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- OCT. 1944

ARMY SERVICE FORCES MANUAL

M 353-3C

CIVIL AFFAIRS HANDBOOK

ITALY

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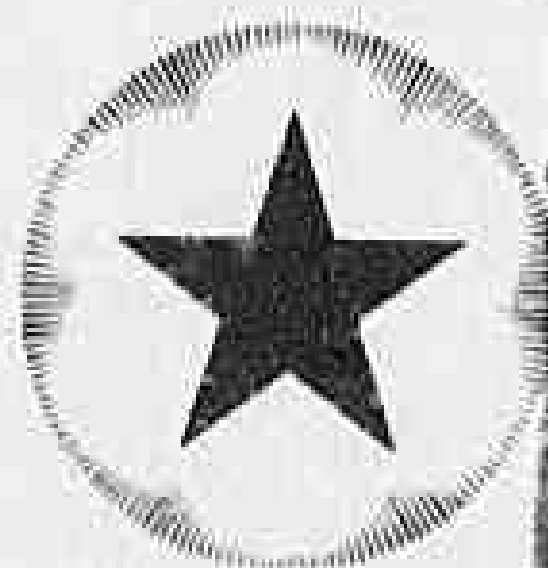
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HEADQUARTERS, ARMY SERVICE FORCES

4 OCTOBER 1944

ARMY SERVICE FORCES MANUAL

M 353-3C

Civil Affairs

CIVIL AFFAIRS HANDBOOK

ITALY

SECTION 3C: BOOK THREE

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Headquarters, Army Service Forces 4 October 1944

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NUMBERING SYSTEM OF
ARMY SERVICE FORCES MANUALS

The main subject matter of each Army Service Forces Manual is indicated by consecutive numbering within the following categories:

- M1 - M99 Basic and Advanced Training
- M100 - M199 Army Specialized Training Program and Pre-
Induction Training
- M200 - M299 Personnel and Morale
- M300 - M399 Civil Affairs
- M400 - M499 Supply and Transportation
- M500 - M599 Fiscal
- M600 - M699 Procurement and Production
- M700 - M799 Administration
- M800 - M899 Miscellaneous
- M900 - up Equipment, Materiel, Housing and Construction

* * * *

HEADQUARTERS, ARMY SERVICE FORCES
Washington, 25, D. C., 4 October 1944

Army Service Forces Manual M 353 - 3C, Civil Affairs Handbook, Italy, Section 3C, Book Three, Italian Civil Code, has been prepared under the supervision of The Provost Marshal General, and is published for the information and guidance of all concerned.

[SPX 461 (28 Sep 44)]

By command of Lieutenant General SOMERVALL:

W. D. STYER,
Major General, General Staff Corps,
Chief of Staff.

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Major General
Adjutant General

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This translation of the Third Book of the Italian Civil Code was
prepared for the

MILITARY GOVERNMENT DIVISION, OFFICE OF THE PROVOST MARSHAL GENERAL

by the

RESEARCH AND ANALYSIS BRANCH OF THE OFFICE OF STRATEGIC SERVICES

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INTRODUCTION

Purposes of the Civil Affairs Handbook

The basic purposes of civil affairs officers are (1) to assist the Commanding General by quickly establishing those orderly conditions which will contribute most effectively to the conduct of military operations, (2) to reduce to a minimum the human suffering and the material damage resulting from disorder, and (3) to create the conditions which make it possible for civilian agencies to function effectively.

The preparation of Civil Affairs Handbooks is a part of the effort to carry out these responsibilities as efficiently and humanely as possible. The Handbooks do not deal with plans or policies (which will depend upon changing and unpredictable developments). It should be clearly understood that they do not imply any given official program of action. They are rather ready reference source books containing the basic factual information needed for planning and policy making.

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CIVIL AFFAIRS HANDBOOKS
TOPICAL OUTLINE

1. Geographical and Social Background
2. Government and Administration
3. Legal Affairs
3C Book Three — Italian Civil Code
4. Government Finance
5. Money and Banking
6. Natural Resources
7. Agriculture
8. Industry and Commerce
9. Labor
10. Public Works and Utilities
11. Transportation Systems
12. Communications
13. Public Health and Sanitation
14. Public Safety
15. Education
16. Public Welfare
17. Cultural Institutions

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CIVIL AFFAIRS HANDBOOK
TOPICAL OUTLINE (CONT'D)

This handbook is a translation of Book Three of the Italian Civil Code and is one of a series of six books covering the complete Code. The following outline indicates the place of this handbook in the series.

