the action if summoned to appear, or

3) If the seller appeared in the action, but the claim of the buyer was dismissed on account of the fault of the buyer.

In any case the seller is liable whenever he is summoned to appear in the action and refuses to take the part of the buyer as joint defendant or joint plaintiff. [86/21]

### Part IV. — CLAUSE FOR NON-LIABILITY.

~~423~~ **488**. — The parties to a contract of sale can agree that the seller shall not incur any liability on account of the sale.

~~424~~ **489**. — ~~If the consequences of a non-liability clause are not specified~~ Unless the non-liability clause specifies otherwise, such clause does not exempt the seller from reimbursing the price.

~~425~~ **490**. — A non-liability clause cannot exempt the seller from the consequences of :

1) Facts which he knew at the time of the sale and concealed.

2) Rights which he created in favour of, or transferred to, third persons subsequently to the sale.

## CHAPTER III. [86/22]

## DUTIES OF THE BUYER.

~~426~~ **491**. — The buyer is bound to take delivery of the property sold and to pay the price according to the provisions of this Code concerning performance.

~~427~~ **492**. — The price of the property sold may be either fixed by the contract or inferred from the clauses of the contract or from the circumstances of the case.

~~428~~ **493**. — Tender of security is not equivalent to payment of price.

## CHAPTER IV.
## OF SOME PARTICULAR KINDS OF SALES.

### Part I. — SALE WITH RIGHT OF REDEMPTION.

~~429~~ **494**. — Sale with right of redemption is a contract of sale whereby the ownership of the property sold passes to the buyer subject to a special agreement that the seller can redeem that property.

~~430~~ **495**. — If the property is not redeemed within the period fixed by the contract or by law, its ownership is deemed to have been vested in the buyer from the time of sale. [86/23]

~~431~~ **496**. — The parties may agree that the buyer shall not dispose of the property sold. If he disposes of it contrary to his obligation, he shall be liable to the seller for any injury resulting thereby.

~~432~~ **497**. — If a sale with right of redemption refers to immovable property it is void unless made in writing in the presence of and registered by the proper official.

The same rule applies to ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons, floating-houses and beasts of burden.

~~433~~ **498**. — The right of redemption cannot be exercised later than :

1) Ten years after the time of the sale in case of immovable property ~~or of movable structures sold with the land on which they are erected~~. [86/24]

2) One year after the time of the sale in case of movable property.

~~434~~ **499**. — If a longer period is provided in the contract, it shall be reduced to ten years and one year respectively.

~~435~~ **500**. — If a shorter period than ten years or one year is provided in the contract, the time cannot be afterward extended.

~~436~~ **501**. — The right of redemption may be exercised only by:

1) The original seller or his heirs, or

2) The transferee of the right, or

3) Any person expressly allowed to redeem by the contract.

~~437~~ **502**. — The right of redemption may be exercised only against: [86/25]

1) The original buyer or his heirs, or

2) The transferee of the property or of a right on the property, provided that, in case of movable property, he knew at the time of transfer that such property was subject to a right of redemption.

~~438~~ **503**. — If no price of redemption is fixed, the property may be redeemed by reimbursing the price of the sale.

~~439~~ **504**. — Costs of the sale borne by the buyer must be reimbursed together with the price.

Costs of redemption ~~must be~~ are borne by the person who redeems.

~~440~~ **505**. — The property must be returned in the condition in which it is at the time of redemption.

~~441~~ **506**. — The person who redeems the property recovers it free from any rights created by the original buyer or his heirs or transferees before redemption, provided that any lease made by them in writing shall remain valid for not more than one year after the redemption. [86/26]

## Part II. — SALE BY SAMPLE. — SALE ON APPROVAL.

~~442~~ **507**. — In a sale by sample, the seller is bound to deliver property or properties corresponding to the sample.

If the sample is lost or damaged, the burden of proof that the property delivered does not correspond to the sample lies on the buyer.

~~443~~ **508**. — The liability on account of non-correspondence to the sample is extinguished by prescription one year after delivery.

~~444~~ **509**. — A sale on approval is a sale made on condition that the [86/27]

buyer shall have the opportunity to examine the property before acceptance.

~~445~~ **510**. — If no time is fixed for the examination of the property, the seller can fix a reasonable time and notify the buyer to answer within that time whether he accepts the property or not.

~~446~~ **511**. — If the property is to be examined by the buyer before delivery and the buyer does not accept it within the time fixed by the contract or by ~~the~~ a notification from the seller, the contract is extinguished.

~~447~~ **512**. — When the property has been delivered to the buyer in order that he may examine it, the sale is complete in the following cases :

1) If the buyer does not notify his refusal within the time fixed by the contract or by the notification, or

2) If the buyer does not return the property within that time, or

3) If the buyer ~~after delivery~~ pays the price or part of it, or

4) If the buyer disposes of the property or uses it otherwise than for the purpose of examining it.

## Part III. — SALE BY NUMBER, QUANTITY, WEIGHT OR MEASURE. [86/28]

~~448~~ **513**. — A sale by number, quantity, weight or measure is a sale where no total price is fixed, but the property is sold at so much per unit.

~~449~~ **514**. — If a property is sold at so much per unit and the total amount of such property is specified in the contract, the following rules shall apply in case of deficiency or excess.

~~450~~ **515**. — Sale of immovable property.

In case of deficiency or excess not exceeding five per cent of the total area specified in the contract, the buyer is bound to accept the property and pay the proportionate price at so much per unit.

In case of deficiency or excess exceeding five per cent, the buyer has the option either to accept the property and pay the proportionate price, or to claim cancellation of the contract.

~~451~~ **516**. — Sale of movable property : [86/29]

In case of deficiency the buyer is bound to accept the property and pay the proportionate price, provided that the buyer can claim cancellation of the sale if the deficiency is such as would have prevented him from entering the contract.

In case of excess the buyer is entitled to refuse the surplus, but if he accepts it, he is bound to pay the proportionate price for it.

~~452~~ **517**. — The liability on account of deficiency or excess is extinguished by prescription one year after delivery.

## Part IV. — SALE BY AUCTION.

~~453~~ **518**. — A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

~~454~~ **519**. — A buyer at a sale by auction is bound by the clauses of the notice advertising the sale and by any other statements made by the auctioneer before opening the bidding for each particular lot. [86/30]

~~455~~ **520**. — The auctioneer cannot bid at an auction conducted by himself.

~~456~~ **521**. — The seller cannot bid or employ any person to bid, unless it be expressly stated in the advertisement of the auction that he has such right.

~~The seller within the meaning of this section is the person whose property is sold.~~

~~457~~ **522**. — The auctioneer can withdraw property from the auction whenever he thinks that the highest bid is insufficient.

~~458~~ **523**. — A bidder ceases to be bound by his bid as soon as a higher bid is made, whatever be the validity of such higher bid, or as soon as the lot is withdrawn from the auction.

~~459~~ **524**. — The highest bidder must pay the price in ready money on [86/31]

the completion of the sale, or at the time fixed by the notice advertising the sale.

~~460~~ **525**. — If the highest bidder fails to pay the price, the auctioneer shall resell the property. If the nett proceeds of such sale do not cover the price and costs of the original auction, the original bidder is liable for the difference.

~~461~~ **526**. — The auctioneer is liable for any part of the proceeds of an auction which remains unpaid owing to his failure to enforce the provisions of Section ~~459~~ 524 or ~~460~~ 525.

# TITLE II.
# EXCHANGE.

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~~462~~ **527**. — Exchange is a contract whereby each party agrees to transfer to the other party the ownership of properties other than money.

~~463~~ **528**. — The provisions of Title I concerning sale apply to exchange, each party to a contract of exchange being considered as a seller with regard to the property delivered in exchange, and as a buyer with regard to the property received in exchange. [86/33]

~~464~~ **529**. — If one party to a contract of exchange agrees to transfer to the other party money in addition to other property, the provisions of Title I concerning price shall apply to such money.

# TITLE III.

# GIFT.

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~~465~~ **530**. — A ~~contract of~~ gift is a contract whereby a person, called the donor, agrees to transfer gratuitously a property of his own to another person, called the donee, and the donee agrees to accept such property.

~~466~~ **531**. — A gift may be made by granting to the donee a release of an obligation or by performing an obligation due by the donee.

~~467~~ **532**. — A renunciation by an heir to an inheritance or to a share in an inheritance is not a gift made to the other heirs. [86/34]

~~468~~ **533**. — A gift of property the sale of which is subject to the execution of an official document is void unless made in writing before the proper official.

~~469~~ **534**. — If a gift has been made in writing before the proper official and the donor does not deliver to the donee the property given, the donee is entitled to claim the delivery of it or its value, but he is not entitled to any additional compensation.

~~470~~ **535**. — A gift of property the sale of which is not subject to the execution of an official document is complete only on delivery of the property given.

~~471~~ **536**. — If it is agreed that the delivery of the property given shall be made by instalments, the donor can at any time determine the gift as to any future instalment. [86/35]

Such gift is also extinguished as to any further instalment on the death of the donor.

~~472~~ **537**. —The donor is not liable for injury caused to the donee by defects existing in the property given, unless at the time of the contract he knew and concealed from the donee that such property was likely to cause injury.

~~473~~ **538**. — The donor is not liable for injury caused to the donee by eviction as described in Section 417 concerning sale, unless, at the time of

the contract, he knew and concealed from the donee the reason for such eviction.

~~474~~ **539**. — Whenever the donor is liable for injury caused to the donee by defects existing in the property given or by eviction, the provisions of Section ~~410~~ 475, ~~414~~ 479, ~~415~~ 480, ~~416~~ 481 and ~~419~~ 484 concerning sale apply *mutatis mutandis*. [86/36]

~~475~~ **540**. — If the gift is made on condition that the donee shall make a prestation to the donor or to a third person the gift is said to be subject to a charge.

~~476~~ **541**. — If the donee fails to perform the charge the donor is entitled to claim cancellation of the gift.

~~477~~ **452**. — If the charge is to be performed to a third person, ~~and the donee fails to perform it,~~ the third person is entitled to claim performance.

~~478~~ **543**. — If the charge is for the benefit of the public, the Government is entitled to claim its performance.

~~479~~ **544**. — If the property given is not sufficient to perform the charge, the donee is bound to perform it only as far as the value of the property allows. [86/38]

~~480~~ **545**. — If the gift is subject to a charge, the liability of the donor for defects or eviction is the same as that of a seller, up to the amount of the charge only.

~~481~~ **546**. — If the donee is convicted by a final judgment of having intentionally and unlawfully caused the death of the donor, the heirs of the donor are entitled to claim cancellation of the gift by the Court.

~~482~~ **547**. — The right of the heirs to claim cancellation is extinguished by prescription six months after final judgment.

~~483~~ **548**. — If the donee intentionally and unlawfully attempts to cause the death of the donor, the donor is entitled to claim cancellation of the gift by the Court. [86/40]

~~484~~ **549**. — The heirs of the donor can exercise the action described in Section 483 unless the donor has forgiven the offence.

~~485~~ **550**. — The right of the heirs to claim cancellation is extinguished by prescription six months after the date of the death of the donor.

No action can be entered later than ten years after the attempt.

~~486~~ **551**. — A gift to take effect at the death of the donor is governed by the provisions of law concerning inheritance and wills.

[86/42]

# TITLE IV.
# HIRE OF PROPERTY.

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## CHAPTER 1.
## GENERAL PROVISIONS.

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~~487~~ **552**. — A contract of hire of property or a lease is a contract whereby a person, called the lessor, agrees to let another person, called the lessee, have the use or profits of the property for a limited period of time, and the lessee agrees to pay therefor a remuneration called rent.

~~488~~ **553**. — A lease of immovable property is void unless made in writing.

If the lease is for more than three years, it is void unless also registered by the proper official.

~~489~~ **554**. — Costs of a contract of hire must be borne by both parties equally.

~~490~~ **555**. — The rent may consist of money or other properties, or of a share in the fruits and profits of the property hired. [86/43]

~~491~~ **556**. — No lease may be made for a period exceeding twenty years, provided that an existing lease may be renewed for a period not exceeding twenty years after the date of renewal.

~~492~~ **557**. — Leases made or renewed for more than twenty years are valid for twenty years only.

~~493~~ **558**. — A lease may be made for the duration of the life of the lessor or of the lessee.

~~494~~ **559**. — When several persons claim the same movable property under different leases, the lessee who has first taken possession of the property by virtue of his 1ease shall be preferred.

~~495~~ **560**. — When several persons claim the same immovable property under different leases: [86/45]

1) if none of the leases is required by law to be registered, the lessee who has first taken possession of the property by virtue of his lease shall be preferred:

2) if all the leases are required by law to be registered the lessee whose lease was first registered shall be preferred;

3) if there is a conflict between a lease which is required by law, and a lease which is not required by law, to be registered, the lessee whose lease has been registered, shall be preferred unless the other lessee has taken possession of the property by virtue of his lease before the date of registration.

## CHAPTER II.

## DUTIES AND LIABILITIES OF THE LESSOR.

### Part I. — DELIVERY AND REPAIR.

~~496~~ **561**. — Delivery of the property hired is governed by the provisions of this Code concerning sale.

~~497~~ **562**. — The lessor is bound to deliver the property hired in such a condition as renders it fit for ordinary purposes or for the purposes appearing from the contract. [86/47]

~~498~~ **563**. — The lessor is bound to keep the property hired in good order and repair during the continuance of the contract.

In case of houses or other buildings, this includes at least the repairing of the roofs, timber, walls and floors, and the repainting of the inside and outside at reasonable intervals.

~~499~~ **564**. — The lessor is bound to reimburse to the lessee any necessary expenses incurred by him for the preservation of the property hired, except expenses for ordinary maintenance and petty repairs.

~~500~~ **565**. — In case of delivery in unsuitable condition, the lessee may determine the contract.

## Part II. — LIABILITY FOR DEFECTS. [86/49]

~~501~~ **566**. — In case of a defect existing in the property hired and impairing its fitness for ordinary purposes or for the purposes appearing from the lease, the lessee may determine the contract.

The foregoing provision applies whether the lessor knew or did not know of the existence of the defect.

A property hired which is not kept in good order and repair is a defective property within the meaning of this section.

~~502~~ **567**. — The lessor is not liable in the following cases:

1) Whenever the lessee knew of the defect at the time of the lease or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

2) Whenever the defect was apparent at the time of the delivery, and the lessee has taken delivery of the property without reservation.

~~503~~ **568**. — If the defect is not such as would deprive the lessee of the use and profits of the property hired, and can be remedied by the lessor, the lessee must first notify. the lessor to make it good. If the defect is not made good within a reasonable time, the lessee may determine the contract. [86/50]

~~504~~ **569**. — If there is a deficiency in the area stipulated for in a lease of garden land or of a paddy field, the following rules shall apply:

In case of deficiency not exceeding twenty five per cent, the lessee is only entitled to a proportionate reduction of rent.

In case of deficiency exceeding twenty five percent, the lessee has the option either to have the rent reduced proportionately, or to determine the contract.

~~505~~ **570**. — The liability for a defect is extinguished by prescription two years after the discovery of the defect provided that it shall always be extinguished six months after the extinction of the lease.

## Part III. — LIABILITY FOR EVICTION. [86/51]

~~506~~ **571**. — The lessor is liable for the consequences of any disturbance caused to the peaceful possession of the lessee by any person having a right over the property hired.

~~507~~ **572**. — The lessor is not liable for a disturbance caused by a person whose rights were known to the lessee at the time when the lease was made.

~~508~~ **573**. — In any case of disturbance where an action arises between the lessee and a third person, the lessee is entitled to summon the lessor to appear in the action to be joint defendant or joint plaintiff with the lessee.

~~509~~ **574**. — The lessor is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

~~510~~ **575**. — Whenever the lessor is a party to the action, the Court shall give judgment deciding on the merits of the case between the lessee and the third person, and on the liability of the lessor to the lessee. **[86/52]**

~~511~~ **576**. — If, in consequence of a claim of a third person, the lessee is deprived of the whole of the property hired, he is said to suffer total eviction.

If the lessee is deprived of part of the property hired, or if the property is declared to be subject to a right the existence of which impairs its fitness, the lessee is said to suffer partial eviction.

~~512~~ **577**. — Whenever the lessor is liable for total or partial eviction, the lessee may determine the contract.

~~513~~ **578**. — If immovable property is declared to be subject to a servitude established by law the lessor is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude.

~~514~~ **579**. — If the lessor was not a party to the original action, or if the lessee has made a compromise with the third person, or has yielded to his claim, the liability of the lessor is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the claim of the third person. **[86/53]**

~~515~~ **580**. — The lessor is not liable for eviction in the following cases:

1) If no action was entered and the lessor proves that the rights of the lessee were lost on account of the fault of the lessee.

2) If the lessee did not summon the lessor to appear in the action, and the lessor proves that he would have succeeded in the action if summoned to appear.

3) If the lessor appeared in the action, but the claim of the lessee was dismissed on account of the fault of the lessee.

In any case the lessor is liable whenever he is summoned to appear in the action and refuses to take the part of the lessee as joint defendant or joint plaintiff.

### Part IV. — CLAUSE FOR NON-LIABILITY. [86/54]

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~~516~~ **581**. — Non-liability in matter of hire of properties is governed by the provisions of this Code concerning sale.

## CHAPTER III.

## DUTIES AND LIABILITIES OF THE LESSEE.

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~~517~~ **582**. —The lessee cannot use the property hired for purposes other than ordinary purposes or purposes appearing from the contract.

~~518~~ **583**. —The lessee is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property.

~~519~~ **584**. —Ordinary maintenance and petty repairs shall be borne by the lessee.

~~520~~ **585**. — If the lessee uses the property hired contra to the provisions of Section ~~517~~ 582, ~~518~~ 583 or ~~519~~ 584, or contra to the terms of the contract, the lessor may notify the lessee to comply with such provisions or terms, and if the lessee fails to comply with such notice, the lesson may determine the contract. [86/55]

~~521~~ **586**. — The lessee of a paddy field who has not paid the rent in advance must begin work on that field at such time as is customary.

~~522~~ **587**. — The lessee is bound to allow the lessor or his agents to inspect the property hired at reasonable times and intervals.

~~523~~ **588**. — The lessee is bound to allow the lessor to do whatever is necessary for keeping the property in good order and repair and for its preservation, provided that if the lessee is deprived thereby of the use or profits of the property hired he is entitled either to determination of the lease or to a decrease of rent proportionate to the period of deprivation.

~~524~~ **589**. — In any of the following cases: [86/57]

1) If the property hired is in need of repairs by the lessor, or

2) If a preventive measure is required for avoiding a danger, or

3) If a third person encroaches on the property hired or claims a right over it,

the lessee shall forth with inform the lessor of the occurrence, unless the lessor already has knowledge of it.

If the lessee fails to inform the lessor, the lessee is liable to the lessor for any injury resulting from the delay.