ITALIAN CIVIL CODE

- 3A. Book One (OF PERSONS) Italian Civil Code
- 3B. Book Two (OF SUCCESSIONS) Italian Civil Code
- 3C. Book Three (OF THE RIGHTS OF PROPERTY) Italian Civil Code
- 3D. Book Four (OF OBLIGATIONS) Italian Civil Code
- 3E. Book Five (OF THE RIGHTS OF LABOR) Italian Civil Code
- 3F. Book Six (OF THE PROTECTION OF RIGHTS) Italian Civil Code

This series of handbooks is believed to be the only available English translations of the Italian Civil Code.

This translation of Book Three of the Italian Civil Code was prepared for the MILITARY GOVERNMENT DIVISION, OFFICE OF THE PROVOST MARSHAL GENERAL by the RESEARCH AND ANALYSIS BRANCH, OFFICE OF STRATEGIC SERVICES.

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ITALIAN COURT SYSTEM

Corte di Cassazione		Court of Cassation	
Numero Collegio	1 (Roma) Presidente di Cassazione Consiglieri de Corte di Cassazione	Number Title	1 (Rome) President of Cassation Councillors of Court of Cassation
Numero dei Giudici Votanti	7 per sezione 15 per sezioni unite	Number of Judges per Court	7 for each section 15 for united sections
Suddivisioni	3 sezioni civili 2 sezioni penali 1 sezione unite	Subdivisions	3 civil sections 2 criminal sections 1 united section
Competenza per Territorio	Regno e colonie	Territorial Jurisdiction	All territory subject to Italian State
Competenza	Illimitata - solo su questioni di diritto	Jurisdiction over Subject Matter	Unlimited - on points of law only
Appello	Da ogni giudizio appellabile di corti di grado inferiore - dalla corte di rimando in determinate circostanze alle sezioni unite il cui giudizio e finale	Appeal	From any judgment of a lower court which may be appealed - under certain specified circumstances; from the court to which the case was referred, to the united sections, the decisions of which are final
Pubblico Ministero	Procuratore Generale presso la Corte di Cassazione	Public Attorney	Procurator General of the Court of Cassation

RESTRICTED

Corte d'Appello		Court of Appeals	
Numero Collegio	18 Presidente di Corte d'Appello Consiglieri di Corte d'Appello	Number Title	18 President of Court of Appeals Councillors of Court of Appeals
Numero dei Giudici Votanti	5 Sezioni di C. d'A. Una sezione per Magistratura del Lavoro	Number of Judges per Court	5 Sections of C. of A. 1 section for Magistracy of Labor

Ministero

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ITALIAN COURT SYSTEM (cont'd)

<u>Tribunali</u>		<u>Tribunals</u>	
Numero Collegio	142	Number Title	142
	Presidente - Giudici		President - Judges
Numero dei Giudici Votanti	3	Number of Judges per Court	3
Suddivisioni	Sezioni - No. varia	Subdivisions	Sections - No. varies
Competenza per Territoria	Circondario	Territorial Jurisdiction	Department
Competenza	In materia penale reati non di competenza del pretore o della corte d'assise - in materia civile oltre 5000 lire o indeterminabile	Jurisdiction over Subject Matter	In criminal matters, all crimes which do not fall under the jurisdiction of local magistrate or assizes; in civil cases, matters involving value over 5000 lire or undetermined value
Appello	Dalle sentenze dei pretori	Appeal	From judgments of local magistrates
Pubblico Ministero	Procuratore del Re	Public Attorney	Procurator for the King
<u>Pretura</u>		<u>Local Magistrate's Court</u>	
Numero Collegio	986	Number Title	986
	Pretore		Local Magistrate
Numero dei Giudici Votanti	1	Number of Judges per Court	1