~~525~~ **590**. — The lessee may not make any alteration in, or addition to, the property hired without the permission of the lessor.

~~526~~ **591**. — If the lessor has granted permission to the lessee to make alterations or additions, the lessee is entitled, at the extinction of the lease, to reimbursement of his expenses up to the amount of the increase in value which the property is still deriving from the additions or alterations.

~~527~~ **592**. — If the lessee makes additions or alterations without the permission of the lessor, he is not entitled to reimbursement, but he is allowed, at the extinction of the lease, to take away whatever he added to the property, provided that he puts the property in its former condition. [86/59]

If it is impossible to put the property in its former condition or the property would be damaged thereby, the property must be restored with the alterations additions, and no compensation therefor shall be due to the lessee.

~~528~~ **593**. — If no time for payment of rent is fixed by the contract or by custom, the rent must be paid at the end of each period for which it is stipulated, that is to say: if a property is leased at so much per year, the

rent is payable at the end of each year; if a property is leased at so much per month, the rent is payable at the end of each month.

~~529~~ **594**. — In case of non-payment of rent, the lessor may determine the contract.

But, if the rent be payable monthly or at longer intervals, the lessor must first notify the lessee to pay it within a period of not less than fifteen days.

~~530~~ **595**. — At the determination or extinction of the lease, the lessee is bound to restore the property hired. [86/60]

He is liable for any loss or damage caused during the continuance of the lease by his own fault or by the fault of the persons who are living with him.

He is not liable for loss or damage resulting from the agreed or lawful use of the property hired.

~~531~~ **596**. — If no written description of the condition of the property hired has been made and signed by both parties, the lessee is presumed to have received the property hired in good order and repair.

~~532~~ **597**. — The obligations incurred by the lessee towards the lessor in connection with the lease are extinguished by prescription six months after the restoration of the property hired.

~~533~~ **598**. — The outgoing lessee of agricultural land bound, in so far as he does not suffer any injury thereby to allow the incoming lessee to prepare the land for planting.

## CHAPTER IV. [86/62]

## EXTINCTION OF THE LEASE.

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~~534~~ **599**. — A lease is extinguished at the end of the agreed period without notice.

~~535~~ **600**. — A lease of garden land is presumed to be made for one year.

A lease of paddy land is presumed to be made for the agricultural year.

~~536~~ **601**. — If no period is agreed upon or presumed, either party can determine the lease at the end of each period of payment of rent, provided that such party gives notice to the other of at least one rent period.

In no such case need more than two months notice be given.

~~537~~ **602**. — If the whole of the property hired is lost, the lease is extinguished. [86/63]

~~538~~ **603**. — If part only of the property hired is lost, the Court may, according to the circumstances of the case, either determine the lease or reduce the rent proportionately.

~~539~~ **604**. — A lease is not extinguished by the transfer of the ownership of the property hired.

The transferee is entitled to the rights and is subject to the duties of the transferor towards the lessee.

~~540~~ **605**. — A lease is not extinguished by the death of the lessor.

~~541~~ **606**. — A lease may be determined at the death of the lessee by the lessor or the heirs of the lessee giving notice as provided in Section ~~536~~ 601, provided that such notice be not given later than two months after the death of the lessee.

~~542~~ **607**. — If after the lease is determined or extinguished the lessee remains in possession, and the lessor knowing thereof does not object, the lease is deemed to have been renewed upon the conditions described in Section ~~536~~ 601. [86/65]

~~543~~ **608**. — If a lease of paddy land is extinguished, determined or cancelled after the lessee has planted the paddy, the lessee is entitled to remain in possession till the harvest is finished, on paying the rent.

## CHAPTER V.

## TRANSFER OF LEASE AND SUBLEASE.

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~~544~~ **609**. — Unless otherwise provided by the lease, a lessee can not sublet or transfer his rights in the whole or part of the property hired to a

third person.

~~545~~ **610**. — If a lessee sublets or transfers his rights in the whole or part of the property hired contrary to the provisions of the lease, the lessor may determine the contract. [86/66]

~~546~~ **611**. — In case of transfer or sublease, the original lessee remains liable to the lessor for any obligations arising out of the original lease.

# TITLE V.
# HIRE-PURCHASE.

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**612**. — The contract of A hire-purchase is a contract under which the owner of a property lets it out on hire and promises to sell it to the hirer on his making a certain number of payments.

The contract of hire-purchase is void unless made in writing.

**613**. — The hirer may at any time determine the contract by redelivering the property at his own expense to the owner.

Upon such redelivery, the owner shall return one third of the sum paid by the hirer or any other sum as agreed by the parties being not less than one third. [86/67]

**614**. — The owner may also determine the contract in case of default of two successive payments, or breach of any material part of the contract in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.

In case of default of the last payment, such right to forfeit and to resume possession of the property can be exercised only after one month from the default.

# TITLE ~~V~~ VI.

# HIRE OF SERVICES.

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~~547~~ **615**. — A contract of hire of services is a contract whereby a person called the employee agrees to render services to another person, called the employer, and the employer agrees to pay therefor a remuneration, called salary, proportionate to the duration of the services.

~~548~~ **616**. — The promise to pay a salary is implied if the services cannot, under the circumstances of the case, be expected to be rendered gratuitously. [86/68]

~~549~~ **617**. — The employer cannot transfer his right to a third person, except with the consent of the employee.

~~550~~ **618**. — The employee cannot render the services by a third person, except with the consent of the employer.

~~551~~ **619**. — If the employee either expressly or impliedly warrants special skill on his part, the absence of such skill entitles the employer to determine the contract.

~~552~~ **620**. — Absence of the employee from service for a reasonable cause and during a reasonably short period does not entitle the employer to determine the contract.

~~553~~ **621**. — If no time for payment of salary is fixed by the contract or by custom the salary is payable after services have been rendered ; if fixed by periods salary is payable at the end of each period. [86/69]

~~554~~ **622**. — If after the end of the agreed period the employee continues to render services and the employer knowing thereof does not object, the parties are presumed to have made a new contract of hire on the same terms, but either party can determine the contract by giving notice in accordance with the following section.

~~555~~ **623**. — If the parties have not fixed the duration of the contract, either party can determine it by giving notice at or before any time of payment to take effect at the following time of payment.

The employer can, on giving such notice, immediately dispense with the services of the employee by paying to the employee his salary up to the expiration of the notice.

~~556~~ **624**. — In case of workmen paid by the day and of domestic servants the employee can determine the contract at any time without previous notice. The workman or domestic servant has the same right subject to the provision of Section 334 No. 20 of the Penal Code. [86/71]

~~557~~ **625**. — If a contract of hire of services is one in which the personality of the employer forms an essential part such contract is extinguished by the death of the employer.

~~558~~ **626**. — On determination or extinction of the contract, the employee is entitled to a certificate as to the length and nature of his services.

~~559~~ **627**. — If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, on determination or extinction of the contract, to pay the cost of the return journey, provided that:

1) The contract has not been determined or extinguished by reason of the act or fault of the employee, and

2) The employee returns within a reasonable time to the place from which he has been brought.

# TITLE ~~VI~~ VII.

[86/71a]

# HIRE OF WORK.

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~~560~~ **628**. — A contract of hire of work is a contract whereby a person, called the contractor, agrees to do a definite work for another person, called hirer of work, and the hirer of work agrees to pay him for the result of the work a remuneration, called the price.

~~561~~ **629**. — Tools or instruments which are necessary for the execution of the work shall be supplied by the contractor.

~~562~~ **630**. — If the materials for the work are to be supplied by the contractor, the contractor shall supply materials of good quality.

~~563~~ **631**. — If the materials are to be supplied by the hirer of work, the contractor shall use them carefully and without waste. He shall return the surplus, if any, after the work is completed.

~~564~~ **632**. — If during the execution of the work it becomes apparent that the ground selected by the hirer of work or the materials supplied by him are defective or unsuited to the work, the contractor must notify the hirer of work at once, failing which he shall be liable for the defects or delay caused by the unsuitableness or defects of such ground or materials. [86/72]

~~565~~ **633**. — The contractor is bound to allow the hirer of work or his agents to inspect the work during its execution.

~~566~~ **634**. — If the hirer of work has reasonable ground to think that for any reason whatsoever except his own act or fault, the work will not be finished within the time fixed in the contract ( or within a reasonable time if no time is fixed in the contract), he may notify the contractor to proceed with the work within a reasonable time to be fixed in the notice.

~~567~~ **635**. — If for any reason whatsoever except the act or fault of the hirer of work, the work is being badly executed or is being executed contrary to the terms of the contract, the hirer of work may notify the contractor to make the defects good or to comply with the terms of the contract within a reasonable time to be fixed in the notice. [86/75]

~~568~~ **636**. — If the work delivered is defective, the hirer of work must, immediately after the discovery of the defect, notify the contractor to make the defect good within a reasonable time to be fixed in the notice, failing which he is deemed to have accepted the defective work.

~~569~~ **637**. — If the contractor does not comply with the notice, the hirer of work has the remedies described in this Code concerning non-performance, except that the Court cannot order the work to be done by a third person at the expense of the contractor.

~~570~~ **638**. — If the materials have been supplied by the contractor, his liability for defects is governed by the provisions of this Code concerning sale.

~~571~~ **639**. — If the work is delivered after the time fixed in the contract, or, if no time was fixed, after an unreasonable delay, the hirer of work is entitled, as the Court may think fit, either to a reduction of price on cancellation of the contract, with compensation if any be due. [86/76]

~~572~~ **640**. — If the hirer of work has accepted the work without reservation either expressly or impliedly the contractor is no longer liable for delay in delivery or for defects, unless the defects were such as could not be discovered when the work was accepted, or they had been concealed by the contractor.

~~573~~ **641**. — If the work was done on land and its removal would be unreasonably expensive, the contract shall not be cancelled but the hirer of work shall be entitled to such reduction of price as the Court may think fit.

~~574~~ **642**. — The contractor is not liable for defects or delay caused by the hirer of work.

~~575~~ **643**. — In case of delay in delivery or of delivery of a defective work, the hirer of work is entitled to withhold the price as provided by Section 411 concerning sale. [86/78]

~~576~~ **644**. — The liability of the contractor for defects is limited to the defects appearing within one year after delivery of the work.

If the work is for a structure on land other than a wooden building, the contractor is liable for the defects which may appear within five years

after delivery of the work.

~~577~~ **645**. — The liability of the contractor is extinguished by prescription one year after the defect appeared.

~~578~~ **646**. — If the work is to be done by instalments and the price is fixed at so much per instalment, the agreed part of the price must be paid on delivery of each instalment.

~~579~~ **647**. — The contractor cannot claim more, nor the hirer of work pay less, than the price agreed, no matter what the actual labour was. **[86/80]**

~~580~~. — ~~If an estimate only was made for the work, and the price is not more than five per cent over the estimate, the hirer of work is bound to accept the work and pay the price~~.

~~If the price is more than five per cent over the estimate, the hirer of work can claim cancellation of contract.~~

**มาตรา ๖๔๘** — ถ้าสัญญาว่ากันโดยราคาประมาณอันผู้รับจ้างมิได้รับรองว่าประมาณเช่นนั้นถูกต้องและเปนเด็ดขาดไซร้ ถ้าราคาที่ทำการงารนั้นเกินประมาณไป ท่านให้บังคับด้วยวิธีดังกล่าวต่อไปนี้ คือ

(๑) ราคาเกินประมาณไปไม่มากกว่าร้อยละห้า ผู้ว่าจ้างจำต้องรับการงารที่ทำนั้นและชำระสินจ้างให้

(๒) ถ้าราคาเกินประมาณไปมากกว่าร้อยละห้า ผู้ว่าจ้างอาจเรียกให้เพิกถอนสัญญาได้

~~581~~ **649**. — The hirer of work is bound to pay any excess of price caused by him.

~~582~~ **650**. — If the work is destroyed before delivery by *force majeure*, neither party is entitled to compensation.

~~583~~ **651**. — If the work is destroyed before delivery because the materials supplied by the hirer of work a defective or unsuitable, or through the act or fault of the hirer of work, the contractor is entitled to compensation for labour done and expenses incurred by him. **[86/83]**

~~584~~ **652**. — As long as the work is not finished, the hirer of work can determine the contract on making compensation to the contractor for any injury resulting from the determination of the contract.

~~585~~ **653**. — A contract of hire of work may be determined at the death of the contractor by the heirs of the contractor giving notice to the hirer of work within two months after such death.

The hirer of work is bound to accept such part of the work as is already done, and to pay a reasonable price for it, provided that it be of some use to him.

~~586~~ **654**. — The contractor can sublet the whole or part of the contract to subcontractors unless the contract is one in which the personality of the contractor forms an essential part, but he remains liable for any act or fault of such subcontractors. **[86/84]**

# TITLE ~~VII~~ VIII. [86/84]

# CARRIAGE.

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~~587~~ **655**. — A carrier is a person whose business is to transport goods or passengers for a remuneration.

~~588~~ **656**. — The carriage of goods or passengers by the State Railways Department and of postal articles by the Department of Post and Telegraph are governed by the laws or regulations concerning such Departments.

The carriage of goods by sea is governed by the laws and regulations relating thereto.

## CHAPTER I. [86/86]

## CARRIAGE OF GOODS.

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### Part I. — GENERAL PROVISIONS.

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~~589~~ **657**. — The person making an agreement with a carrier for the transportation of goods is called the sender or consignor.

The person to whom the goods are forwarded is called the consignee.

The remuneration to be paid for the transportation of the goods is called the freight.

~~590~~ **658**. — The accessories of the freight include any customary expenses duly incurred by the carrier in course of transportation.

~~591~~ **659**. — If required by the carrier, the sender must supply him with a way-bill. The way-bill must show the following particulars:

1) The nature of the goods sent, their weight or bulk and the nature, number and marking of the packages.

2) The place of destination.

3) The name or trade name and address of the consignee.

4) The place where and the time when the way. bill is made out.

The way-bill must be signed by the sender.

~~592~~ **660**. — If required by the sender, the carrier must supply him with a consignment note. [86/87]

The consignment note must show the following particulars:

1) The matters contained in Section 591, 1, 2 & 3.

2) The name or trade name of the sender.

3) The amount of freight.

4) The place where and the time when the consignment note is made out.

The consignment note must be signed by the carrier.

~~593~~ **661**. — A consignment note may be made to a named person, or to order, or to bearer.

## Part II. — DUTIES AND LIABILITIES OF THE CARRIER.

~~594~~ **662**. — In the absence of any specific agreement or custom as to the time of delivery, the goods must be forwarded and delivered within a reasonable time.

~~595~~ **663**. — If a consignment note has been made, delivery can be obtained only on its surrender.

~~596~~ **664**. — The carrier is liable for any loss, damage or delay in delivery of the goods entrusted to him unless he proves that the loss, damage or delay is caused by *force majeure* or by the nature of the goods. [86/89]

~~597~~ **665**. — The carrier is liable for loss, damage or delay caused by apparent defects in the packing of the goods, if he accepted the goods without reservation.

~~598~~ **666**. — The carrier is not liable for loss, damage or delay caused by non-apparent defects in the packing of the goods.

~~599~~ **667**. — The carrier is liable for loss, damage or delay caused by the fault of the other carriers or persons to whom he entrusted the goods.

~~600~~ **668**. — The carrier is liable for loss, damage or delay caused by the fault of passengers.

~~601~~ **669**. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the sender must declare their nature before making the contract of carriage, failing which he shall be liable for any injury caused by them. [86/91]

~~602~~ **670**. — The carrier is not liable for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels and other valuables, unless he is given notice of the value or nature of such goods when they are delivered to him.

If their value is declared, the liability of the carrier is limited to such declared value.

~~603~~ **671**. — Compensation in case of delay in delivery cannot exceed the amount which could be awarded in case of total loss of the same goods.

~~604~~ **672**. — The arrival of the goods must be notified to the consignee in the manner provided by custom.

~~605~~ **673**. — No compensation is due for loss or damage discoverable from the external condition of the goods or for delay, if the goods were accepted without reservation on delivery. [86/92]

~~606~~ **674**. — In case of loss or damage not discoverable from the external condition of the goods, no compensation is due unless notice of loss or damage has been given to the carrier within eight days after delivery of the goods.

~~607~~ **675**. — The liability of the carrier for loss, damage or delay is extinguished by prescription one year after delivery or, if the goods were not delivered, one year after the date when delivery ought to have been made.

~~608~~ **676**. — A provision in a receipt, consignment note or other such document delivered by the carrier to the sender, excluding or limiting the liability of the carrier, is void unless the sender expressly agreed to such exclusion or limitation of liability.

## Part III. — RIGHTS AND DUTIES OF THE SENDER AND THE CONSIGNEE.

[86/94]

~~609~~ **677**. — As long as the goods are in the carrier's hands, the sender or the holder of the consignment note can exercise the right of stoppage in transit, that is to say he can require the carrier to stop the transportation or to return the goods.

In such case, the carrier is entitled to the freight in proportion to the transportation performed and to all other expenses occasioned by the stoppage or the return of the goods.

~~610~~ **678**. — If the consignment note has been made to order or to bearer, the right of stoppage in transit can be exercised only on surrendering the note to the carrier.

~~611~~ **679**. — The right of stoppage in transit ceases:

1) When the carrier gives notice of the arrival of the goods to the consignee.

2) When the goods have arrived at the place of destination and the consignee demands delivery.

~~612~~ **680**. — After the goods have arrived at the place of destination and the consignee has demanded delivery, or after the carrier has given notice of the arrival of the goods to the consignee, the consignee is entitled to the rights of the sender arising out of the contract of carriage. [86/95]

~~613~~ **681**. — The freight and accessories are payable either by the sender or by the consignee, as provided by the contract or by custom.

~~614~~ **682**. — If goods are lost by *force majeure*, the carrier is not entitled to the freight. Whatever has been received on that account must be returned.

~~615~~ **683**. — If the carrier delivers the goods before payment of the freight and accessories, he remains liable to preceding carriers for such part of the freight and accessories as may still be due to them.

~~616~~ **684**. — The carrier is entitled to retain the goods as long as the freight and accessories are not paid, provided that the party liable for [86/96]

them may at any time apply to the Court for an order, either :

1) Restricting the exercise of this right to such part of the goods as the Court may deem sufficient to cover the freight and accessories, or

2) Ordering the carrier to deliver the goods on security being given for payment of freight and accessories.

~~617~~ **685**. — If the consignee cannot be found, the carrier must notify the sender by registered letter to give his orders as to the disposal of the goods and to provide for the payment of the freight and accessories within a reasonable time to be fixed in the notice.

If the sender fails to comply with the notice the carrier can sell the goods by public auction.

~~618~~ **686**. — If the consignee does not take delivery of the goods, or does not pay the freight and accessories due by him, the carrier can notify the consignee by registered letter to pay the freight and accessories and take delivery within a reasonable time to be fixed in the notice.

The carrier must at the same time notify the sender by registered letter. [86/98]

If the consignee or the sender do not comply with the notice, the carrier can sell the goods by public auction.