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<u>Pretura</u>		<u>Local Magistrate's Court</u>	
Numero Collegio	986 Pretore	Number Title	986 Local Magistrate
Numero dei Giudici Votanti	1	Number of Judges per Court	1
Suddivisioni	Pretori Aggiunti - Vice Pretori - Giudice Tutelare	Subdivisions	Substitute or extra local magistrate - Judge in charge of minors and incapacitated persons
Competenza per Territorio	Mandamento	Territorial Jurisdiction	District
Competenza	In materia penale, reati punibili con pena non superiore ai 3 anni o pecuniaria non oltre lire 10,000. In materia civile azioni reali e personali non superiore a lire 5,000. Senza limite di valore per azioni di sfratto per locazione finita, danni a fondi rustici, denunce di nuova opera o di danno temuto e distanze legali nel piantamento di alberi e ingiunzione a termini.	Jurisdiction of Subject Matter	In criminal matters, crimes punishable with penal servitude, not over 3 years or fine not over 10,000 lire. In civil matters for actions involving value not over 5,000 lire. For actions involving unlimited value in matters of expulsion for termination of lease, damages to country property, injunctions, legal distance in planting of trees and in boundaries.
Appello	Dalle sentenze dei conciliatori	Appeal	From judgments of the justices of the peace
Pubblico Ministero	Uditori, Vice Commissari di Pubblica Sicurezza, Segretario Comunale, Avvocato, Notaio, o Procuratore scelto dal Pretore	Public Attorney	Junior Magistrate, Local Chief of Police, Secretary attached to municipality, Lawyer, Notary, or Procurator chosen by the local Magistrate

Gradi della Magistratura

Primo Presidente della Corte di Cassazione
 *Procuratore Generale della Corte di Cassazione

Presidente di Sezione della Corte di Cassazione
 Primo Presidente della Corte d'Appello
 *Procuratore Generale di Corte d'Appello
 *Avvocato Generale di Corte di Cassazione

Consigliere di Corte di Cassazione
 *Sostituto Procuratore Generale di
 Corte di Cassazione
 Presidente di Sezione di Corte d'Appello

Consigliere di Corte d'Appello
 *Sostituto Procuratore Generale di Corte d'Appello
 Presidente di Tribunale
 *Procuratore del Re

Giudice di Tribunale
 *Sostituto Procuratore del Re

Aggiunti Giudiziani

Pretore
 **Vice Pretore

**Uditore

*Fanno parte del pubblico ministero - sono funzionari dell'ordine giudiziario senza le guarentigie dell'inamovibilità.

**In materia penale - possono adempiere le funzioni del pubblico ministero su richiesta del pretore.

Grades of Judiciary

First President of the Court of Cassation
 *Procurator General of the Court of Cassation

President of Section of the Court of Cassation
 First President of the Court of Appeals
 *Procurator General of the Court of Appeals
 *Solicitor General of the Court of Cassation

Councillor of Court of Cassation
 *Deputy Procurator General of the
 Court of Cassation
 President of Section of Court of Appeals

Councillor of Court of Appeals
 *Deputy Procurator General of Court of Appeals
 President of Tribunal
 *Procurator for the King

Judge of the Tribunal
 *Deputy Procurator for the King

Adjuncts

Local Magistrate
 **Assistant Local Magistrate

**Junior Magistrate

*Members of the public attorney's office who come under Dept. of Justice, but do not enjoy the guarantee of irremovability (privilege of magistrates - beginning 3 years after their appointment as judges of tribunals by virtue of which they cannot be dismissed or transferred to other jurisdictions for the duration of their office except after trial in which they must appear in person.

**May function as public attorney, in criminal matters, on request of the local magistrate.

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StrutturaGrades of Judiciary

Corte di Cassazione
La Corte di Cassazione

First President of the Court of Cassation
*Procurator General of the Court of Cassation

La Corte di Cassazione
Corte d'Appello
Corte d'Appello
Corte di Cassazione

President of Section of the Court of Cassation
First President of the Court of Appeals
*Procurator General of the Court of Appeals
*Solicitor General of the Court of Cassation

Cassazione
Generale di
Corte d'Appello

Councillor of Court of Cassation
*Deputy Procurator General of the
Court of Cassation
President of Section of Court of Appeals

Corte d'Appello
Generale di Corte d'Appello

Councillor of Court of Appeals
*Deputy Procurator General of Court of Appeals
President of Tribunal
*Procurator for the King

Re

Judge of the Tribunal
*Deputy Procurator for the King

Adjuncts

Local Magistrate
**Assistant Local Magistrate

**Junior Magistrate

Ministero - sono
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*Members of the public attorney's office who come under
Dept. of Justice, but do not enjoy the guarantee of
irremovability (privilege of magistrates - beginning
3 years after their appointment as judges of tribunals -
by virtue of which they cannot be dismissed or trans-
ferred to other jurisdictions for the duration of
their office except after trial in which they must
appear in person.
**May function as public attorney, in criminal matters,
on request of the local magistrate.

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ITALIAN CIVIL CODE

THIRD BOOK OF THE RIGHTS OF PROPERTY

TITLE ONE

OF PROPERTY

CHAPTER I

OF PROPERTY IN GENERAL

ARTICLE 810 - Definition

All things which may be the subject of rights constitute property.