~~619~~ **687**. — In the cases provided by Sections ~~617~~ 685 and ~~618~~ 686, if the goods are of a perishable nature, the carrier can sell them by public auction without notice.

~~620~~ **688**. — The carrier shall forthwith deduct from the nett proceeds of the public auction the freight, accessories and other monies due in connection with the contract of carriage and must deliver the surplus to the person entitled to it.

~~621~~ **689**. — If the goods were transported by several carriers, the last of them can exercise the rights described in Sections 616 to 620, for the amounts due to them all for freight and accessories.

~~622~~ **690**. — If the goods were transported by several carriers, all the rights arising out of the contract of carriage may, at the discretion of the party exercising them, be exercised against the last carrier alone. [86/99]

## CHAPTER II.
## CARRIAGE OF PASSENGERS.

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~~623~~ **691**. — The carrier of passengers is liable ~~for delay or for any other injury suffered by any passenger~~ to a passenger for personal injuries and for the damages immediately resulting from a delay suffered by reason of the transportation, unless the injury or delay is caused by force majeure or by the fault of such passenger.

~~624~~ **692**. — Luggage entrusted to the carrier in time must be delivered on the arrival of the passenger.

~~625~~ **693**. — If the passenger does not take delivery of the luggage within one month after its arrival, the carrier can sell it by public auction.

If the luggage is of a perishable nature, the carrier can sell it by public auction twenty-four hours after it arrival. [86/100]

The provisions of Section 620 apply *mutatis mutandis*.

~~626~~ **694**. — The rights and liabilities of the carrier for the luggage which has been entrusted to him are governed by Chapter I, even though the carrier did not make a separate charge for it.

~~627~~ **695**. — No liability is incurred by the carrier for luggage which has not been entrusted to him, unless such luggage be lost or damaged by the fault of the carrier or of his employees.

~~628~~ **696**. — A provision in a ticket, receipt or such other document delivered by the carrier to the passenger excluding or limiting the liability of the carrier is void, unless the passenger expressly agreed to such exclusion or limitation of liability.

# TITLE ~~VIII~~ IX.

[86/101]

# LOAN.

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## CHAPTER I.

## LOAN FOR USE.

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~~629~~ **697**. — A contract of loan for use is a contract whereby a person, called the lender, agrees to let another person, called the borrower, have the use of a property without paying remuneration and the borrower agrees to return the property after having had the use of it.

~~630~~ **698**. — A contract of loan for use is complete only on delivery of the property lent.

~~631~~ **699**. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

~~632~~ **700**. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

~~633~~ **701**. — The borrower cannot use the property lent for purposes other than ordinary purposes or purposes appearing from the contract itself. [86/102]

~~634~~ **702**. — The borrower cannot let a third person have the use of the property lent.

~~635~~ **703**. — If the borrower acts contrary to any of the provisions of Section ~~633~~ 701 or ~~634~~ 702, he becomes liable for any loss or damage even caused by *force majeure* to the property lent, unless he proves that the property would have been lost or damaged in the same way even if he had not acted contrary to such provisions.

~~636~~ **704**. — The borrower is bound to take as much care of the property lent as a person of ordinary prudence would take of his own property.

~~637~~ **705**. — If the borrower acts contrary to any of the provisions of Section ~~633~~ 701, ~~634~~ 702 or ~~636~~ 704, the lender can determine the contract. [86/103]

~~638~~ **706**. — If a third person who claims a right over the property lent enters an action against the borrower or attaches the property, the borrower must forth with give notice thereof to the lender.

After the borrower has been served with a writ at the suit of the claimant or after attachment, the borrower cannot return the property, except on an order of the Court or with the consent of the parties to the case.

~~639~~ **707**. — If the parties have fixed no time for the return, the borrower must return the property after he has had the use of it for the purposes appearing from the contract, provided that the lender can claim the return as soon as a time reasonably sufficient for such use has elapsed.

~~640~~ **708**. — If the parties have fixed no time for the return and the purposes of the loan do not appear from the contract, the lender can claim return at any time.

~~641~~ **709**. — Expenses for ordinary maintenance of the property lent must be borne by the borrower. [86/105]

Any other charges upon the property lent must be borne by the lender.

~~642~~ **710**. — The borrower may not make any alteration in, or addition to the property lent without the permission of the lender.

~~643~~ **711**. — If the lender has granted permission to the borrower to make alterations or additions, the borrower is entitled, at the extinction of the loan, to reimbursement of his expenses up to the amount of the increase in value which the property is still deriving from the additions or alterations.

The borrower is entitled to withhold the property until such reimbursement.

~~644~~ **712**. — If the borrower makes additions or alterations without the permission of the lender, he is not entitled to reimbursement, but he is allowed, at the extinction of the loan, to take away whatever he added to the property, provided that he puts the property in its former condition. [86/106]

If it is impossible to put the property in its former condition or the property would be damaged thereby, the property must be restored with the alterations or additions and no compensation therefor shall be due to the borrower.

~~645~~ **713**. — In case of loss of the property lent, the value to be taken into account for the assessment of compensation is the value which such property would have had at the time when and at the place where it ought to have been returned.

~~646~~ **714**. — A contract of loan for use is extinguished by the death of the borrower.

~~647~~ **715**. — The liability for compensation or reimbursement of expenses in connection with a contract of loan for use is extinguished by prescription six months after the extinction of such contract.

## CHAPTER II. [86/107]

## LOAN FOR CONSUMPTION.

### Part I. — GENERAL PROVISIONS.

~~648~~ **716**. — A contract of loan for consumption is a contract whereby a person called the lender, agrees to transfer the ownership and possession of property to another person, called the borrower, with or without remuneration, and the borrower agrees to return property of the same kind, quality and quantity.

~~649~~ **717**. — A contract of loan for consumption is complete only on delivery of the property lent.

~~650~~ **718**. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

~~651~~ **719**. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

~~652~~ **720**. — If no time for return of the property lent has been fixed, the lender may give notice to the borrower to return the property within a [86/108]

reasonable time to be fixed in the notice.

## Part II. — SPECIAL RULES FOR LOAN OF MONEY.

~~653~~ **721**. — No loan of money for a sum exceeding two hundred baht in capital may be proved unless there be some written evidence signed by the borrower.

~~654~~ **722**. — Interest shall not exceed 15% per year; when a higher rate of interest is fixed by the contract, it shall be reduced to 15% per year.

~~655~~ **723**. — Interest shall not bear interest. ~~But~~ the parties to a loan of money, however, may, at the end of each ~~succeeding~~ year, agree that the interest ~~due~~ shall be added to the capital, and that the whole shall bear interest, ~~provided that~~ but any such agreement must be made in writing.

~~656~~ **724**. — If a contract of loan of money is made and the borrower, instead of money, accepts goods or negotiable instruments, the amount of the loan shall be taken as the actual value of the goods or negotiable instruments at the time of delivery. [86/109]

# TITLE ~~IX~~ X.

# DEPOSIT.

## CHAPTER I.

## GENERAL PROVISIONS.

~~657~~ **725**. — A contract of deposit is a contract whereby a person, called the depositor, agrees to deliver a movable property to another person, called the depositary, and the depositary agrees to keep such property in safe custody, with or without remuneration, and to return it to the depositor or to a third person.

~~658~~ **726**. — A contract of deposit is complete only on delivery of the property deposited.

~~659~~ **727**. — The depositary is bound to take as much care of the property deposited as a person of ordinary prudence would take of his own property. [86/112]

~~660~~ **728**. — The depositary is not allowed, without the permission of the depositor, to use the property deposited or to let a third person have the use or custody of it.

~~661~~ **729**. — The depositary who acts contrary to any of the provisions of Section 660 becomes liable for any loss or damage caused even by *force majeure* to the property deposited, unless he proves that the property would have been lost or damaged even if he had not acted contrary to such provision.

~~662~~ **730**. — If a property is the subject of litigation, the parties to the case can agree, or the Court may order, that such property shall be deposited with one of the parties or with a third person.

The depositary of such property can only return it to a person appointed for that purpose by the parties or by the Court.

~~663~~ **731**. — If a third person claims a right over the property deposited and enters an action against the depositary, or attaches the property, the [86/113]

depositary must forth with give notice thereof to the depositor.

After the depositary has been served with a writ at the suit of the claimant or after attachment, the depositary can only return the property on an order of the Court, or with the consent of the parties to the case.

~~664~~ **732**. — If a time for the return of the property deposited has been fixed, the depositary ~~cannot~~ has no right to return the property before such time, except in case of unavoidable necessity.

~~665~~ **733**. — Although the parties have fixed a time for the return of the property deposited, the depositary must return it at any time on demand made by the depositor.

~~666~~ **734**. — If the parties have fixed no time for the return of the property deposited, the depositary can return it at any time.

~~667~~ **735**. — If the property is deposited in the name of a third person, the depositary can only return it to that third person. [86/115]

~~668~~ **736**. — The depositary is bound to deliver with the property any interest and profits which may have accrued from it.

~~669~~ **737**. — Costs of returning the property deposited ~~must be~~ are borne by the depositor.

~~670~~ **738**. — In case of loss of the property deposited, the value to be taken into account for the assessment of compensation is the value which the property would have had at the time when and at the place where it ought to have been returned.

~~671~~ **739**. — The depositor is bound to reimburse the depositary for any expenses which were necessary for the preservation or maintenance of the property deposited unless such expenses were incumbent upon the depositary under the contract of deposit.

~~672~~ **740**. — If no time for payment of remuneration is fixed by the contract or by custom, the remuneration is payable when the property deposited is returned. If fixed by periods, the remuneration is payable at the end of each period. [86/116]

~~673~~ **741**. — When the remuneration or expenses are not paid, the

depositary is entitled to retain the property deposited, provided that the depositor may at any time apply to the Court for an order, either:

1) Restricting the exercise of this right to such part of the property deposited as the Court may deem sufficient to cover the remuneration or expenses, or

2) Ordering the depositary to return the property deposited on the depositor giving security for remuneration or expenses.

~~674~~ **742**. — If the depositary retains the property deposited as provided in Section ~~673~~ 741, he may notify the depositor by registered letter to pay the remuneration or expenses within a reasonable time to be fixed in the notice.

If the depositor fails to comply with the notice the depositary can sell by public auction the property deposited.

~~675~~ **743**. — The depositary must forth with deduct from the nett proceeds of the public auction the remuneration and expenses due to himself and deliver the surplus to the person entitled to the return of the deposit. [86/117]

~~676. — No deposit of property exceeding two hundred baht in value may be proved, unless there be sore written evidence signed by the depositary.~~

~~677. — If a property has been deposited under such circumstances of *force majeure* that no written contract could reasonably be made, written evidence of the deposit is not required.~~

~~678~~ **744**. — The liability for remuneration, reimbursement of expenses or compensation in connection with a deposit is extinguished by prescription six months after the extinction of such contract.

## CHAPTER II.

## SPECIAL RULES FOR DEPOSIT OF MONEY.

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~~679~~ **745**. — If the deposit is one of money, it is presumed that the depositary shall not return the same specie, but the same amount.

The depositary can use the money deposited and is only bound to return an equivalent amount. He is bound to return such amount even should the money deposited have been lost by *force majeure*.

~~680~~ **746**. — If the depositary is ~~only~~ bound only to return the same amount of money, the depositor ~~cannot~~ may not demand the return of the money before the agreed time, nor ~~can~~ may the depositary return it before such time. [86/118]

## CHAPTER III.
## SPECIAL RULES FOR INNKEEPERS.

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~~681~~ **747**. — The proprietor of an inn, or hotel or of any other place where travellers or guests receive sleeping accommodation for remuneration is considered as a depositary of the luggage or other property brought by such travellers or guests.

He is liable for any loss or damage caused to such luggage or property unless he proves that such loss or damage was not caused by his act or fault, or by the act or fault of persons for whom he was responsible.

~~682~~ **748**. — The liability for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels or other valuables belonging to the traveller or guest is limited to two hundred baht, unless such valuables have been deposited with the proprietor with an indication of their nature and value.

~~683~~ **749**. — If valuables have been deposited with the proprietor, he is liable for them up to the value declared. [86/119]

~~684~~ **750**. — A notice posted in the inn, hotel or other such place excluding or limiting the liability of the proprietor is void unless the traveller or guest expressly agreed to such exclusion or limitation of liability.

~~685~~ **751**. — The liability for compensation for loss or damage caused to the luggage or other property of the traveller or guest is extinguished by prescription six months after the departure of the traveller or guest.

~~686~~ **752**. — If the remuneration is not paid, the proprietor can exercise over the luggage or other property of the traveller or guest which is in the inn, hotel or other such place the rights described in Sections ~~673~~ 741, ~~674~~ 742 and ~~675~~ 744.

# TITLE ~~X~~ XI. [86/121]

# SURETYSHIP.

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## CHAPTER I.

## GENERAL PROVISIONS.

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~~687~~ **753**. — A contract of suretyship is a contract whereby a person, called surety, agrees to perform an obligation in case the debtor does not perform it.

~~688~~ **754**. — A contract of suretyship may guarantee any obligation even unconditional or future.

~~689~~ **755**. — A contract of suretyship is void or voidable according as to whether the obligation secured is void or voidable.

~~690~~ **756**. — An obligation which is voidable owing to one of the parties being incapacitated may be guaranteed by suretyship if it appears from the contract or from the circumstances of the case that the surety agreed to guarantee the creditor against the consequences of the want of capacity.

~~691~~ **757**. — Suretyship may be given for a limited period of time or for a series of transactions. [86/123]

~~692~~ **758**. — A person ~~can~~ may agree to be surety for another surety.

~~693~~ **759**. — The suretyship covers interest and compensation due by the debtor on account of the obligation and all charges accessory to it.

~~694~~ **760**. — The surety is liable for the costs of action to be paid by the debtor to the creditor, but he is not liable for such costs if the action was entered without first demanding performance from him.

~~695~~ **761**. — If, on enforcement of the contract of suretyship, the surety does not perform the whole of the obligation of the debtor, together with interest, compensation and accessories, the debtor remains liable to the creditor for the surplus. [86/124]

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## CHAPTER II.
## EFFECTS BEFORE PERFORMANCE.

~~696~~ **763**. — As soon as the debtor is in default the creditor is entitled to demand performance of the obligation from the surety.

~~697~~ **764**. — The surety is not bound to perform the obligation before the time fixed for performance, although the debtor may have lost the benefit of the time clause.

~~698~~ **765**. — The surety is entitled to summon the debtor to appear in the action in order that the judgment may decide on his liability to the creditor and on the liability of the debtor to him. [86/125]

~~699~~ **766**. — When the debtor is summoned and the surety proves:

1). That the debtor has the means to perform the whole or part of the obligation, and

2) That enforcement against the debtor would not be difficult,

the Court may, in its discretion, order that the obligation shall be enforced first against the debtor.

~~700~~ **767**. — If the obligation is secured by a pledge or mortgage, the surety is entitled to have the obligation performed first out of the property pledged or mortgaged.

~~701~~ **768**. — If the surety has agreed to be bound jointly with the debtor, the surety becomes a joint debtor.

~~702~~ **769**. — If there are several sureties for the same obligation, they are jointly liable to the creditor within the limits specified in their respective contracts of suretyship. [86/126]

As between themselves, their shares in any deficiency are in proportion to the amount for which each surety is liable.

If no amount was specified each surety shall bear an equal share in the deficiency.

~~703~~ 770. — An interruption of prescription against the debtor is also an interruption against the surety.

## CHAPTER III.

## EFFECTS AFTER PERFORMANCE.

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~~704~~ 771. — The surety who has performed the obligation is entitled to reimbursement from the debtor and is subrogated to the rights of the creditor against the debtor.

But he cannot exercise such rights to the injury of the creditor.

~~705~~ 772. —In addition to the defences which the surety has against the creditor, he can also set up defences which the debtor has against the creditor. [86/128]

~~706~~ 773. — The surety who neglects to set up against the creditor defences of the debtor forfeits his right to reimbursement by the debtor to the extent of these defences, unless he proves that he did not know of such defences and that his ignorance was not due to his fault.

~~707~~ 774. — If the surety does not inform the debtor that he has performed the obligation and the debtor, in ignorance, performs it, the surety is not entitled to reimbursement by the debtor.

The surety has only an action for undue enrichment against the creditor.

~~708~~ 775. — If the creditor impairs or reduces the securities given for the performance of the obligation, the surety is discharged to the extent of the injury suffered by him thereby.

[86/130]

## CHAPTER IV.

## EXTINCTION OF SURETYSHIP.

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~~709~~ 776. — When the obligation of the debtor is extinguished, the surety is discharged.

~~710~~ 777. — If suretyship has been given for a series of transactions, the surety can at any time determine the suretyship for the future by giving notice to the creditor to that effect.

In such case, the surety is not liable for transactions one by the debtor after the notice has reached the creditor.

~~711~~ **778**. — Suretyship given for the transaction of a registered partnership or limited partnership is extinguished for the future if the partnership changes its firm name.

It is not extinguished by a change in the members or object of the partnership.

~~712~~ **779**. — If suretyship has been given for an obligation which is to be performed at a definite time, and the creditor grants to the debtor an extension of time, the surety is discharged. [86/131]

The surety is not discharged if he agreed to the extension of time or if the extension is granted by the Court.

~~713~~ **780**. — The surety ~~is entitled to~~ may tender performance of the obligation to the creditor from the time when performance is due.

If the creditor refuses to accept performance, the surety is discharged.

# TITLE ~~XI~~ XII.
# MORTGAGE.

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## CHAPTER I.
## GENERAL PROVISIONS.

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~~714~~ **781**. — A contract of mortgage is a contract whereby a person, called the mortgagor, agrees to assign a property to another person, called the mortgagee, as security for the performance of an obligation, without delivering the property to the mortgagee.

The mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors and ~~even though~~ regardless as to whether or not the ownership of the property has been transferred to a third person. [86/132]

~~715~~ **782**. — Immovables of any kind can be mortgaged.

The following movables can also be mortgaged, provided they are registered according to law:

1) Ships or vessels ~~having displacement~~ of ~~and over~~ six tons and over, steam-launches or motor-boats ~~having displacement~~ of ~~and over~~ five tons and over.

2) Floating houses.

3) Beasts of burden.

4) Any other movables ~~for~~ regard to which the law shall provide registration ~~to~~ for that ~~effect~~ purpose.

~~716~~ **783**. — A property which is not transferable cannot be mortgaged.

~~717~~ **784**. — A contract of mortgage must specify the property mortgaged. [86/133]

~~718~~ **785**. — No property can be mortgaged except by its present owner.

~~719~~ **786**. — A person whose right of ownership over a property is subject to a condition, can mortgage the property only subject to the same

condition.

~~720~~ **787**. — A contract of mortgage may secure any obligation, even conditional or future.

~~721~~ **788**. — A contract of mortgage is void or voidable according as to whether the obligation secured is void or voidable.

~~722~~ **789**. — A contract of mortgage must specify the obligation for the performance of which the mortgaged property is assigned as security, and its amount in Siamese currency. [86/134]

If the obligation is unlimited, the parties shall fix the highest amount for which the mortgaged property is assigned as security.

~~723~~ **790**. — A person may mortgage a property as security for the performance of an obligation by another person.

~~724~~ **791**. — The performance of one and the same obligation may be secured by the mortgage of several properties belonging ~~to~~ either to one or to several owners.

The parties may agree :

1) that the mortgagee shall enforce his right against the mortgaged properties in a specified order.

2) that each property is security only for a specified part of the obligation.

~~725~~ **792**. — As long as the obligation is not due, the mortgagor cannot agree that the mortgagee shall, in case of non-performance, become the owner of the mortgaged property or dispose of it otherwise than in conformity with the provisions concerning enforcement of mortgage (Chapter ~~IV~~ V). [86/135]

~~726~~ **793**. — Notwithstanding any clause in the contract to the contrary, a property mortgaged to a person can be mortgaged to another person during the continuance of the previous contract.

But beasts of burden cannot be subjected to successive mortgages.

~~727~~ **794**. — The parties to a contract of mortgage may agree that the obligation shall be performed by instalments.

~~728~~ **795**. — A contract of mortgage must be made in writing in the presence of and registered by the competent official in accordance with the rules relating thereto.

## CHAPTER II. [86/137]

## EXTENT OF MORTGAGE.

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~~729~~ **796**. — The mortgaged property is security for the performance of the obligation and for the following accessories :

1) Interest, if any.

2) Compensation in case of non—performance of the obligation.

3) Costs of enforcement of the right of mortgage.

~~730~~ **797**. — The right of mortgage extends to all the properties mortgaged and to the whole of each of them, even after part performance.

~~731~~ **798**. — When the mortgaged property is divided into parcels, rights of mortgage continues to extend to each and all of them.

However, one parcel may be transferred free of any right of mortgage with the consent of the mortgagee. Such consent or order cannot be set up against the buyer of the mortgagee's right unless it has been registered.

~~732~~ **799**. — The right of mortgage extends to all things which are so connected with the mortgaged property as to form one thing with it, subject to the restrictions provided by the three following Sections. [86/138]

~~733~~ **800**. — The right of mortgage on a land does not extend to the buildings erected by the mortgagor upon it after the time of mortgage unless there is in the contract a special clause to that effect.

However, in any case, the mortgagee can have such buildings sold with the land, but his preferential right does not extend to the increase of value derived from the buildings.

~~734~~ **801**. — The right of mortgage over buildings made by a person upon or under another's land does not extend to that land, and vice versa.

~~735~~ **802**. — The right of mortgage does not extend to the fruits, interests and profits of the mortgaged property except after the time when

the mortgagee has notified the mortgagor or the transferee of his intention to enforce the mortgage.

## CHAPTER III.

[86/139]

## RIGHTS AND DUTIES OF MORTGAGEE AND MORTGAGOR.

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~~736~~ **803**. — ~~No agreement entered after the time of the mortgage creating servitudes or other real rights~~ No servitude or other real right created by agreement or will upon the mortgaged property by which ~~depreciates~~ the value of the property is depreciated and which is registered after the registration of the mortgage~~, can~~ may be set up against the mortgagee unless he has agreed to it.

~~737~~ **804**. — If the mortgaged property is damaged, or if one of the mortgaged properties is lost or damaged, so that the security becomes insufficient, the mortgagee ~~can~~ may enforce ~~at once~~ the mortgage at once, unless ~~there is no fault of~~ the mortgagor has not been at fault and ~~the later~~ offers either to mortgage another property of sufficient value or to repair the damage within a reasonable time.

~~738~~ **805**. — If a person who has mortgaged a property as security for the performance of an obligation by another person performs the obligation on behalf of the debtor to prevent the enforcement of the mortgage, he is entitled to recover from the debtor the amount of the performance.

If the mortgage is enforced, the mortgagor is entitled to recover from the debtor the amount up to which the mortgagee has been satisfied by such enforcement. [86/140]

~~739~~ **806**. — When two or more persons have mortgaged their properties as security for the performance of one and the same obligation by another person and no order has been specified, the mortgagor who has performed the obligation or on whose property the mortgage has been enforced, has no right of recourse against the other mortgagors.

~~740~~ **807**. — If a person has mortgaged a property as security for the performance of an obligation by another person, and the creditor grants to the debtor an extension of time, the mortgagor in discharged.

The mortgagor is not discharged if he agreed to the extension of time

or if the extension is granted by the Court.

~~741~~ **808**. — If a person has mortgaged a property as security for the performance of an obligation by another person, the mortgagor is entitled to tender performance of the obligation to the mortgagee from the time when performance is due. [86/141]

If the mortgagee refuses to accept performance, the mortgagor is discharged.

~~742~~ **809**. — When several persons have separately mortgaged their properties as security for the performance of one and the same obligation by another person and an order has been specified, the release granted by the mortgagee to one of the mortgagors discharges the subsequent mortgagors to the extent of the injury suffered by them thereby.

## CHAPTER IV.

## ENFORCEMENT OF MORTGAGE.

~~743~~ **810**. — In case of non-performance, the mortgagee is entitled to have the mortgage enforced in the manner described in the following sections.

~~744~~ **811**. — The mortgagee must first notify the debtor by registered letter to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee can apply to the Court for an order : [86/142]

1) either ordering that the property mortgaged be seized and sold by public auction; or

2) transfering to him the ownership of the mortgaged property.

~~745~~ **812**. — The Court shall not issue an order transfering the property to the creditor when :

1) the debtor has failed to pay interests for less than five years; or

2) the mortgagor has satisfied the Court that the value of the property overcovers the amount due; or

3) there are other registered mortgages or preferential rights on the same property.

~~746~~ **813**. — When one and the same property is mortgaged to several mortgagees, they rank according to the respective dates and hours of registration, and the earlier mortgagee shall be satisfied before the later one.

~~747~~ **814**. — A later mortgagee cannot enforce his right to the injury of an earlier one. [86/143]

~~748~~ **815**. — The nett proceeds of the auction shall be distributed to the mortgagees according to their ranks, and the surplus, if any, shall be delivered to the mortgagor.

~~749~~ **816**. — If the estimated value of the property, in case of transfer, or the nett proceeds, in case of auction, are less than the amount due, the debtor of the obligation remains liable for the difference.

~~750~~ **817**. — If a mortgage extends to several properties and no order has been fixed, the mortgagee can enforce his right upon such of them as he may select, provided that he does not do so upon more properties than is necessary for the satisfaction of his right.

~~751~~ **818**. — The mortgagee who intends to enforce the mortgage against the transferee of a mortgaged property must notify the transferee by registered letter of his intention one month before applying to the Court. [86/145]

## CHAPTER V.
## RIGHTS AND DUTIES OF THE TRANSFEREE OF A MORTGAGED PROPERTY.

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~~752~~ **819**. — The transferee of a mortgaged property may remove the mortgage, provided that he be not the principal debtor, a surety or an heir of either of them.

~~753~~ **820**. — The transferee may remove the mortgage at any time ~~until, or within one month after~~, but if he has been notified by the mortgagee of his intention to enforce the mortgage, he must do so within one month thereafter.

~~754~~ **821**. — The transferee who wishes to remove the mortgage must offer to all the registered creditors to pay such sum of money as he thinks fit.

~~755~~ **822**. — The form of the offer may be made to contain the following particulars : [86/147]

1) the place and description of the mortgaged property,

2) the date of transfer of ownership,

3) the name of the former owner,

4) the name and residence of the transferee,

5) the sum offered,

6) a calculation of the total amount due to each of the creditors including accessories, and of the sums which would be distributed to them according to their respective ranks.

A certified copy of the entries in the official register referring to the property mortgaged will be enclosed.

~~756~~ **823**. — If all the creditors accept the offer, the mortgages, and preferential rights, if any, are removed by the payment of the sum offered.

~~757~~ **824**. — If a creditor refuses the offer, he is entitled to apply to the Court within one month from the date of the offer, for an order to have the mortgaged property sold by public auction, provided that he notifies his refusal to the transferee and to the other registered creditors. [86/148]

The transferee can bid at the auction.

~~758~~ **825**. — If the nett proceeds of the auction are not more than the sum offered by the transferee, the creditor demanding sale shall bear the costs of the auction.

~~759~~ **826**. — If a creditor does not answer the offer of the transferee within one month from the date of the offer, the mortgage or preferential right is removed by the transferee depositing in lieu of performance the sum offered to such creditor.

~~760~~ **827**. — If the transferee who has been notified by the mortgagee of his intention to enforce the mortgage does not either perform the obligation or remove the mortgage, the mortgage is enforced against him in the same manner as if it were to be enforced against the mortgagor.

~~761~~ **828**. — Any right over the mortgaged property existing in favour of the transferee before the transfer and extinguished by merger in consequence of the transfer, shall revive in his favour when the enforcement or the removal of the mortgage results in the transfer of the ownership to another person. [86/149]

~~762~~ **829**. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been reduced by the fault of the transferee, he is liable to pay compensation to the mortgagee up to the extent of the injury suffered by him thereby.

~~763~~ **830**. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been increased by the transferee, he is entitled to reimbursement of his expenses out of the proceeds of the sale up to the amount of the increase of value at the time of the auction.

## CHAPTER VI. [86/151]

## EXTINCTION OF MORTGAGE.

~~764~~ **831**. — A contract of mortgage is extinguished :

1) by the total loss, or expropriation, of the mortgaged property ;

2) by the extinction of the obligation secured ;

3) by the release of the mortgage granted in writing to the mortgagor ;

4) by the discharge of the mortgagor ;

5) by the removal of the mortgage ;

6) by the auction sale of the mortgaged property by order of the Court;

7) by the transfer of the ownership of the mortgaged property to the mortgagee.

~~765~~ **832**. — The mortgagee can enforce the mortgage even after the obligation secured has been extinguished by prescription, but the arrears of interest on mortgage cannot be enforced for more than five years.

~~766~~ **833**. — When a contract of mortgage is extinguished, the owner of the property concerned is entitled to have such extinction registered by the competent official. [86/152]

~~767~~ **834**. — The mortgagor is entitled to have any part performance, or

any discharge, or any agreement reducing the number of the mortgaged properties or the amount of the obligation secured, registered by the competent official.

Any such part performance, discharge, or agreement, cannot be set up against the buyer of the mortgagee's right unless it has been registered.

## CHAPTER VII.
## REGISTRATION.

~~768~~ **835**. — The registration concerning mortgage shall be made at the Registry Offices, the number, places, districts and competency of which are fixed by the special laws and regulations relating thereto.

~~769~~. — ~~The parties who apply for the registration of contract of mortgage must:~~

~~1) make to the Registrar a statement of the terms of the agreement;~~

~~2) produce to him the land certificate, or, in case of movables, the registration certificate of the property concerned.~~

~~770~~. — ~~On such application, the contract is drawn up according to the statement of the parties, and the Registrar shall enter on the certificate and on the Register counterfoil a summary of the contract showing the names of the parties, the nature of the obligation and the maximum amount for which the mortgaged property is security, the rate of interest, the date of maturity of the obligation, the date of registration.~~

~~771~~. — ~~The person who applies for registration of an alteration or extinction of the mortgage must produce to the Registrar the land certificate, or, in case of movables, the registration certificate of the property concerned, and the document supporting his application.~~

~~772~~. — ~~On such application the Registrar shall enter on the certificate and on the Register counterfoil the alteration or extinction of the mortgage, and the date of such entry, and he shall annex thereto the documents produced.~~

~~773~~. — ~~If in the opinion of the Registrar the application does not comply with the provisions of law, the Registrar shall decline to proceed with the registration until he has received an order of the Court to~~

register.

He must however make on the certificate and Register counterfoil a note stating the fact and date of the application.

If the Registrar afterwards proceeds with the registration, such registration shall be deemed to have been made on the date of the application.

774. — When an alteration or extinction of the mortgage has been registered otherwise than with the consent of the mortgagee or by an order of the Court, the mortgagee may have such registration cancelled by the Court if he proves that in fact there had been no alteration or extinction of the mortgage.

On registration of the cancellation, the mortgagee shall be restored in his right and rank.

775. — Every person is entitled to consult the register's during the Office hours, without removing the books, and to obtain from the Registrar a certified copy or abstract of all the entries and documents relating to the mortgaged property, on payment of such fees as may be fixed by the competent Minister.

# TITLE ~~XII~~ XIII.

[86/154]

# PLEDGE.

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## CHAPTER I.

## GENERAL PROVISIONS.

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~~776~~ **836**. — A contract of pledge is a contract whereby a person, called the pledgor, agrees to deliver to another person, called the pledgee, a movable property, called pledge, as a security for the performance of an obligation to the pledgee.

~~777~~ **837**. — A contract of pledge is complete only on delivery of the pledge.

~~778~~ **838**. — A property which is not transferable cannot be pledged.

~~779~~ **839**. — A movable property which is already mortgaged cannot be pledged.

~~780~~ **840**. — The pledge is security for the performance of the obligation and for the following accessories : [86/155]

1) Interest, if any.

2) Compensation in case of non-performance of the obligation.

3) Costs of enforcement of the right of pledge.

4) Expenses for the preservation of the pledge.

5) Compensation for injury caused by non-apparent defects of the pledge.

~~781~~ **841**. — The parties to a contract of pledge can agree that the pledge shall be kept by a third person.

~~782. — A property pledged to a person may be pledged to another person during the continuance of the first contract.~~

~~If the first pledgee has been notified in writing of the existence of the second contract of pledge, the following rules apply:~~

~~1) The first pledgee is bound, after the obligation due to him has been performed, to deliver the pledge to the second pledgee.~~

~~2) If the first pledgee has enforced the pledge and sold it by public auction, he must deliver to the second pledgee the surplus of the nett proceeds, if any.~~

~~If no notification in writing of the second contract of pledge has been made to the first pledgee, the first pledgee is under no obligation to the second pledgee~~.

~~783~~ **842**. — If the pledge is a right represented by a written instrument, the contract of pledge is void unless such instrument be delivered to the pledgee and the contract of pledge be notified in writing to the debtor of the right.

~~784~~ **843**. — Instruments to bearer may also be pledged by mere delivery.

~~785~~ **844**. — If the instrument is transferable by indorsement, the contract of pledge is void unless the pledgor indorses such instrument to the pledgee and the indorsement shows that it was made for the purpose of pledge. [86/156]

No notification to the debtor of such instrument is necessary.

~~786~~ **845**. — If the instrument is a share certificate or other such instrument issued to a named person and not transferable by indorsement, the contract of pledge is void unless such instrument is pledged by making on it a statement to that effect.

No notification to the debtor of such instrument is necessary.

~~787~~ **846**. — If a pledged right becomes due before the obligation for which it is security is due, the debtor of such right must deliver to the pledgee the property due. The property delivered constitutes a pledge in lieu of the pledged right. If the property delivered is money, it shall be appropriated to the performance of the obligation.

~~788~~ **847**. — If a right is pledged, it cannot be extinguished or modified to the injury of the pledgee without the consent of the pledgee. [86/158]

~~789~~ **848**. — In the cases when a property is pledged by a person other than its owner, the contract is voidable unless the pledgee has received

the pledge believing in good faith that the pledgor is the owner, or unless the owner authorizes or ratifies the contract, or unless the pledgor becomes owner of the property.

If the property pledged is a property lost or a property obtained through an offence or the pledging of which constitutes an offence, the contract of pledge is void.

~~790~~ **849**. — If a person who has pledged property as a security for the performance of an obligation by another person performs the obligation, he is entitled to recover from that person the amount of the performance.

~~791~~ **850**. — If a person has pledged property as a security for the performance of an obligation by another person and the pledge is enforced, the owner of the pledge is entitled to recover from such person the amount up to which the pledgee has been satisfied by such enforcement. [86/160]

~~792~~ **851**. — The provisions of this Title XIII apply to contracts of pledge entered into with licensed pawnbrokers only in so far as they are not contrary to the laws or regulations concerning pawnbrokers.

## CHAPTER II.

## RIGHTS AND DUTIES OF PLEDGOR AND PLEDGEE.

~~793~~ **852**. — The pledgee is entitled to retain the pledge until he has received full performance of the obligation and accessories.

~~794~~ **853**. — The pledgee is bound to keep the pledge in safe custody and take as much care of it as a person of ordinary prudence would take of his own property.

~~795~~ **854**. — The pledgee is not allowed, without the consent of the pledgor, to use the pledge or to let a third person have the use or custody of it. [86/161]

~~796~~ **855**. — If the pledgee acts contrary to any of the provisions of section ~~795~~ 854, he becomes liable for any loss or damage caused to the pledge, even by *force majeure*, unless he proves that the pledge would have been lost or damaged even if he had not acted contrary to such provisions.

~~797~~ **856**. — The pledgee must collect the interest and profits of the pledge and appropriate them to the performance of the obligation and accessories.

~~798~~ **857**. — The pledgor is bound to reimburse the pledgee for any expenses which were necessary for the preservation or maintenance of the pledge, unless such expenses were incumbent upon the pledgee under the contract of pledge.

~~799~~ **858**. — The pledgee is bound to return the pledge to the pledgor when the obligation and accessories are extinguished. [86/163]

~~800~~ **859**. — The following liabilities are extinguished by prescription six months after the return of the pledge or its sale by auction:

1) The liability for compensation for damage caused to the pledge by the pledgee.

2) The liability for reimbursement of expenses incurred for the preservation or maintenance of the pledge.

3) The liability for compensation for injury caused to the pledgee by non-apparent defects in the pledge.

## CHAPTER III.
## ENFORCEMENT OF PLEDGE.

~~801~~ **860**. — If the obligation and accessories for which the pledge is security are not performed, the pledgee is entitled to have the pledge enforced in the manner described in the following sections.

~~802~~ **861**. — The pledgee must first notify by registered letter the debtor to perform the obligation and accessories within a reasonable time to be fixed in the notice. [86/164]

If the debtor fails to comply with the notice, the pledgee can sell the pledge by public auction.

The pledgee must notify the pledgor by registered letter of the day and time when, and of the place where, the auction shall be held.

~~803~~ **862**. — If notification is impossible, the pledgee can sell the pledge by public auction one month after the obligation became due.

~~804~~ **863**. — The buyer of a pledge duly sold by public auction acquires over it the same rights as if he had bought it from the owner.

~~805~~. — ~~The pledgee of a bill is entitled to collect it on the day of its maturity without previous notification.~~

~~806~~ **864**. — If the pledge is a sum of money, the pledgee is entitled to appropriate it up to the amount of the obligation and accessories.

~~807~~ **865**. — The pledgee must appropriate the nett proceeds of the public auction or of his collection to the extinction of the obligation and accessories and must return the surplus, if any, to the pledgor. [86/165]

If the proceeds are less than the amount due, the debtor of the obligation remains liable for the difference.