SECTION I

THE FUNCTION OF PROPERTY IN THE CORPORATE REGIME

ARTICLE 811 - Regulations of the corporate regime

All property is subject to regulation by the corporate regime with regard to the economic function of the property and the demands of national production.

SECTION II

OF MOVABLE AND IMMOVABLE PROPERTY

ARTICLE 812 - Definition of property

The soil, water sources and water courses, trees, buildings and other construction, whether or not their foundation is in the soil for a temporary purpose, and generally all that which is naturally or artificially connected with the soil, are immovables.

Mills and bath and other floating establishments are also considered immovables when securely attached to the shore or to the bed of the river, or when, by reason of the use of such immovables, they are intended to be so attached permanently.

All other property is movable property.

ARTICLE 813 - Applicable provisions

Unless the law provides otherwise, the provisions concerning immovable property are also applicable to rights in rem having immovable

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property as the subject thereof, and to all actions relative thereto. Provisions concerning movable property are applicable to all other rights.

ARTICLE 814 - Natural power resources

Natural power resources which may have economic value are considered movable property.

ARTICLE 815 - Movable property recorded in public registers

Movable property which is recorded in public registers is subject to the provisions relative to recorded property, or in the absence of such provisions, to the provisions governing movable property.

ARTICLE 816 - Aggregation of movables

A collection of things owned by the same person and having a common purpose is considered to form an aggregation of movables.

The single things included in such aggregation may be the object of separate acts, and may be subject to separate legal relations.

ARTICLE 817 - Appurtenances

A thing which is permanently intended for the service or ornament of another thing, is an appurtenance. Such use may be put into effect by the owner of the principal thing or by anyone having a right in rem in same.

ARTICLE 818 - Rules governing appurtenances

Transactions and legal relations relating to the principal things extend to the appurtenances also, unless otherwise provided. Appurtenances may be the subject of separate transactions and legal relations.

The fact that the accessory has ceased to have the character of an appurtenance to the principal thing may not be raised in defense against third parties who have previously acquired rights in the principal thing.

ARTICLE 819 - Rights of third parties in appurtenances

The destination of one thing to the service or ornament of another thing does not affect previously existing rights of third parties in the thing so destined; such rights cannot be raised in defense against third parties in good faith unless evidenced by writings dated prior to the time when the principal thing was an immovable or a movable recorded in a public register.

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SECTION III

OF FRUITS AND INCOME

ARTICLE 820 - Natural and artificial fruits

Natural fruits are those which emanate directly from the thing, with or without manual labor, such as agricultural products, timber, the increase of animals, or the products of mines, quarries or turfpits.

Fruits are an integral part of the principal thing until severed from it. Artificial fruits are those which are derived from the thing in exchange for the enjoyment of the use of such thing by third parties, such as the interest on capital, rentals, life annuities, and any other income or rent.

ARTICLE 821 - Acquisition of fruits

Natural fruits belong to the owner of the thing which produces them, unless ownership of such natural fruits is attributed to others as a result of severance.

Whoever appropriates the fruits shall reimburse the person who has incurred expenses for the production and gathering of such fruits. Artificial fruits accrue, day by day, for the duration of the right.

CHAPTER II

OF PROPERTY BELONGING TO THE NATION, TO PUBLIC
AND RELIGIOUS ENTITIES

ARTICLE 822 - Public Domain

The following property belongs to the nation and is part of the public domain: the seashore, the beach, bays and ports; rivers, torrential streams, lakes and other waters defined as public waters by the pertinent laws; works for national defense.

The following are also part of the public domain, if owned by the nation: roads, motor parkways and railroads; airdromes; aqueducts; immovables acknowledged by the pertinent laws as having historical, archeological and artistic interest; museum collections, picture galleries, archives and libraries; other property which the law places under the jurisdiction of the regulations pertaining to the public domain.

ARTICLE 823 - Legal position of public domain

Property which is part of the public domain is inalienable and cannot be subject to rights in favor of third parties, except in the

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manner and within the limits set forth by the laws regulating such property.

The protection of the property which is part of the public domain is entrusted to the administrative authorities. These authorities have the power either to proceed with administrative measures or to avail themselves of the ordinary means of protecting ownership and possession as regulated by this Code.

ARTICLE 824 - Property of provinces and communes
subject to regulations of the public domain

Property of the kind indicated in the second paragraph of Article 822, if owned by provinces or communes, is subject to the regulations of the public domain.