~~808~~ **866**. — If several properties are pledged as security for one obligation, the pledgee can sell such of them as he may select, but he cannot sell more than required for the satisfaction of his claim.

~~809~~ **867**. — As long as the obligation is not due, the pledgor cannot agree that the pledgee shall, in case of non-performance, become the owner of the pledge or dispose of it otherwise than as provided by this Chapter.

## CHAPTER IV. [86/166]

## EXTINCTION OF PLEDGE.

~~810~~ **868**. — A contract of pledge is extinguished :

1) When the obligation for which the pledge is security is extinguished otherwise than by prescription, or

2) When the pledgee allows the pledge to remain in, or to return into the possession of the pledgor.

# TITLE ~~XIII~~ XIV.
# WAREHOUSING.

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## CHAPTER I.
## GENERAL PROVISIONS.

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~~811~~ **869**. — A warehouseman is a person whose business is to receive goods for storage in a warehouse, for remuneration.

~~812~~ **870**. — The provisions of Sections ~~658~~ 720, ~~660~~ 726 to ~~665~~ 733, ~~668~~ 736, ~~669~~ 737, ~~670~~ 738, ~~672~~ 740 ~~676~~ and ~~678~~ 744 concerning deposit apply to warehousing in so far as they are not contrary to the provisions of this Title XI~~II~~V.

~~813~~ **871**. — The warehouseman is liable for any loss or damage caused to the goods unless he proves that such loss or damage has been caused by *force majeure* or by the nature of the goods. [86/167]

~~814~~ **872**. — The warehouseman is liable for the loss or damage caused by apparent defects in the packing of the goods stored if he accepted them without reservation.

~~815~~ **873**. — The warehouseman is not liable for the loss or damage caused by non-apparent defects in the packing of the goods.

~~816~~ **874**. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the depositor must declare their nature to the warehouseman on making the contract of warehousing, otherwise he will be liable for any injury caused by them.

~~817~~ **875**. — A provision in a warehouse receipt excluding or limiting the liability of the warehouseman is void, unless the depositor expressly agreed to such exclusion or limitation of liability. [86/169]

~~818~~ **876**. — The warehouseman is bound to allow the holder of the warehouse receipt ~~and~~ or the holder of the warrant to inspect the goods and to take samples at any reasonable ~~intervals~~ time during business hours ~~and to take samples~~.

~~819~~ **877**. — No compensation is due for loss or damage discoverable from the external condition of the goods if the goods were withdrawn without express reservation.

~~820~~ **878**. — In case of loss or damage not discoverable from the external condition of the goods, no compensation is due unless notice of loss or damage be given to the warehouseman within eight days after withdrawal.

~~821~~ **879**. — If no time for the return of the goods was fixed, the warehouseman ~~can~~ may return the goods at any time on giving three months notice to the depositor. [86/170]

~~822~~ **880**. — If the remuneration due is not paid, the warehouseman is entitled to retain the goods, provided that the depositor or the holder of the warehouse receipt may at any time apply to the Court for an order, either :

1) Restricting the exercise of this right to such part of the goods as the Court may deem sufficient to cover the remuneration, or.

9) Ordering the warehouseman to return the goods on the depositor or the holder of the warehouse receipt giving security for the remuneration.

~~823~~ **881**. — It the depositor or the holder of the warehouse receipt does not withdraw the goods at the proper time, or does not pay the remuneration due, the warehouseman can notify the depositor by registered letter to withdraw the goods and pay the remuneration within a reasonable time to be fixed in the notice.

If the depositor fails to comply with the notice, the warehouseman can sell the goods by public auction. [86/171]

The proceeds of the public auction must be appropriated as provided by Sections ~~839~~ 898 and ~~840~~ 899.

## CHAPTER II.

## WAREHOUSE RECEIPT AND WARRANT.

~~824~~ **882**. — If required by the depositor, the warehouseman must deliver to him a document taken out from a special counterfoil Register and including a warehouse receipt and a warrant.

~~825~~ **883**. — The warehouse receipt ~~is a document by the indorsement of which the rights and liabilities of the depositor are transferred to the indorsee receipt~~ entitles the depositor to transfer the ownership of the goods to another person by indorsement.

~~826~~ **884**. — The warrant ~~is a document by the indorsement of which the goods mentioned in it may be pledged to the indorsee~~ entitles the depositor to pledge the goods mentioned in it by indorsement and without being delivered to ~~him~~ the indorsee.

Provided that when the depositor wants to pledge the goods, he must separate the warrant from the warehouse receipt and deliver the former to the indorsee.

~~827~~ **885**. — The warehouse receipt and the warrant must each bear the same serial number as mentioned in the counterfoil, and be signed by the warehouseman. [86/172]

They shall contain the following particulars:

1) The name or trade name and the address of the depositor.

2) The place of storage.

3) The remuneration for storage.

4) The nature of the goods stored, their weight or bulk and the nature, number and marking of the packages, if any.

5) The place where, and the time when, the receipt and the warrant are made out.

6) The period for which the gooks are stored, if any has been fixed.

7) If the goods stored are insured, the amount of the insurance, the period for which the goods are insured and the name or trade name of the underwriter.

~~The receipt and the warrant must each be signed by the warehouseman.~~

The warehouseman must enter the same particulars in the counterfoil.

~~828~~. — ~~The fact and date of the issue of the warrant and the serial number of such warrant must be stated in the warehouse receipt.~~

~~829~~. — ~~The fact of the issue of the warehouse receipt and warrant must be entered in the books of the warehouseman together with the particulars and serial numbers of such warehouse receipt and warrant.~~

**886**. — When the depositor indorses the warrant to a pledgee, the parties must mention such indorsement upon the warehouse receipt.

If such mention is not made, the pledge cannot be set up against a further buyer of the goods.

**887**. — When the warrant is indorsed and delivered to the pledgee, the depositor and the pledgee shall certify on the warrant that they have made on the warehouse receipt the mention provided in the foregoing section. [86/173]

**888**. — When the depositor pledges the goods and delivers the warrant to an indorsee, such indorsee must notify in writing to the warehouseman the amount of the obligation for the security of which the goods are pledged, the interest to be paid and the day of maturity of the obligation; and upon such notification the warehouseman must enter such particulars in the counterfoil.

If such entry is not made in the counterfoil, the pledge cannot be set up against the creditors of the depositor.

~~830~~ **889**. — The holder of a warehouse receipt can require the warehouseman to divide the goods stored and to deliver to him a separate warehouse receipt for each part. In such case, the holder must return the original warehouse receipt to the warehouseman.

The expenses for such division and for the delivery of the new receipt or receipts must be borne by the holder.

~~831~~ **890**. — The ownership of the goods stored can be transferred only by indorsement on the warehouse receipt. [86/174]

~~832~~ **891**. — The goods stored can be pledged only by indorsement of the warrant. After the warrant has been indorsed, the goods may be pledged to a second pledgee by indorsing the warehouse receipt in the same way as a warrant.

~~833~~ **892**. — As long as the goods stored are not pledged, the warehouse receipt and the warrant cannot be transferred separately.

~~834~~ **893**. — The first indorsement on a warrant must mention the amount of the obligation for the security of which the goods are pledged,

the interest to be paid and the day of maturity of the obligation.

~~The same particulars must be noted by the first pledgee on the warehouse receipt with his signature, otherwise the first pledgee and the subsequent pledgees cannot set up their right of pledge against the holder of the warehouse receipt.~~

~~835~~ **894**. — The delivery of the goods stored ~~can~~ may be obtained only on surrender of the warehouse receipt.

~~836~~ **895**. — If a warrant has been ~~issued~~ separated and indorsed to a pledgee, the delivery of the goods ~~can~~ may be obtained only on surrender of both the warehouse receipt and the warrant. [86/175]

However, the holder of the warehouse receipt can at any time have the goods returned to him on depositing with the warehouseman the whole amount of the obligation entered in the warrant, with interest up to the date when the obligation is due.

The amount so deposited must be paid by the warehouseman to the holder of the warrant upon surrender of such warrant.

~~837~~ **896**. — If the obligation for which the goods have been pledged is not performed on the day of its maturity, the holder of the warrant is entitled to have the goods sold by public auction by the warehouseman, provided that the public auction shall not be held less than eight days after the day of maturity of the obligation.

~~838~~ **897**. — The holder of the warrant must notify the depositor by registered letter of the day and time when, and of the place where, the auction shall be held.

~~839~~ **898**. — The warehouseman must deduct from the nett proceeds of the public auction the sums due to him in connection with the storage, and out of the balance he must, on surrender of the warrant, pay to the holder thereof the amount due to him. [86/176]

Any surplus must be paid to the second pledgee on surrender of the warehouse receipt or, if there is no second pledgee or after he has been satisfied, to the holder of the warehouse receipt.

~~840~~ **899**. — If the nett proceeds of the public auction are not sufficient to satisfy the holder of the warrant the warehouseman must return the warrant to the holder stating thereon the amount paid, and make an entry

thereof in his books.

~~841~~ **900**. — The holder of the warrant can have recourse for the amount unpaid against all or any of the prior indorsers, jointly or separately, provided that the public auction has been held within one month after the day of maturity of the obligation.

~~842~~ **901**. — As far as circumstances admit, the provisions of this Code concerning promissory notes apply to warrants and to warehouse receipts indorsed as warrants. [86/177]

~~843~~ **902**. — If a warehouse receipt or a warrant has been lost or stolen, the holder on giving proper security can require the warehouseman to deliver him a new receipt or warrant.

# TITLE ~~XIV~~ XV.

# AGENCY.

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## CHAPTER I.

## GENERAL PROVISIONS.

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~~844~~ **903**. — A contract of agency is a contract whereby a person, called the principal, directs another person, called the agent, to act for him and the agent agrees to do so.

~~845~~ **904**. — Agency may be express or implied. [86/178]

~~846~~ **905**. — An employee is presumed to have an implied authority to do for his employer whatever is customary in the course of his employment.

~~847~~ **906**. — The *compradore* of a Bank is presumed to have no authority to bind his employer.

~~848~~ **907**. — Unless refused at once, an offer of agency is deemed to be accepted by the agent if it refers to acts to be done in the ordinary course of his business or which the agent offered to do by a notice or advertisement addressed to the public.

~~849~~ **908**. — Acts done by an agent on behalf of an incapacitated principal are valid only in so far as they would be valid if done by the incapacitated person himself.

~~850~~ **909**. — Agency is void in so far as the principal directs the agent to do acts which by nature or by law cannot be done through representatives. [86/179]

~~851~~ **910**. — The principal who employs an incapacitated person as an agent is bound by the acts of that agent in the same way as if he was capable.

But the liability of the agent to the principal is governed by the provisions concerning capacity.

~~852~~ **911**. — If the principal appoints an agent without limiting or specifying the nature or extent of his authority, the agent is said to have a general authority.

~~853~~ **912**. — If the nature or extent of his authority is limited or specified, the agent is said to have a special authority.

~~854~~ **913**. — The agent who has a special authority can do on behalf of his principal whatever is necessary for the due execution of the matters entrusted to him. [86/180]

~~855~~ **914**. — The agent who has a general authority can do anything on behalf of his principal, except:

1) Sell immovable property.

2) Make a gift.

3) Make a compromise.

4) Enter an action in Court.

5) Submit a dispute to arbitration.

~~856~~ **915**. — In case of emergency, the agent can do in order to protect his principal from loss all such acts as would be done by a person of ordinary prudence in his own case.

~~857~~ **916**. — The agent is only entitled to receive a remuneration in the cases provided by agreement or by custom.

~~858~~ **917**. — If several agents have been appointed by the same principal for the same matters, it is presumed that they cannot act separately. [86/182]

## CHAPTER II.

## DUTIES OF THE AGENT TO THE PRINCIPAL.

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~~859~~ **918**. — The agent is bound to act for his principal according to the directions given by the principal or, in the absence of such directions, according to the custom and with such care as may be expected from a person of ordinary prudence.

If the agent acts otherwise, he must make compensation for any injury

which the principal may sustain therefrom ; and, if any profit accrues, he must account for it to the principal.

~~860~~ **919**. — If required, the agent must at any reasonable time give information to his principal as to the condition of the matters entrusted to him.

~~861~~ **920**. — After determination or extinction of the agency, the agent must as soon as possible report to the principal how the matters have been executed. [86/184]

~~862~~ **921**. The agent must transfer to the principal the rights which he has acquired in his own name but on behalf of the principal.

~~863~~ **922**. — The agent must hand over to the principal all the monies and other properties which he receives in the execution of the agency.

~~864~~ **923**. — If the agent has used for his own benefit money which he ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when he used it for his own benefit.

## CHAPTER III. [86/186]

## DUTIES OF THE PRINCIPAL TO THE AGENT.

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~~865~~ **924**. — The principal is bound to reimburse the agent for any advances made or expenses incurred by him in his capacity as agent and within the scope of his authority.

Interest is due by the principal to the agent on such advances or expenses from the day when they were made.

~~866~~ **925**. — The principal is bound to make compensation to the agent for the consequences of acts done by him in his capacity as agent and within the scope of his authority.

~~867~~ **926**. — The principal must, if so required, advance to the agent such sums as are necessary for the execution of the matters entrusted to him.

~~868~~ **927**. — The remuneration of the agent shall be fixed by agreement. [86/188] In the absence of any agreement, it shall be governed by custom.

~~869~~ **928**. — In the absence of any agreement or custom as to the time of payment, remuneration is payable only after the determination or extinction of the agency.

~~870~~ **929**. — The agent is not entitled to remuneration in respect of that part of his agency which he has misconducted.

~~871~~ **930**. — The agent can withhold, out of any sum received by him on account of the principal in the execution of the agency, all monies due to himself for advances, expenses or remuneration.

~~872~~ **931**. — If any of the monies due to the agent are not paid, the [86/190] agent can exercise over any property of the principal in his possession by reason of the agency the rights described in Sections ~~673~~ 741, ~~674~~ 742 and ~~675~~ 743 concerning deposit.

## CHAPTER IV.

## LIABILITY OF PRINCIPAL AND AGENT TO THIRD PERSONS.

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~~873~~ **932**. — The principal is bound to third persons by the acts which the agent has made within the scope of his authority and in the name of the principal.

A limitation of authority which is not customary or is not inherent in the nature of the matters entrusted cannot be set up against third persons who had no knowledge of it.

~~874~~ **933**. — A person who expressly or impliedly represents another person as his agent or knowingly allows another person to be represented as his agent, is liable to third persons in good faith in the same way as if such person was his agent.

~~875~~ **934**. — A principal who represents his agent or knowingly allows [86/191] his agent to be represented as having a wider authority than he actually has is liable to third persons in good faith in the same way as if the agent had such wider authority.

~~876~~ **935**. — If a person does an act without authority or beyond the scope of his authority such act does not bind the principal unless he expressly or impliedly ratifies it.

~~877~~ **936**. — If the principal does not ratify the act, the person who has acted as agent is personally liable to third persons, unless he proves that such third persons knew that he was acting without authority or beyond the scope of the authority.

~~878~~ **937**. — A principal is not bound by a contract entered into by his agent with a third person, if the contract was entered into by the agent in consideration of any property or other advantage given or promised to him by such third person.

~~879~~ **938**. — Notifications made by, or to the agent within the scope of his authority are deemed to be notifications made by, or to, the principal. [86/193]

## CHAPTER V.

## EXTINCTION OF AGENCY.

~~880~~ **939**. — Agency is extinguished in the following cases :

1) By the execution of the agency being completed.

2) If the authority was given for a limited period of time, by the expiration of such time.

3) By the death of the principal or of the agent.

4) By the principal becoming incapacitated.

~~881~~ **940**. — Agency is determined by the principal revoking the authority or the agent renouncing the agency.

~~882 (1st sentence)~~ **941**. — The principal can revoke the authority and the agent renounce the agency at any time. [86/194]

~~882 (2nd sentence)~~ **942**. — The party who determines the agency at a time which is inconvenient to the other party is liable to such party for any injury resulting therefrom, unless the determination of the agency was caused by some unavoidable necessity.

~~883~~ **943**. — When agency is extinguished by the principal dying or becoming incapacitated, the agent is bound to take all reasonable steps to

protect the interests entrusted to him until the heirs or representatives of the principal can themselves protect such interests.

~~884~~ **944**. — When agency is extinguished by the death of the agent, the heirs of the agent are bound to notify the principal and to take all reasonable steps to protect the interests entrusted to the agent until the principal can himself protect such interests.

~~885~~ **945**. — The principal is bound to the agent for the acts done by him before he knew or ought to have known of the determination or extinction of the agency. [86/196]

~~886~~ **946**. — The agent is bound to the principal to continue the execution of the agency until the time when the principal knows or ought to have known of the renunciation by the agent.

~~887~~ **947**. — The principal is not bound to third persons for the consequence of acts done by the agent after determination or extinction of the agency, if such persons knew or ought to have known of the extinction.

~~888~~. — ~~Determination or extinction of the agency for any cause whatsoever is deemed to be known to third persons after three successive advertisements in a local paper.~~

~~889~~ **948**. — On determination or extinction of the agency the principal can require the surrender of any written authority delivered to the agent.

## CHAPTER VI. [86/197]

## SUBAGENCY.

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~~890~~ **949**. — The agent cannot appoint a subagent, unless he be allowed by the principal to do so, or unless by custom a subagent may be appointed.

~~891~~ **950**. — An agent who has appointed a subagent although he was not allowed by the principal or by custom to do so is liable for all the acts done by that subagent in such capacity.

~~892~~ **951**. — The agent who has lawfully appointed a subagent is not liable to the principal for the acts done by the subagent unless the

principal proves that the agent has not selected the subagent with such care as may be expected from a person of ordinary prudence.

~~893~~ **952**. — If the discretion left to the agent for the appointment of a subagent has been limited to persons designated by name by the principal, the agent is not liable for the acts done by any such subagent.

~~894~~ **953**. — The principal has a direct cause of action against the subagent for his rights arising out of the subagency. [86/198]

~~895~~ **954**. — The subagent has a direct cause of action against the principal for his rights arising out of the subagency.

~~896~~ **955**. — The principal is bound to third persons by the acts done by a lawfully appointed subagent within the scope of the authority and in the name of the principal, in the same way as if such acts were done by the agent.

## CHAPTER VII.
## IMPORTATION AGENTS.

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~~897~~ **956**. — ~~Importation agents, whether called agents, commission agents, representatives or otherwise are personally liable for the execution of the contracts entered into by them as such.~~ อันว่าตัวแทนรับสั่งของ คือบุคคลซึ่งในทางค้าขายของเขาย่อมทำการซื้อ ฤๅขายของอันเปนของบุคคลอื่นในนามของตนเอง ฤๅรับจัดการค้าขายเปลี่ยนมืออย่างอื่นแทนบุคคลอื่น [?????]

ตัวแทนรับสั่งของย่อมรับผิดชอบแต่ลำพังตนเอง เว้นแต่เมื่อทำการโดยแสดงออกชัดว่าทำการแทนตัวการและเปิดเผยนามตัวการ [86/199]

แม้กระนั้นก็ดี ถ้าตัวการอยู่ต่างประเทศและมีภูมิลำเนาในต่างประเทศ ท่านว่าตัวแทนจะต้องรับผิดชอบแต่ลำพังตนเองทุกประการ เว้นแต่จะได้มีข้อสัญญากันไว้อย่างอื่น

# TITLE ~~XV~~ XVI.

# BROKERAGE.

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~~898~~ **957**. — A broker is a person who acts as intermediary between other persons for the negotiation of contracts.

The remuneration which may be due to a broker for his services is called brokerage.

~~899~~ **958**. — A broker who has been instructed by a party not to disclose his name shall not communicate it to the other party.

~~900~~ **959**. — A broker is not personally liable for the execution of the contracts entered into through his mediation. [86/203]

However when a broker has not disclosed to one party the name of the other party, he is liable for performance to the former party.

~~901~~ **960**. — A broker who has been instructed by a party to sell or buy property at a fixed price may be himself the buyer or the seller, provided he gives notice thereof to that person.

In such case the broker incurs the same liability as an ordinary party to a contract of sale, but he is still entitled to charge brokerage.

~~902~~ **961**. — A broker is presumed to have no authority to receive on behalf of the parties the payments or other prestations due in ~~execution~~ performance of the contract.

~~903~~ **962**. — The promise to pay brokerage is implied unless the services, under the circumstances of the case, shall have been expected to be rendered gratuitously.

~~904~~ **963**. — No brokerage is due to the broker unless the contract is the result of his services. [86/204]

~~905~~ **964**. — A broker loses his right to brokerage if he agrees to accept brokerage from both parties to the contract without their consent.

~~906~~ **965**. — The brokerage shall be fixed by agreement. In the absence of any agreement, it shall be governed by custom.

If the brokerage agreed upon is excessive, the Court can reduce it.

# TITLE ~~XVI~~ XVII.

# COMPROMISE.

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~~907~~ **966**. — A contract of compromise is a contract whereby the parties agree to settle a dispute between them by mutual concessions.

~~908~~ **967**. — A contract of compromise ~~referring to property the sale of which is subject to the execution of an official document~~ is void unless made in writing ~~before the proper official~~. [86/206]

~~909~~ **968**. — The effect of the compromise is to extinguish the claims abandoned by each party and to secure to each party the rights which are declared to belong to him.

~~910~~ **969**. — The parties to a compromise are liable for defects or for eviction as provided in the Title concerning sale.

~~911~~ **970**. — Cancellation of a compromise on the ground of mistake is limited to the following cases :

1) Mistake as to the identity of one of the parties to the compromise.

2) Compromise based on forged or invalid documents.

~~912~~ **971**. — A compromise based on forged or invalid documents cannot be cancelled by the Court if, at the time of the compromise, all the parties knew that such documents were forged or invalid. [86/207]

# TITLE ~~XVII~~ XVIII.

# GAMBLING AND BETTING.

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~~913~~ **972**. — Gambling or betting contracts are void unless expressly authorized by law.

~~914~~ **973**. — If a person, in order to pay a void gambling or betting debt, agrees to incur another obligation, such obligation is void.

But a bill subscribed or indorsed according to Title XXI on bills in order to pay a gambling or betting debt is valid in the hands of a holder in good faith.

~~915~~ **974**. — A person who has knowingly performed a gambling or betting contract is not entitled to restitution. [86/210]

# TITLE ~~XVIII~~ XIX.

# CURRENT ACCOUNT.

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~~916~~ **975**. — A contract of current account is a contract whereby two persons agree that transactions between them shall be entered in a separate account and that from time to time the respective obligations shall be set off and only the difference paid.

~~917~~ **976**. — The parties can agree to have several current accounts at the same time.

~~918~~ **977**. — The entry of a bill in a current account is presumed to be made on condition that the bill will be paid. If the bill is not paid, the entry may be cancelled.

~~919~~ **978**. — A surety for a party to a current account guarantees the payment of the difference due by him when the balance is struck. [86/212]

~~920~~ **979**. — The balance must be struck at the time agreed by the parties. If no time has been agreed, the balance must be struck at the time fixed by the custom.

~~921~~ **980**. — Either party can at any time determine the contract of current account and have the balance struck.

~~922~~ **981**. — The contract of current account is extinguished and the balance must be struck when one party dies or becomes incapacitated.

~~923~~ **982**. — The difference, if not paid, bears interest from the day when the balance was struck.

~~924~~ **983**. — The obligations, resulting from a current account are extinguished by prescription five years after the balance was struck. [86/213]

# TITLE ~~XIX~~ XX.

# INSURANCE ~~AGAINST LOSS~~.

## CHAPTER I.

## GENERAL PROVISIONS.

~~925~~ **984**. — A contract of insurance is a contract whereby a person agrees to make compensation for a contingent loss and another person agrees to pay therefor a sum of money called premium.

~~926~~ **985**. — In the present Title :

"insurer" means ~~The~~ the party who agrees to make compensation ~~is called the underwriter~~ or to pay a sum of money;

"assured" means ~~The~~ the party who agrees to pay the premium ~~is called the insurer~~;

"beneficiary" means ~~The~~ the person who is to receive compensation ~~is called the insured~~ or to be paid a sum of money. [86/215]

The assured and the beneficiary may be one and the same person.

มาตรา ๙๘๖. — ถ้าในเหตุที่ทำสัญญาประกันภัยกันนั้น หามูลประกันภัยกันมิได้ไซร้ สัญญาอันนั้น ท่านว่าย่อมเปนโมฆะ

~~947~~ **987**. — When the parties to a contract of insurance ~~on life~~, in fixing the amount of the premium, took into consideration a particular risk, and such risk ceases to exist, the ~~insurer~~ assured is entitled to have the premium reduced proportionately for the future.

~~944 (1st paragraph)~~ **988**. — If at the time of making the contract ~~of insurance on life~~, the assured, or, in case of insurance on life, the person upon whose life or death the payment of the sum payable depends knowingly omits to disclose facts which would have induced the ~~underwriter~~ insurer to raise the premium or to refuse to enter into the contract, or knowingly makes false statements in regard to such facts, the contract is voidable.

~~945~~ **989**. — If the ~~underwriter~~ insurer knew of the facts mentioned in [86/216]

Section 988 or knew the statements to be false, or would have known of them or of their falsity if he had exercised such care as may be expected from a person of ordinary prudence, the contract shall be valid.

~~927~~ **990**. — A contract of insurance is void unless made in writing.

**991**. — A policy of insurance shall be made in two copies at least, one of them having to be delivered to the assured.

The policy must be signed by the insurer and contain :

1) The subject of the insurance;

2) The risk taken by the insurer;

3) The value of the insurable interest, if it has been fixed;

4) The sum insured;

5) The amount of the premium and manner of its payment;

6) The time of the commencement and of the end of the insurance;

7) The name or trade name of the insurer; [86/217]

8) The name or trade name of the assured;

9) The name of the beneficiary, if any;

10) The date of the contract of insurance.

11) The place where, and the date when, the policy was made.

**992**. — Contracts of Maritime insurance remain under the provisions of the Maritime Law.

## CHAPTER II.
## INSURANCE AGAINST LOSS.

### PART I. — General Provisions.

**993**. — "Loss", within the meaning of this Chapter, includes any injury which may be estimated in money.

~~928~~ **994**. — If two or more contracts of insurance are made simultaneously for the same loss and the total amount of the sums insured exceeds the actual amount of the loss, the insured is entitled to receive compensation up to such amount only.

Each underwriter must pay a part of the actual loss in proportion to the sum insured by him. [86/218]

Contracts of insurance are deemed to have been made simultaneously if their dates are the same.

~~929~~ **995**. — If two or more contracts of insurance are made successively, the first ~~underwriter~~ insurer is first liable for the loss. If the amount paid by him is not sufficient to cover the loss, the next ~~underwriter~~ insurer is liable for the difference and so on, till the loss is covered.

**996**. — Before the risk begins, the assured may determine the contract, but the insurer is entitled to one half of the premium.

**997**. — If, during the period of insurance, the insurable interest is substantially reduced, the assured is entitled to a reduction of the sum insured and of the premium.

The reduction of the premium shall take effect only for the future.

**998**. — The insurer cannot claim a reduction of the amount of the compensation to be paid by him, unless he proves that the insurable interest as agreed by the parties was substantially too high. [86/219]

~~930~~. — ~~If a person who has insured his own property transfers the ownership of such property to another person, the contract of insurance is extinguished.~~

~~The foregoing provision does not apply and the contract of insurance is transferred with the property in the following cases :~~

~~1) When the property is transferred by way of inheritance.~~

~~2) When the underwriter, having received notice of the transfer, agrees to it.~~

**999**. — If the assured transfers the subject of insurance for which a premium has been paid, the right to receive compensation is transferred with it.

If, by such transfer, the risk is substantially altered or increased, the contract of insurance becomes void.

**1000**. — If the insurer has been adjudged bankrupt, the assured may

require proper security to be given him failing which he may terminate the contract.

If the assured is adjudged bankrupt, the same rules shall apply correspondingly; however when a premium has been already paid, under which insurance is running for a certain period of time, the insurer cannot determine the contract before such period expires.

~~931~~. — ~~The underwriter is bound to pay compensation for the actual amount of the loss.~~

~~The actual amount of the loss shall be valued at the place where, and at the time when, the loss occurred. The sum insured is presumed to be a correct basis for such valuation.~~

~~The compensation cannot exceed the sum insured.~~

~~932~~. — ~~The actual amount of the loss includes:~~

~~1) The damage caused to the insured property by reasonable measures used for preventing the loss.~~

~~2) All reasonable expenses incurred for preserving the insured property from the loss.~~

**1001**. — The insurer is bound to pay compensation for : [86/220]

(1) The actual amount of the loss;

(2) The damage caused to the insured property by reasonable measures taken for preventing the loss;

(3) All reasonable expenses incurred for preserving the insured property from the loss.

The actual amount of the loss shall be valued at the place where, and at the time when, the loss occurred. The sum insured is presumed to be a correct basis for such valuation.

The compensation cannot exceed the sum insured.

~~934~~ **1002**. — The expenses of valuation of the loss must be borne by the ~~underwriter~~ insurer.

~~936~~. — ~~The underwriter is liable even if the loss is caused by the fault of the insured, unless the insured failed to comply with a particular clause of the contract.~~

**1003**. — The insurer is not liable if the loss or other event specified in the contract is caused by the bad faith or the gross negligence of the assured or the beneficiary.

**มาตรา ๑๐๐๔** — ถ้าคู่สัญญามิได้ตกลงกันไว้เปนประการอื่น ท่านว่าผู้รับประกันภัย [86/221]
ไม่ต้องรับใช้ในเมื่อความวินาศได้เกิดขึ้นโดยสภาพ ฤๅเพราะความชำรุดบกพร่องของวัสดุ
อันได้เอาประกันภัยไว้นั้นเอง ฤๅเพราะความเสื่อมเปลืองอันเปนธรรมดาแห่งวัสดุนั้น

~~935~~ **1005**. — If the loss is caused by the fault of a third person, the ~~underwriter~~ insurer who pays compensation is subrogated, up to the amount paid by him, to the rights of the insurer and of the insured against such third person.

If the ~~underwriter~~ insurer has paid part only of the ~~amount of the loss~~ compensation, he cannot exercise the rights ~~mentioned in the foregoing paragraph~~ to the prejudice of the right~~s which the insurer or the insured retain against~~ of the assured or of the beneficiary to claim from the third person for the remainder of the loss.

~~937~~ **1006**. — If the contract of insurance provides that, on the happening of the loss, the ~~insurer or the insured~~ assured or the beneficiary are bound to inform the ~~underwriter~~ insurer within a certain period of time, no such notice is necessary if the ~~underwriter~~ insurer knew otherwise within that period of the happening of the loss.

~~938~~ **1007**. — The liability for payment of compensation is extinguished [86/222]
by prescription two years after date of loss.

The liability for payment of a premium is extinguished by prescription two years after the date when the premium became due.

## PART II. — Special Rules for Insurance on Carriage.

~~933~~ **1008**. — A contract of insurance on carriage covers every loss which the goods carried may sustain from the time when they are received by the carrier until they are delivered to the consignee, and the amount of compensation ~~must be~~ is fixed according to the value which the goods carried would have had on arrival at the place of destination.

**1009**. — If the goods carried are insured in course of their

transportation, the insurable interest of such goods includes their value at the place where and at the time when they have been received by the carrier, increased by the freight to the place of delivery to the consignee and other expenses connected with transportation.

Profits to be made at the time when the goods were to be delivered, are included in the insurable interest only if there is an express agreement to that effect.

**1010**. — Unless otherwise specified by the contract, a contract of insurance on carriage remains valid if, under the necessities of transportation, the carriage is interrupted for a time, or there are modifications in the route or manner of carriage. [86/223]

**1011**. — The policy of insurance on carriage must contain in addition to the particulars specified in Section 867 :

(1) The specification of the route and manner of the carriage;

(2) The name or trade name of the carrier;

(3) The place where the goods are to be received and delivered;

(4) The period fixed for the carriage, if any.

## PART III. — Guarantee Insurance.

**1012**. — Guarantee insurance is a contract of insurance where the insurer agrees to make compensation, on behalf of the assured, for a loss caused to another person and for which the assured is responsible.

The injured person is entitled to receive the compensation actually due to him from the insurer directly, but such compensation cannot exceed the sum due by the insurer under the contract. In an action between the injured person and the insurer, the injured person shall summon the assured to appear in the action. [86/224]

The insurer is not discharged from his liability to the injured person by delivering the compensation to the assured, unless he proves that the compensation has been paid by the assured to the injured person.

**1013**. — If the compensation paid by the insurer under judgment does

not cover the whole amount of the loss, the assured remains liable for the difference unless the injured person has failed to summon the assured to appear in the action as provided by the foregoing Section.

## ~~TITLE XX.~~

## CHAPTER III.

## INSURANCE ON LIFE.

~~939~~. — ~~A contract of insurance on life is a contract whereby the underwriter agrees to pay to the beneficiary a sum of money, dependent upon the life or death of a person, and the insurer agrees to pay him a premium therefor.~~

**1014**. — In a contract of insurance on life, the payment of the sum of money is dependent upon the life or death of a person.

~~940~~. — ~~The beneficiary may be the insurer or any third person.~~

~~941~~ **1015**. — The sum payable may be a lump sum or an annuity, as may be agreed between the parties. [86/225]

~~942~~. — ~~The person upon whose life or death the payment of the sum depends may be the insurer, beneficiary or any third person.~~

~~943~~ **1016**. — If the ~~insurer~~ assured is not the beneficiary, he has the right to transfer the benefit of the contract to another person ~~so long as the beneficiary has not notified the underwriter in writing of his intention to take such benefit~~ unless he has delivered the policy to the beneficiary and the beneficiary has notified in writing the insurer his intention to take the benefit of the contract.

~~After the beneficiary has notified in writing the underwriter of his intention to take the benefit of the contract, no transfer is possible unless the beneficiary agrees to it.~~

~~944 (2nd paragraph)~~ **1017**. — ~~But the underwriter must~~ In case of cancellation of the contract under Section 988, the insurer has to return to the insurer or to his heirs the redemption value of the policy.

~~946~~ **1018**. — If the age of the person upon whose life or death the payment of the sum depends has been incorrectly stated, ~~the contract of insurance shall not be voidable, but the sum payable shall be the sum to which the beneficiary would have been entitled if the age of the person had been correctly stated~~ in consequence of which a lower premium has been fixed, the sum to be paid by the insurer shall be reduced in the same proportion.

However the contract is voidable if it is proved by the insurer that the real age at the time when the contract was made, was out of the age-limit according to his business-practice. [86/226]

~~948~~ **1019**. — The ~~insurer~~ assured is entitled at any time to determine the contract of insurance by discontinuing to pay the premium. If the premium had been paid for at least three years he is entitled to receive from the ~~underwriter~~ insurer the surrender value of the policy or a paid up policy.

~~949~~ **1020**. — Whenever the sum is to be paid on the death of a person, the ~~underwriter~~ insurer is bound to pay it on such death unless :

1) Such person voluntarily committed suicide within one year after the date of the contract, or

2) Such person was intentionally killed by the beneficiary.

In case number 2, the ~~underwriter~~ insurer is bound to pay the ~~insurer~~ assured or to his heirs the redemption value of the policy.

~~950~~ **1021**. — If the death is caused by the fault of a third person, the ~~underwriter~~ insurer cannot claim compensation from that person, but the heirs of the deceased do not lose their right to compensation from the third person, even if the sum payable under the contract of insurance on life reverts to them. [86/227]

~~951~~ **1022**. — If the insurer has made an insurance payable on his death in favour of his heirs, the sum payable shall be part of the assets of his estate available for his creditors.

If the insurance has been made in favour of a particular person, only the amount of the premiums paid by the insurer shall be part of the assets of his estate available for his creditors.

# TITLE XXI.
# BILLS.

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## CHAPTER I.
## GENERAL PROVISIONS.

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~~952~~ **1023**. — Bills within the meaning of this Code are of three kinds, namely: bills of exchange, promissory notes and cheques.

~~953~~. — ~~References to matters provided in this Title are void unless written on the bill.~~

~~954~~ **1024**. — If matters not provided in this Title are written on the bill, they have no effect under the bill.

~~955~~ **1025**. — A person who puts his signature upon a bill is liable thereon according to the tenor of such bill.

~~956~~ **1026**. — A person who affixes on a bill a mere mark, such as a cross or a finger print, even if certified by witnesses, cannot exercise the rights and does not incur the liabilities resulting from the specific rules concerning bills. He is only bound by the general rules concerning obligations. [86/228]

~~957~~ **1027**. — If an agent puts his signature upon a bill without stating that he is acting on behalf of a principal, the agent is liable under the bill but the principal is not.

~~958~~ **1028**. — Although one or more of the parties to a bill may be incapacitated, the bill is valid as regards capable parties.

~~959~~ **1029**. — No extension of time can be granted by the Court for the payment of a bill.

~~960~~ **1030**. — Holder means a person who is in possession of a bill as a payee or indorsee, or the bearer if the bill is payable to bearer. [???]

~~961~~ **1031**. — The indorsee of a bill is not a holder unless the first

indorsement be signed by the payee and each subsequent indorsment be signed by the person described in the preceding indorsement, so that there be an unbroken series of indorsements.

962 **1032**. — The expression *prior parties* includes the drawer or maker of the bill and the prior indorsers.

963 **1033**. — When there is no room on a bill for further indorsements, a slip of paper, called an allonge, may be attached thereto. It becomes part of the bill.

The first indorsement on the allonge must be written partly on the bill itself and partly on the alionge.