Cemeteries and communal markets are subject to the same regulations.

ARTICLE 825 - Property of other persons subject to public domain

Rights in rem owned by the nation, provinces and communes in property belonging to other persons are also subject to the regulations of public domain when such rights have been granted for the benefit of any of the properties indicated in the preceding article or for the fulfillment of purposes affected with a public interest, similar to those for the benefit of which such property is likewise being used.

ARTICLE 826 - Patrimony of the nation, provinces and communes

Property belonging to the nation, provinces and communes, which is not included in the category indicated in the preceding article, constitutes the patrimony of the nation, provinces and communes, as the case may be.

Forest lands which are part of the national domain according to the pertinent laws; mines, quarries and turf-pits insofar as they cannot be disposed of by the owner of the land; objects of historical, archeological, palethnological, paleontological and artistic value discovered by anyone in any manner whatever in the subsoil; property constituting Crown property; and barracks, armaments, aircraft and men-of-war, are part of the inalienable patrimony of the nation.

Public office buildings and their appurtenances and other property used in the public service are part of the inalienable patrimony of the nation, province or commune, according to their location.

ARTICLE 827 - Vacant immovables

Immovable property which is not owned by anyone belongs to the patrimony of the nation.

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ARTICLE 828 - Legal position of property constituting the patrimony

Property constituting the patrimony of the nation, provinces and communes is subject to particular regulations and to the provisions of this Code, insofar as it is not provided otherwise.

Property constituting the inalienable patrimony of the nation cannot be used for purposes other than those for which intended, except in the manner provided by the pertinent laws.

ARTICLE 829 - Transfer of property from the public domain to the patrimony of the nation

The transfer of property from the public domain to the patrimony of the nation shall be made through pertinent declaration of the administrative authorities. Notice of the act shall be inserted in the Gazetta Ufficiale of the Kingdom.

With reference to property which is owned by provinces and communes, the provision declaring such transfer to the patrimony of the nation shall be published with the formalities established by provincial and communal regulations respectively.

ARTICLE 830 - Property of public non-local entities

Property owned by public entities which are not local, is subject to the provisions of this Code, except for the provisions of special laws. The provision of the second paragraph of Article 828 is applicable to property owned by said entities when used in the public service.

ARTICLE 831 - Property owned by religious entities and church buildings

Property owned by religious entities is subject to the provisions of this Code, insofar as special pertinent laws do not provide otherwise.

Buildings intended for the public exercise of the Catholic faith, even if owned by private individuals, cannot be diverted from their purpose even through alienation, until such purpose has been terminated in accordance with the appropriate laws.

TITLE TWO

OF OWNERSHIP

CHAPTER I

GENERAL PROVISIONS

ARTICLE 832 - Extent of the rights of ownership

The owner has the right fully to enjoy and dispose of things to the

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exclusion of all others, within the limit, and observing the obligations, imposed by laws and regulations.

ARTICLE 833 - Acts of nuisance

The owner may not perform acts which have no other intent than to harm or annoy others.

ARTICLE 834 - Expropriation in the public interest

No one can be deprived, wholly or in part, of his property, except for legally declared reasons of public interest and upon payment of an equitable indemnity.

Provisions concerning expropriation for reasons of public interest are regulated by special laws.

ARTICLE 835 - Requisitions

Requisition of movables or immovables may be ordered for serious and urgent public, military, or civil necessities. An equitable indemnity is due the owner.

The provisions concerning requisition are regulated by special laws.

ARTICLE 836 - Temporary restrictions and obligations

The administrative authorities may, for the reason indicated in the preceding Article, impose special limitations and obligations of a temporary nature on commercial and agricultural enterprises, within the limits and with the formalities provided by special law.

ARTICLE 837 - Stock piles

Stock piles of specified agricultural or industrial products are made up for the purpose of regulating the distribution thereof in the interest of national production.

The provisions regulating contribution of such products to the stock piles are contained in special laws.

ARTICLE 838 - Expropriation of property affecting national production or of prevailing public interest

If the owner abandons the conservation, cultivation or use of property affecting national production in such manner as to cause grave prejudice to the demands of such production, the administrative authorities, by prior payment of a just indemnity, may proceed with the expropriation of such property; the provisions of criminal and police laws, the provisions of the corporate regime law, and the special provisions concerning specific property remain unaffected.

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The same procedure is applicable if the deterioration of the property causes grave prejudice to the appearance of cities, artistic or historical monuments, or the public health.