## CHAPTER II. [86/232]

## BILLS OF EXCHANGE.

### PART I. — DRAWING OF A BILL OF EXCHANGE.

964 **1034**. — A bill of exchange is a written instrument by which a person, called the drawer, orders another person, called the drawee, to pay a sum of money to, or to the order of, a person called the payee.

965 **1035**. — A bill of exchange must be dated, signed by the drawer, and must contain the following particulars :

1) A sum certain in money.

2) The name or trade name of the drawee.

3) The name or trade name of the payee.

4) An unconditional order to pay.

5) A day of maturity.

6) The place of payment.

966 **1036**. — The sum must be expressed at least once in letters.

967 **1037**. — If the sum is expressed in letters and figures and the two [86/234] expressions do not agree, the bill of exchange is good for the sum expressed in letters.

968 **1038**. — If the sum is expressed several times in letters and the several expressions do not agree, the bill of exchange is good for the lowest sum only.

969 **1039**. — A stipulation as to interest in a bill of exchange is valid.

970 **1040**. — A person can draw a bill of exchange payable to himself or to his order.

971 **1041**. — A person can draw a bill of exchange upon himself.

972 **1042**. — A bill of exchange can be drawn payable to bearer. [86/236]

973 **1043**. — The drawer can insert in the bill of exchange a referee in case of need at the place of payment.

974 **1044**. — The maturity of the bill of exchange must be:

1) On a fixed day, or

2) At the end of a fixed period after the date of the bill, or

3) On demand, or at sight, or

4) At the end of a fixed period after sight.

975 **1045**. — If the drawer has not specified the maturity in the bill of exchange, the bill is payable on demand.

976. — A document which complies with the requirements of the present part is a bill of exchange within the meaning of this Code.

977 **1046**. — A document which does not comply with the requirements of the present part is not a bill of exchange within the meaning of this Code. [86/237]

## Part II. — EFFECTS OF A BILL OF EXCHANGE.

978 **1047**. — The drawer of a bill of exchange engages that it shall be accepted and paid according to its tenor and that, if it be dishonoured by non-acceptance or non-payment, he will pay it to the holder or to any indorser who has been compelled to pay it, provided that the requisite

proceedings on non-acceptance or non-payment be duly taken.

~~979~~ **1048**. — The drawer may specify in the bill of exchange that he assumes no liability or only a limited liability under the bill.

~~980~~ **1049**. — The drawer may specify in the bill of exchange that he waives some or all of the duties of the holder.

~~981~~ **1050**. — A debtor under a bill of exchange can set up against a person who makes a claim under such bill the following defences only: [86/239]

1) Defences resulting from the provisions of this Title XXI.

2) Defences which the debtor has personally against the claimant.

## Part III. — TRANSFER AND INDORSEMEMT.

~~982~~ **1051**. — A bill of exchange issued to a named payee may be transferred by indorsement unless the drawer of the bill has inserted in it a clause forbidding indorsement.

~~983~~ **1052**. — A bill of exchange payable to bearer is transferred by mere delivery. It may be also transferred by indorsement.

~~984~~ **1053**. — Any person, even if drawer, acceptor or prior indorser, who acquires a bill of exchange by indorsement, may again transfer it by indorsement.

~~985~~ **1054**. — An indorsement is made by writing the name or trade name of the indorsee on the bill of exchange, with the signature of the indorser. [86/241]

~~986~~ **1055**. — An indorsement may also be made by the mere signature of the indorser on the back of the bill of exchange. Such indorsement is called blank indorsement.

~~987~~ **1056**. — A bill of exchange bearing a blank indorsement may be transferred by mere delivery.

Any holder of a bill bearing a blank indorsement can fill up the indorsement.

~~988~~ **1057**. — When a bill of exchange payable to bearer has been transferred by indorsement, the bill ceases to be payable to bearer until it is indorsed to bearer or indorsed in blank.

~~989~~ **1058**. — An indorser may, in indorsing the bill of exchange, insert a referee in case of need at the place of payment. [86/243]

~~990~~ **1059**. — Indorsement must be for the whole amount of the bill of exchange. A partial indorsement is void.

~~991~~ **1060**. — The indorser of a bill of exchange engages that it shall be accepted and paid according to its tenor and that, if it be dishonoured by non-acceptance or non-payment, he will pay it to the holder or to a subsequent indorser who has been compelled to pay it, provided that the requisite proceeding on non-acceptance or non-payment be duly taken.

~~992~~ **1061**. — An indorser may, in indorsing the bill of exchange, specify that he assumes no liability or only a limited liability under the bill.

~~993~~ **1062**. — If an indorser specifies that he forbids further indorsements, he incurs no liability under the bill of exchange to subsequent indorsers. [86/245]

~~994~~ **1063**. — If the holder of a bill of exchange indorses it after the time for protest for non-acceptance or non-payment has elapsed, the indorsee acquires only the rights of his indorser.

~~995~~ **1064**. — A holder can by indorsement pledge the bill of exchange or give an authority to another person to collect it. The purpose of such indorsement must be stated on the bill.

~~996~~ **1065**. — Whenever a bill of exchange has been indorsed for pledge or collection, the indorsee cannot indorse it, except for the same purpose.

## Part IV. — ACCEPTANCE. [86/247]

### ~~1. — ACCEPTANCE BY DRAWEE.~~

~~997~~ **1066**. — The holder of a bill of exchange is entitled to present it at any time for acceptance to the drawee, unless there be a clause in the bill forbidding presentation for acceptance.

~~998~~ **1067**. — The holder of a bill of exchange payable at the end of a period after sight must present it for acceptance within one year from its date, or, if the drawer has specified a shorter time, within such time.

If the holder fails to present the bill for acceptance within the above mentioned period, he loses his rights under the bill against the prior indorsers.

~~999~~ **1068**. — If the drawee does not refuse to accept the bill of exchange on presentation, he is allowed till midday on the following day, to seek out the holder and accept it.

~~1000~~ **1069**. — Acceptance is made by a declaration of acceptance written on the bill of exchange with the signature of the drawee. [86/250]

~~1001~~ **1070**. — If the drawee merely puts his signature on the bill of exchange, he is deemed to have accepted it.

~~1002~~ **1071**. — If the bill of exchange is payable at the end of a period after sight, the acceptance must be dated.

~~1003~~ **1072**. — If the drawee omits to date his acceptance, any person can date it.

~~1004~~ **1073**. — If the acceptance is not dated, the last day of the period fixed for acceptance is deemed to be the day of acceptance.

~~1005~~ **1074**. — The drawee cannot cancel his acceptance. [86/251]

~~1006~~ **1075**. — The drawee may limit his acceptance to a part of the sum payable.

~~1007~~ **1076**. — If the drawee subjects his acceptance to ~~any other limitation than to part of the sum payable~~ [เปนอย่างอื่นนอกจากที่บัญญัติไว้ในมาตรา 1075 นั้น], acceptance is deemed to be refused.

~~1008~~ **1077**. — By acceptance the drawee becomes bound to pay the amount accepted on the day of maturity of the bill of exchange.

## Part V. — SURETYSHIP.

~~1036~~ **1078**. — Every party to a bill of exchange may be guaranteed by a surety.

~~1037~~ **1079**. — Suretyship is created by a signed statement to that effect on the bill of exchange. [86/254?]

~~1038~~ **1080**. — A person who not being the drawee merely puts his signature on the face of a bill of exchange is deemed to be a surety.

~~1039~~ **1081**. — Suretyship may be for part only of the amount of the bill of exchange.

~~1040~~ **1082**. — If the surety does not state on the bill of exchange for whom he is surety, he is deemed to be surety for the drawer.

~~1041~~ **1083**. — A surety who has performed his obligation is subrogated to the rights which the holder had against the guaranteed debtor and to the rights of such debtor against the prior parties.

## Part VI. — PAYMENT. [86/255?]

### ~~1. — GENERAL PROVISIONS.~~

~~1042~~ **1084**. — A bill of exchange is payable on the day of its maturity. The holder must present it for payment on that day.

~~1043~~ **1085**. — In order to fix the day of maturity of a bill of exchange payable at the end of a period after sight which has not been accepted, the day of presentation shall be considered as the day of acceptance.

~~1044~~ **1086**. — A bill of exchange payable on demand is payable on the day of its presentation.

~~1045~~ **1087**. — The holder of a bill of exchange payable on demand must present it for payment within one year from its date or, if the drawer has specified any shorter time, within such time.

~~1046~~ **1088**. — Payment can be obtained only on surrender of the bill of [86/256]

exchange. The payer can require the holder to give a receipt on the bill and to sign it.

~~1047~~ **1089**. — The holder of a bill of exchange cannot refuse part payment, although the bill has been accepted for its full amount.

~~1048~~ **1090**. — In case of part payment, the holder must note it on the bill of exchange and deliver a receipt to the payer.

~~1049~~ **1091**. — If a bill of exchange is not presented for payment on the day of maturity, the acceptor ~~can~~ may free himself from his liability by depositing the amount due on the bill.

~~1050~~ **1092**. — The holder of a bill of exchange cannot be compelled to receive payment of it before maturity, except in case of a documentary bill. [86/257]

"Documentary bill" means a bill of exchange which is transferred with, and cannot be transferred without, documents constituting evidence that goods which are in transit are pledged to secure either the payment of the bill on the date of its maturity or the acceptance by the drawee.

~~1051~~ **1093**. — If the holder grants an extension of time to the drawee, he loses his right of recourse against the prior parties who do not agree to the extension.

~~1052~~ **1094**. — Payment of a bill of exchange before the day of maturity is at the risk of the payer.

~~1053~~ **1095**. — The drawee is bound to refuse payment:

1) If it appears sufficiently that the person presenting the bill of exchange is not a holder or has no capacity to receive payment, or [86/259]

2) If the bill of exchange has been lost or obtained through an offence and due notice thereof has been given to the drawee.

~~1054~~ **1096**. — A payment made by a party to a bill of exchange avails for all parties subsequent to him.

~~2. — RIGHT OF RECOURSE IN CASE OF NON-PAYMENT.~~

## Part VII. — ACCEPTANCE OR PAYMENT FOR HONOUR.

### ~~3~~ 1. — ACCEPTANCE FOR HONOUR.

~~1028~~ **1097**. — If the drawee has failed to accept the bill of exchange, any person may, with the consent of the holder, accept the bill for the honour of any party liable thereon.

~~1029~~ **1098**. — The holder cannot refuse acceptance offered by a referee in case of need.

If he refuses it he loses his right of recourse against the prior parties.

~~1030~~ **1099**. — Acceptance by a referee in case of need or by a third person is called acceptance for honour. [86/262]

~~1031~~ **1100**. — An acceptance for honour is made by a declaration of acceptance on the bill of exchange with the signature of the acceptor.

~~1032~~ **1101**. — If the acceptor for honour does not designate in the bill of exchange the person for whom he accepts, the acceptance is deemed to have been made for the honour of the drawer.

~~1033~~ **1102**. — When a bill of exchange payable at the end of a period after sight is accepted for honour, its maturity is calculated from the date of such acceptance.

~~1034~~ **1103**. — If the drawee fails to pay the bill of exchange, the acceptor for honour is liable to the holder and to the parties subsequent to the person for whose honour he has accepted, for any amount unpaid on the bill up to the amount of his acceptance together with the expenses. [86/263]

But he is exempted from such liability if the holder fails :

1) To present the bill for payment on maturity to the drawee, and

2) To present the bill for payment to the acceptor for honour not later than the day following the day of maturity, and

3) To send a protest to the drawee within the proper time.

~~1035~~ **1104**. — Sections ~~1002~~ 1071 to ~~1007~~ 1076 apply to acceptance

for honour.

## ~~3~~ 2. — PAYMENT FOR HONOUR. [86/265]

~~1074~~ **1105**. — A bill of exchange accepted for honour must, on the day of maturity, be presented for payment first to the drawee.

If the drawee fails to pay it, the holder must, on the day of maturity or on the following day, present it for payment to the acceptor for honour.

If there is no acceptor for honour or if the acceptor for honour does not pay the holder must, within same period of time, present the bill for payment to the referee in case of need, if any.

~~1075~~ **1106**. — If the acceptor for honour or the referee in case of need fails to pay the fact must be stated in the notice of dishonour.

~~1076~~ **1107**. — If the holder fails to proceed as prescribed in sections ~~1017~~ 1124 and ~~1018~~ 1125 he loses his right of recourse against the person who has named the referee in case of need, or against the person in whose favour acceptance for honour has been made, and against the parties subsequent to them.

~~1077~~ **1108**. — If the bill of exchange is not paid on presentation, any person, even not a party to it, can pay it. [86/269]

The holder cannot refuse such payment. If he refuses, he loses his right of recourse against the party for whom payment was offered and against the subsequent parties.

~~1078~~ **1109**. — Payment by an acceptor for honour or by a referee in case of need or by a third person is called payment for honour.

~~1079~~ **1110**. — If several persons offer to pay a bill of exchange for honour, the holder must accept that payment which will discharge the greatest number of persons from their obligations.

~~1080~~ **1111**. — If a payer for honour who is not a referee in case of need or an acceptor for honour does not name the person for whose honour he pays, such payment is deemed to be made for the honour of the drawee.

~~1081~~ **1112**. — The holder must enter the fact of the payment for [86/270]

honour on the Post Office receipt for the protest for non-payment if such protest has been made. The holder must on payment of the sum due and of the expenses for protest deliver to the payer for honour the Post Office receipt and the bill of exchange.

~~1082~~ **1113**. — The payer for honour must, within ~~two~~ three days after date of payment, notify the payment to the person for whose honour he has paid and send the Post Office receipt for the protest, if any, to him.

~~1083~~ **1114**. — The payer for honour is subrogated to the rights which the holder had against the acceptor, the person for whose honour he has paid and the parties prior to such person.

~~1084~~ **1115**. — Sections ~~1046~~ 1088, ~~1047~~ 1089, ~~1048~~ 1090, ~~1050~~ 1092, ~~1052~~ 1094, ~~1053~~ 1095 and ~~1054~~ 1096 apply to payment for honour.

## Part VIII. — RIGHT OF RECOURSE. [86/271]

~~1009. — If the bill of exchange is presented for acceptance as provided by Sections 997 to 999 and the drawee fails to accept it, the holder has a right of recourse against all or any of the prior parties, jointly or separately, provided that he complies with the rules prescribed in Sections 1011 to 1018.~~

~~1055. — If a bill of exchange is presented for payment on the day of maturity and the drawee fails to pay it, the holder has a right of recourse against all or any of the prior parties, jointly or separately, provided that he complies with the rules prescribed in sections 1057 to 1064.~~

**มาตรา ๑๑๑๖** — ถ้าตั๋วแลกเงินได้ยื่นตามควรเพื่อให้รับรอง ฤๅเพื่อให้ใช้เงิน แล้วแต่กรณี และผู้จ่ายละเลยเสียไม่รับรอง ฤๅไม่ใช้เงินไซร้ ท่านว่าผู้ทรงตั๋วนั้นมีสิทธิจะไล่เบี้ยเอาแก่คู่สัญญาคนก่อน ๆ ทั้งหมด ฤๅแต่คนใดคนหนึ่งร่วมกัน ฤๅแยกกันก็ได้ หากว่าผู้ทรงได้ปฏิบัติต้องตามวิธีที่จะกล่าวไว้ในมาตราทั้งหลายต่อไปนี้

~~1010. — If the acceptance is limited to part of the sum payable, the holder has the right of recourse for the difference only.~~

~~1056. — If part only of a bill of exchange is paid, the holder has the right of recourse for the difference.~~

**มาตรา ๑๑๑๗** — ถ้าการรับรอง ฤๅการใช้เงินมีจำกัดแต่เพียงส่วนหนึ่งแห่งจำนวนเงินอันจะพึงจ่ายไซร้ ท่านว่าผู้ทรงตั๋วเงินนั้นมีสิทธิจะไล่เบี้ยเอาได้แต่เพียงในส่วนที่ยังขาด

~~1011~~ **1118**. — The holder must, on the day following the day of presentation, send to the drawee through the Post Office a notice called protest.

~~1057. — The holder must, on the day following the day of maturity, send to the drawee through the Post Office a notice called protest.~~

~~1012~~ **1119**. — The protest shall be entered by the Post Office in three copies ~~in the form provided by Schedule A attached to this Code~~.

~~1058. — The protest shall be entered by the Post Office in three copies in the form provided by Schedule B attached to this Code.~~

~~1013. — Each copy shall be signed by the clerk of the Post Office where the protest is made and shall bear the date stamp of such Office. It must contain the following particulars :~~

~~1) The date of the protest.~~

~~2) The date of the bill of exchange.~~

~~3) The name or trade name of the drawer.~~

~~4) The name or trade name of the drawee.~~

~~5) The amount of the bill of exchange.~~

~~6) The day of maturity of the bill of exchange.~~

~~7) The day of presentation.~~

~~8) The name or trade name and address of the holder.~~

~~9) A statement that the drawee can, during the three days next following the date of protest, seek out the holder and accept the bill of exchange on paying the expenses of protest.~~

~~1059~~ **1120**. — Each copy shall be signed by the clerk of the Post Office where the protest is made and shall bear the date stamp of such office. It must contain the following particulars : [86/273]

1) The date of protest.

2) The date of the bill of exchange.

3) The name or trade name of the drawer.

4) The name or trade name of the drawee.

5) The amount of the bill of exchange.

6) วันยื่นตั๋วเงินและ The day of maturity of the bill of exchange.

7) The name or trade name and address of the holder.

8) The amount payable to the holder, including expenses of protest.

9) A statement that the drawee can, within the three days next following the day of protest, seek out the holder เพื่อรับรองตั๋วเงินนั้น ฤ ~~and~~ pay that amount แล้วแต่กรณี โดยยอมเสียค่าคัดค้านให้ด้วยก็ได้.

~~1014~~ **1121**. — คำคัดค้านซึ่งจดหมายตราสินไว้เปนสามฉบับนั้น

Copy No. 1 being the protest shall be sent to the drawee under registered cover.

Copy No. 2 being the receipt for the protest shall be delivered to the holder.

Copy No. 3 being the original shall be kept by the Post Office.

~~1060~~. — ~~Copy No. 1 being the protest shall be sent to the drawee under registered cover.~~

~~Copy No. 2 being the receipt for the protest shall be delivered to the holder.~~

~~Copy No. 3 being the original shall be kept by the Post Office.~~

~~1015~~ **1122**. — If the bill of exchange is not accepted or not paid within the three days period, the bill is said to be dishonoured by non-acceptance and the holder must, within the four days next following, send notice of dishonour to the person or persons, against whom he intends to take recourse [86/278]

~~1061~~. — ~~If the bill of exchange is not paid within the three days period, the bill is said to be dishonoured by non-payment and the holder must, within the four days next following, send notice of dishonour to the person or persons against whom he intends to take recourse.~~

~~1016~~ **1123**. — If the drawee notes on the bill of exchange the fact and date of refusal of acceptance and signs such note, no protest is necessary and the holder must, within eight days from the date of refusal, send notice of dishonour to the person or persons against whom he intends to take recourse.

~~1062~~. — ~~If the bill of exchange is not paid within the three days period, the bill is said to be dishonoured by non-payment and the holder must, within the four days next following, send notice of dishonour to the person or persons against whom he intends to take recourse.~~

~~1017~~ **1124**. — The notice of dishonour must contain the date of the bill of exchange, the names or trade names of the drawer and drawee, the amount of the bill, the name or trade name and address of the holder, the date of the protest or of the refusal of acceptance, the fact that the bill was not accepted and the reason why the bill was not accepted or the fact that no reason was given for its non-acceptance.

คำบอกกล่าวขาดความเชื่อถือในกรณีไม่ใช้เงินนั้น ต้องมีรายการอย่างเดียวกันอนุโลมตามควรแก่การ และนอกจากนั้นต้องบอกวันตั๋วแลกเงินนั้นถึงกำหนดใช้เงินด้วย

~~1063~~. — ~~The notice of dishonour must contain the day of maturity of the bill of exchange, the names or trade names of the drawer and drawee, the amount of the bill, the name or trade name and address of the holder, the date of protest or of the refusal of payment, the fact that the bill was not paid and the reason why it was not paid or the fact that no reason was given for its non-payment.~~

~~1018~~ **1125**. — The right of recourse of the holder against the person or persons to whom notice of dishonour was sent is extinguished by prescription one year after date of non-acceptance ฤๅนับแต่วันตั๋วเงินถึงกำหนดแล้วแต่กรณี. [86/279]

~~1064~~. — ~~The right of recourse of the holder against the person or persons to whom notice of dishonour was sent is extinguished by prescription one year after the day of maturity~~.

~~1019~~ **1126**. — An indorser to whom notice of dishonour has been given by a subsequent party can take recourse against all or any of the parties prior to him, jointly or separately.

In such case the indorser must send notice of dishonour to the person or persons against whom he intends to take recourse, within four days from the date when he himself has received notice of dishonour.

~~1065~~. — ~~An indorser to whom notice of dishonour has been given by a subsequent party can take recourse against all or any of the parties prior to him, jointly or separately.~~

~~In such case the indorser must send notice of dishonour to the person or persons against whom he intends to take recourse within four days from the date when he himself has received notice of dishonour.~~

~~1020~~ **1127**. — The right of recourse of the indorser is extinguished by prescription one year after date of the notice sent by him.

~~1066~~. — ~~The right of recourse of the indorser is extinguished by prescription one year after date of the notice sent by him.~~

~~1021~~ **1128**. — The return of the ~~non accepted~~ dishonoured bill of exchange with the Post Office receipt for protest annexed to it is a sufficient notice of dishonour.

~~1067~~. — ~~The return of the unpaid bill of exchange with the Post Office receipt for protest annexed to it is a sufficient notice of dishonour~~.

~~1022~~ **1129**. — When a notice of dishonour has been duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the Post Office. [86/281]

~~1068~~. — ~~When a notice of dishonour has been duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the Post Office.~~

~~1023~~ **1130**. — If the holder or indorser fails to take the proceedings ~~prescribed by Sections 1011 to 1021~~ ตามวิธีการดังกล่าวไว้ในส่วนนี้ he loses his rights under the bill of exchange against all prior parties, except those who have waived protest or notice of dishonour.

~~1069~~. — ~~If the holder or indorse fails to take the proceedings prescribed by Sections 1057 to 1067, he loses his rights under the bill of exchange against all prior parties, except those who have waived protest or notice of dishonour.~~

~~1024~~. — ~~The holder is entitled to take recourse for the following amounts:~~

~~1) The non accepted amount of the bill of exchange less interest thereon up to the date of maturity.~~

~~In order to fix the date of maturity, the day of presentation is to be considered as the day of acceptance.~~

~~2) The expenses of presentation for acceptance and of protest and of notice of dishonour.~~

~~1070~~. — ~~The holder is entitled to take recourse for the following amount:~~

~~1) The unpaid amount of the bill together with interest thereon from the day of maturity.~~

~~2) The expenses of presentation for payment and of protest and of~~

~~notice of dishonour.~~

**มาตรา ๑๑๓๑** — ผู้ทรงตั๋วแลกเงินชอบที่จะไล่เบี้ยเอาเงินเหล่านี้ได้ คือ

(ก) ในกรณีไม่รับรอง ไล่เบี้ยเอาจำนวนเงินอันเขาไม่รับรองในตั๋วแลกเงิน

(ข) ในกรณีไม่ใช้เงิน ไล่เบี้ยเอาจำนวนเงินอันเขายังไม่ได้ใช้ให้ตามตั๋วเงิน กับทั้งดอกเบี้ยในจำนวนนั้นนับแต่วันถึงกำหนดใช้เงิน

(ค) ค่ายื่นตั๋วแลกเงินเพื่อให้รับรอง ฤๅเพื่อให้ใช้เงิน แล้วแต่กรณี กับค่าทำคำคัดค้านและคำบอกกล่าวขาดความเชื่อถือ

~~1025~~ **1132**. — An indorser against whom recourse has been taken is himself entitled to take recourse for the following amounts: [86/283]

1) The sum paid by him together with interest thereon from the date of his payment.

2) All expenses paid by him.

~~1071~~. — ~~An indorser against whom recourse has been taken is himself entitled to take recourse for the following amounts:~~

~~1) The sum paid by him, together with interest thereon from the date of his payment~~

~~2) All expenses paid by him.~~

~~1026~~ **1133**. — Reimbursement of a dishonoured bill of exchange can be obtained only on surrender of the bill and of a recourse account.

The payer can require the payee to make a receipt on the recourse account and sign it.

~~1072~~. — ~~Reimbursement of a dishonoured bill of exchange can be obtained only on surrender of the bill and of a recourse account.~~

~~The payer can require the payee to make a receipt on the recourse account and sign it.~~

~~1027~~ **1134**. — A drawer or prior indorser to whom a bill of exchange has been re-indorsed or re-transferred has no right of recourse against a party to whom he was previously liable under the bill.

~~1073~~. — ~~A drawer, acceptor or prior indorser to whom a bill of exchange has been reindorsed or re-transferred has no right of recourse against a party to whom he was previously liable under the bill.~~

## Part ~~VII~~ IX. — BILL OF EXCHANGE IN A SET.

~~1085~~ **1135**. — The payee is entitled to require the drawer to deliver to him the bill of exchange in a set consisting of several parts.

~~1086~~ **1136**. — The several parts must be designated as such by the words First of Exchange, Second of Exchange, Third of Exchange, etc. [86/288]

If they are not designated as such, each of them is good as an independent bill of exchange.

~~1087~~ **1137**. — The acceptance must be made on one part only.

~~1088~~. — ~~If one part of the set is paid, there is no liability under the other parts except those on which an acceptance is made.~~

~~1089~~. — ~~A person who has indorsed different parts of a bill of exchange to different persons or who has made his acceptance on several parts is liable according to the provisions of the present Title for any such part not surrendered to him at the time of payment.~~

**มาตรา ๑๑๓๘** — เมื่อบุคคลผู้ใดได้รับรองตั๋วแลกเงินไว้กว่าส่วนหนึ่งขึ้นไป และส่วนอันได้รับรองไว้นั้น ตกไปในมือผู้ทรงโดยชื่อหลายคนด้วยกัน ท่านว่าบุคคลผู้นั้นจะต้องรับใช้เงินตามตั๋วนั้นทุกส่วนไปเสมือนว่าเปนตั๋วเงินต่างฉบับกันฉะนั้น

บุคคลผู้ใดได้สลักหลังตั๋วแลกเงินหลายส่วนให้แก่บุคคลหลายคนด้วยกัน ท่านว่าบุคคลผู้สลักหลังเช่นนั้น จะต้องรับใช้เงินตามตั๋วนั้นทุกส่วนไป และบันดาผู้สลักหลังภายหลังบุคคลนั้นทุกคนก็จะต้องรับใช้ในส่วนที่ตนได้สลักหลัง เสมือนดังว่าส่วนทั้งหลายที่ว่านั้นเปนตั๋วเงินต่างฉบับกัน

**มาตรา ๑๑๓๙** — ถ้าส่วนหนึ่งในสำรับแห่งตั๋วแลกเงินนั้น ได้ใช้เงินแล้ว ส่วนอื่น ๆ ก็ย่อมหมดสิ้นราคาไป แต่กระนั้นก็ดี ถ้าผู้รับรองใช้เงินในส่วนหนึ่งโดยมิได้เรียกให้ส่งมอบส่วนซึ่งตนได้รับรองไว้นั้นคืนให้แก่ตน และส่วนนั้นมาถึงกำหนดใช้เงินเข้าในระหว่างที่ตกอยู่ในมือของผู้ทรงโดยชื่อคนหนึ่งคนใดไซร้ ท่านว่าผู้รับรองก็จะต้องรับใช้เงินให้แก่ผู้ทรงตั๋วเงินนั้น [86/289]

## CHAPTER III.
## PROMISSORY NOTES.

~~1090~~ **1140**. — A promissory note is a written instrument by which a person, called the maker, promises to pay a sum of money to, or to the order of, a person, called the payee.

~~1091~~ **1141**. — A promissory note must be dated, signed by the maker, and must contain the following particulars :

1) A sum certain in money.

2) The name or trade name of the payee.

3) An unconditional promise to pay.

4) The place where the promissory note is made.

5) A day of maturity.

~~1092~~ **1142**. — If the maker does not state in the promissory note a place of payment, the place where it is made is the place of payment. [86/294]

~~1093~~ **1143**. — The following provisions of Chapter II concerning bills of exchange apply *mutatis mutandis* to promissory notes :

Sections ~~966~~ 1036 to ~~969~~ 1039, ~~972~~ 1042, ~~974~~ 1044 to ~~977~~ 1046 concerning the drawing of a bill of exchange.

Sections ~~978~~ 1047, ~~980~~ 1049, ~~981~~ 1050 concerning the effects of a bill of exchange.

Sections ~~982~~ 1051 to ~~988~~ 1057, ~~990~~ 1059 to ~~996~~ 1065 concerning transfer and indorsement.

Sections ~~1036~~ 1078 to ~~1041~~ 1083 concerning suretyship.

Sections ~~1042~~ 1084 to ~~1054~~ 1096 concerning payment.

Sections ~~1055~~ 1108 to ~~1073~~ 1115 concerning the right of recourse in case of non-payment.

Sections ~~1077~~ 1116 to ~~1084~~ 1134 concerning payment for honour.

~~1094~~ **1144**. — The holder of a promissory note payable at the end of a period after sight must present it to the maker within one year from its date, or, if the maker has specified a shorter time in the promissory note,

within such time.

If the holder fails to present the promissory note within the above mentioned time, he loses his right of recourse against the prior indorsers.

~~1095~~ **1145**. — The maker must note on the promissory note the date of presentation and sign it. [86/295]

~~1096~~ **1146**. — If the maker merely puts his signature on the promissory note, the promissory note is deemed to have been duly presented to him and any person can fill up the date.

If there is no date, the last day of the time fixed by section ~~1094~~ 1144 is deemed to be the day of presentation.

~~1097~~ **1147**. — If the maker does not on presentation sign the promissory note as provided by section ~~1095~~ 1145, the holder and the indorsers have a right of recourse against the prior parties, provided that they comply with the provision of sections ~~1011~~ 1118 to ~~1027~~ 1134 concerning bills of exchange, *mutatis mutandis*.

~~1098~~ **1148**. — If the holder fails to have a protest made, he loses his right of recourse against all prior parties except the maker.

## CHAPTER IV. [86/296]

## CHEQUES.

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### Part I. — GENERAL PROVISIONS.

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~~1099~~ **1149**. — A cheque is a written instrument by which a person, called the drawer, orders a banker to pay a sum of money to or to the order of another person called the payee.

~~1100~~ **1150**. — A cheque must be dated, signed by the drawer, and must contain the following particulars :

1) A sum certain in money;

2) The name or trade name and address of the banker;

3) The name or trade name of the payee;

4) An unconditional order to pay.

~~1101~~ **1151**. — The provisions of Chapter II concerning bills of exchange apply to cheques, *mutatis mutandis,* in so far as they are not contrary to the provisions of this Chapter ~~IV~~ IX.

~~1102~~ **1152**. — A cheque can be drawn payable to bearer, or payable to the drawer. [86/297]

If no payee is named in the cheque, it is payable to bearer.

~~1103~~ **1153**. — A cheque is payable on demand.

~~1104~~ **1154**. — No reference to a day of maturity can be inserted in a cheque.

~~1105~~ **1155**. — A cheque which contains a reference to a day of maturity, such as “on demand” or “on such day,” etc., is a bill of exchange.

~~1106~~ **1156**. — The holder of a cheque must present it for payment to the banker within ~~two months~~ one year after the date of drawing, otherwise he loses his right of recourse against the prior parties.

~~1107~~ **1157**. — A banker is bound to pay a cheque drawn on him by his customer unless: [86/299]

1) There be not enough money to the credit of the account of the customer to meet the cheque, or

2) The cheque be presented for payment more than one year after its date of drawing.

~~1108~~ **1158**. — A banker is bound to refuse payment of a cheque drawn on him if:

1) The drawer has countermanded payment, or

2) The banker has received notice of the death of the drawer, or

3) The cheque has been lost, or obtained through an offence and notice thereof has been given to the banker.

~~1109 (1st and 2nd paragraphs)~~ **1159**. — If the banker signs on the cheque a statement such as “good” or “good for payment,” or words to the same effect, he becomes bound to pay the cheque in the same way as the acceptor of a bill of exchange.

If the statement is “good for payment on such and such day” the

banker is bound to pay only if the cheque is presented on that day.

~~1109 (3rd paragraph)~~ **1160**. — The foregoing provisions do not apply if the banker has only signed a statement certifying the genuineness of the signature of the drawer. [86/300]

~~1110~~. — ~~Whoever draws a cheque except against a deposit or a credit granted to him shall be punished with fine not exceeding two thousand baht.~~

### Part II. — CROSSED CHEQUES.

~~1111~~ **1161**. — If the cheque bears across its face two parallel lines, with or without the words "Company" or "Bank" or any other words having the same meaning, between such lines, the cheque is said to be crossed and payment of it can only be made to a banker.

~~1112~~ **1162**. — If the name of a particular banker is written between the parallel lines payment can only be made to that banker.

But the banker to whom the cheque is crossed can cross it to another banker for collection.

~~1113~~ **1163**. — The banker who pays a crossed cheque contrary to the provisions of Section ~~1111~~ 1161 or ~~1112~~ 1162 is liable for any injury resulting therefrom. [86/305]

## CHAPTER V.
## PRESCRIPTION.

~~1114~~ **1164**. — The obligations incurred under a bill of exchange by the acceptor or under a promissory note by the maker are extinguished by prescription after three years from day of maturity.

~~1115~~ **1165**. — If a bill has been made, transferred or indorsed in respect of an obligation and the rights under such bill have been lost by prescription or by the omission of any necessary proceedings, the original obligation remains in force, unless it be extinguished by prescription or otherwise.

## CHAPTER VI.

[86/306]

## FORGED, STOLEN AND LOST BILLS.

~~1116~~ **1166**. — A forged bill means a bill which has been fabricated or altered or which bears false signatures as defined by Section 222 of the Penal Code.

~~1117~~ **1167**. — A person who forges a bill has no rights under such bill.

~~1118~~ **1168**. — A bill bearing false signatures is valid for the genuine signatures which may be on it.

~~1119~~ **1169**. — If a statement in a bill has been altered without the consent of the parties, any person who affixes his signature on such bill after the alteration is liable according to the tenor of the altered bill. [86/310]

If it is impossible to find out whether the signature was affixed before or after the alteration was made, the signature is presumed to have been affixed before alteration.

~~1120~~. — ~~No rights can be exercised under a forged bill by a person who acquired it or became a party to it in bad faith or without such care as may be expected from a person of ordinary prudence.~~

**มาตรา ๑๑๗๐** — เมื่อลายมือชื่อในตั๋วเงินเปนลายมือปลอม ท่านว่าบุคคลผู้ได้ตั๋วเงินนั้นมาก็ดี เข้าเปนคู่สัญญาด้วยในตั๋วเงินนั้นก็ดี จะใช้สิทธิอย่างหนึ่งอย่างใดแก่คู่สัญญาคนใด ๆ แห่งตั๋วเงินนั้นโดยอาศัยลายมือชื่อปลอมนั้นหาได้ไม่

**มาตรา ๑๑๗๑** — ถ้ามีผู้นำตั๋วเงินชนิดจะพึงใช้เงินตามเขาสั่ง ฤๅใช้เงินเมื่อทวงถามมาเบิกต่อนายธนาคาร และนายธนาคารนั้นได้ใช้เงินให้ไปตามทางค้าปรกติโดยสุจริตไซร้ หากว่าลายมือชื่อปลอมนั้นเปนแต่เพียงสลักหลังรับเงินก็ดี สลักหลังภายหลังแต่นั้นก็ดี ท่านให้ถือว่านายธนาคารได้ใช้เงินไปถูกระเบียบ

~~1121~~ **1172**. — The holder of a bill which is lost or stolen must, as soon as he knows of the loss or theft, notify in writing the maker, the drawee, the referee in case of need, the acceptor for honour and the surety, if any, to refuse payment of the bill. [86/312]

~~1122~~ **1173**. — If the lost or stolen bill is presented for acceptance or

payment to a person who has received the notice provided by Section ~~1121~~ 1172 he must inform the person presenting it that the bill is a lost or stolen bill.

He must also notify the holder of the bill without delay the name and description of the person presenting it.

~~1123~~ **1174**. — The person presenting a bill which was lost or stolen must surrender it to its holder without compensation if it is proved that he acquired it in bad faith or without such care as may be expected from a person of ordinary prudence.

~~1124~~ **1175**. — If the lost or stolen bill is not presented for payment on the day of maturity the holder is entitled to get a copy. [86/313]

The copy must be demanded through the successive indorsers.

~~1125~~ **1176**. — If the lost or stolen bill was payable after sight but not accepted or was payable on demand, the holder is entitled to get the copy as soon as the notice of loss or theft has reached the maker, the drawee, the referee in case of need, the acceptor for honour and the surety, if any.

~~1126~~ **1177**. — The holder has under the copy the same rights as under the original bill, except rights lost by prescription or by the omission of any necessary proceedings.

~~1127~~ **1178**. — Whoever presents a bill which has been lost or stolen, and receives payment of it is bound to repay the sum received by him if it is proved that he acquired the bill in bad faith or without such care as may be expected from a person of ordinary prudence. [86/315]

~~1128~~ **1179**. — If the loss, theft or forgery of a bill was caused or facilitated by the fault of one of the parties to the bill, he is liable to the person who has paid or repaid the bill for such part of the injury caused, as the Court may think fit.