ARTICLE 839 - Property of historical and artistic interest

Privately owned immovables and movables having an artistic, historical, archeologic or ethnographic interest are subject to the provisions of special laws.

CHAPTER II

OF REAL PROPERTY

SECTION I

GENERAL PROVISIONS

ARTICLE 840 - Subsoil and air space

Ownership of the soil extends to the subsoil and all that which is contained therein, and the owner may construct below the soil all kinds of works and diggings so long as it does not damage his neighbors. This provision is not applicable to whatever is contemplated by laws concerning mines, quarries and turf-pits. The limitations imposed by laws concerning antiquities, fine arts, waters, hydraulic works and other special laws are likewise unaffected.

The owner of the soil cannot oppose activities of others which take place at such depth in the subsoil or at such height above the soil that the owner would have no interest to prevent.

ARTICLE 841 - Enclosing of real property

An owner of real property may enclose it at any time.

ARTICLE 842 - Hunting and fishing

The owner of real property cannot prevent access thereto for hunting purposes, unless such property is enclosed in the manner prescribed by laws relating to hunting or unless there are cultivations liable to be damaged. The owner may always oppose the entry of persons not having a license granted by the authorities.

The consent of the owner of the real property is necessary in order to fish.

ARTICLE 843 - Access to real property

Whenever a recognized necessity arises, the owner of real property shall permit access and transit through such property for the purpose of

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building or repairing walls or other works owned by his neighbor or in common with his neighbor.

If the access causes damage, an adequate indemnity shall be due the owner. The owner shall likewise permit access through such property to those who wish to regain possession of objects which may be accidentally thereon, or of animals which have strayed thereon by eluding custody. The owner may avoid access to his property by delivering the object or the stray animal.

ARTICLE 844 - Infiltrations

The owner of real property cannot prohibit infiltrations of smoke or heat, fumes, noises, concussions and similar emanations coming from neighboring property, unless they are beyond normal toleration, taking into consideration the condition of the neighborhood.

The judicial authorities, in applying this provision, shall weigh the demands of production against the rights of ownership and may take into account the priority of the specific usage.

ARTICLE 845 - Special regulations in the public interest

In cases contemplated by special laws and by the provisions of the following sections, real property is subject to special regulations for the purpose of accomplishing ends affecting the public interest.

SECTION IIRESETTLEMENT OF RURAL PROPERTYARTICLE 846 - Smallest tillable unit

Transfers of ownership, and partitions and allotments of any nature, of lands intended for cultivation or adaptable for cultivation, and the establishment or transfer of rights in rem in such lands, shall not take place if they involve such subdivision of tracts of land as would cause the land to fall below the minimum tillable unit.

The minimum tillable unit of land is understood to be of such size as a farmer's family could profitably work and cultivate according to the rules of sound agrarian technique, when such land is not a part of a larger farming tract.

ARTICLE 847 - Manner in which minimum tillable unit is determined

The size of a minimum tillable unit shall be determined in each neighborhood separately, by a decree of the administrative authorities, to be adopted after hearing the professional associations with reference to the pertinent regulations governing production and to the local population statistics.

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ARTICLE 848 - Penalty for non-observance

Acts performed in violation of the provisions of Article 846 may be annulled by the judicial authorities on request of the public attorney. Such actions are barred after three years from the date of entry of the registration of the document.

ARTICLE 849 - Landed estates included within larger land units

Independent of the formation of agrarian pools as set forth in the following Article, the owner of real property within the boundaries of which are included parcels owned by others, may, when such parcels fall below the minimum tillable unit, demand that the ownership of the latter be transferred to him upon payment of the price thereof, for the purpose of bringing about a better arrangement of the land units. The judicial authorities shall adjudicate any disagreement, after hearing the professional associations with reference to the existence of conditions justifying such request for transfer.

ARTICLE 850 - Agrarian pools for the purpose of land resettlement

When several adjoining parcels of land below the minimum tillable unit are owned by different owners, a pool of such owners may be formed, on request of any of the interested parties or under the auspices or the initiative of the administrative authorities, for the purpose of providing a land resettlement tending to increase the utilization of said parcels of land.

The provisions set forth for land reclamation pools are applicable to such agrarian pools.

ARTICLE 851 - Mandatory transfers

An agrarian pool provided for in the preceding Article may make the plan of resettlement in advance.

Mandatory expropriations and transfers may be effected for the purpose of bringing about a better arrangement of the land units. Rectification of boundaries and integration of tillable units may also be effected.

ARTICLE 852 - Limitations on mandatory transfers

The following are excluded from the mandatory transfers set forth in the preceding Article:

1. Parcels of land on which there is a farm house or a dwelling house.
2. Lands adjacent to buildings and constituting the curtilage thereof.
3. Building lots.
4. Kitchen gardens, gardens and parks.
5. Land necessary for yards or dumping grounds of industrial or commercial establishments.
6. Lands subject to floods, avalanches or other serious risks.
7. Lands characterized by their conspicuous individuality due to special uses, position or crop specialization.

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ARTICLE 853 - Transfers of rights in rem

In the case of mandatory transfers, servitudes are abolished, maintained or created in accordance with the demands of the new plan.

Other rights in rem of enjoyment on the lands are transferred to the real property which has been assigned in exchange, and whenever such rights do not extend to all the lands owned by the same owner, the rights are transferred only to such specified portions of the real property assigned in exchange, that their share thereof corresponds to the value of the rights enjoyed on the real property on which they existed previously.

Liens which do not extend to all the lands owned by the same owners are transferred to the newly assigned land in an amount proportionate to the value of the lands upon which such liens were imposed. In the case of compulsory expropriation of an immovable, one portion of which is burdened with a lien, the immovable is expropriated in its entirety, but only that part of the price (of the immovable) which corresponds to the portion burdened with the lien shall be applied to the lien, according to the seniority thereof.

ARTICLE 854 - Notice and registration of plan of resettlement

The plan of resettlement shall first be made known to the interested parties and may be protested thru administrative channels, with the formalities and within the limits provided by special laws.

The administrative decree which approves the resettlement plan shall be entered in the register of immovables of the office in the locality where the property is situated.

ARTICLE 855 - Effects of approval of resettlement plan

Approval of the resettlement plan causes the transfer of ownership and of other rights in rem to become operative; the servitudes imposed in such plan are also set up thereby.

ARTICLE 856 - Jurisdiction of judicial authorities

With reference to Article 850 and following, the jurisdiction of the ordinary judicial authorities remains unaffected with regard to the protection of the rights of interested parties. However, the decisions of said authorities cannot cause a revision of the resettlement plan but may cause such rights as are ascertained by them to be converted and liquidated in cash. The resulting credits are given preference according to the provision of special laws.

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SECTION III

COMPREHENSIVE LAND RECLAMATION

ARTICLE 857 - Lands subject to reclamation

Lands located in areas where there are lakes, standing waters, marshes and marshlands, lands consisting of mountainous terrain in a disorderly hydrogeological or forrestal condition and lands which are exhaustively cultivated because of grave physical or social causes but otherwise adapted to a radical transformation in the scheme of production, may be declared subject to land reclamation for the attainment of hygienic, demographic, economic or other social aims.

ARTICLE 858 - Areas of reclamation of projects

Areas of reclamation and coordinated activities are determined by the projects, which are published as special laws.

ARTICLE 859 - Works under jurisdiction of the government

The project indicated in the preceding Article shall establish what land reclamation works come under the jurisdiction of the government.

ARTICLE 860 - Owner's contribution to expenses

The owners of property which is situated within the area subject to land reclamation are bound to share in the expenses necessary for the establishment, upkeep and use of the works in proportion to the benefit they derive from said reclamation.

ARTICLE 861 - Works under the jurisdiction of private persons

The owners of the immovables indicated in the preceding Article are bound to carry out the works which come under the jurisdiction of private persons and affect interests which are common to several estates, or of one estate in particular, in accordance with the general reclamation plan and with the directives on agrarian transformation connected therewith.

ARTICLE 862 - Land reclamation associations

The establishment, upkeep and use of land reclamation works may be provided by associations formed by the interested owners.

Such associations may also be entrusted with the establishment, upkeep and use of the works affecting interests which are common to several estates, or of one estate in particular.

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The associations are established thru Royal decree and, in the absence of private initiative, may also be formed ex-officio. Such associations are considered public juridical persons and carry on their activities according to the provisions of special laws.

ARTICLE 863 - Land improvement associations

Associations for the establishment, upkeep and use of works in connection with land improvements affecting several estates may also be set up with the formalities established for land reclamation associations and independently of a general land reclamation plan.

Such associations are private juridical persons. They may, however, take the character of public juridical persons by reason of the large amount of territory which they may cover, or if they are recognized as of national interest by decree of the administrative authorities, or exercise functions of particular importance to the increase of production.

ARTICLE 864 - Contributions to land improvement associations

The owner's contributions to the expenses of the establishment, upkeep and use of land reclamation and land improvement associations may be exacted in accordance with the provisions regulating land taxation and the privileges therein contained.

ARTICLE 865 - Expropriation for non-observance of obligations

If non-observance of the obligations imposed on owners is such as to jeopardize the performance of a land reclamation plan, total or partial expropriation of the estate owned by a defaulting owner may be resorted to, after having first complied with the provisions of the pertinent special laws.

Upon request of the land improvement association, the expropriation is made in favor thereof, or, in the absence of such request, in favor of such other persons as assume the obligations by giving adequate security to perform the works.

SECTION IVOF RESTRICTIONS DUE TO HYDROGEOLOGICAL ACTIONS AND
FLOOD CONTROLARTICLE 866 - Restrictions caused by hydrogeological actions and
other reasons

All kinds of lands, regardless of use and purpose, and independently from any land reclamation plan, may be subject to restrictions, with such formalities and conditions as are set forth in special laws, for the pur-

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pose of avoiding the possibility of denudations, loss of stability, or disturbance of the water flow, to the public detriment. Such restrictions cause the use of the lands and their eventual transformation, the kind of cultivation, and the care of forests and pasturage, to be subject to the limitations imposed by the pertinent special laws.

These laws may likewise extend restrictions on the use of forests which, by reason of their situation, protect lands or buildings from the fall of avalanches, the fall of stones, banking of sand, and violence of winds, as well as on the use of forests which are considered necessary for local conditions of hygiene.

ARTICLE 867 - Settlement and reforestation of restricted lands

Restricted lands may be subject to expropriation, temporary occupation, or suspension of pasturage, in the manner and with the formalities set forth in the pertinent laws, for purposes of reforestation and consolidation.

ARTICLE 868 - Protective measures against water courses

Owners of immovables located near water courses which damage or threaten to damage agriculture, inhabited places, or constructions affecting public interest, are bound to share in the carrying out of the works necessary to the control of such water courses, even independently of any land reclamation plan, and with the formalities set forth by special laws.

SECTION VOF OWNERSHIP OF BUILDINGSARTICLE 869 - Building regulations

Owners of immovables located in communes where building regulations are in effect shall comply with such regulations in the erection of new buildings and in the reconstruction or alteration of old buildings.

ARTICLE 870 - Real Estate developments

In the event of the formation of developments of building lots with special requirements concerning construction and use, the persons owning rights in the immovables included in such developments shall adjust their mutual relationship in such manner as to permit the carrying out of the plan. They may also form an association for carrying out the development. In absence of an agreement, expropriation may be resorted to.

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ARTICLE 871 - Building and public ornamentation regulations

The regulations to be complied with in building are included in special laws and in communal building regulations.

Special laws also provide the regulations to be complied with in building in localities subject to seismic disturbances.

ARTICLE 872 - Violations of building regulations

Consequences of an administrative character deriving from violation of the regulations referred to in the preceding Article are set forth in special laws.

Persons who have suffered damage by reason of such violations shall be compensated therefor, and the right they may have to request restoration to the former condition remains unaffected in case of a violation of the rules set forth or mentioned in the following section.

SECTION VI

OF DISTANCES BETWEEN BUILDINGS, PLANTATIONS AND
EXCAVATIONS AND CONCERNING WALLS, DITCHES AND
FENCES BETWEEN PROPERTIES.

ARTICLE 873 - Distances between buildings

A distance of not less than three meters shall be maintained between buildings on adjacent properties, unless attached or forming a unit. Local regulations may provide for a greater distance.

ARTICLE 874 - Compulsory sharing of boundary wall

The owner of an estate adjoining a wall owned by another person, may request such wall to be held in common, in all or part of its height, provided such request covers the entirety of his property adjacent to the wall.

In order to establish common ownership the aforementioned owner shall pay for one-half of the value of the wall or of that part of it included in the common ownership, and one-half of the value of the soil on which the wall was built. He shall, moreover, perform any work necessary to avoid damaging the property of the adjoining owner.

ARTICLE 875 - Compulsory sharing of walls which are not boundary walls

If a wall is at a distance less than $1\frac{1}{2}$ meters from the boundary or at a distance less than $\frac{1}{2}$ of the distance required by local regulations, the adjoining owner may, for the purpose of building against such wall,

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request common ownership thereof by paying for the value of the soil to be covered by the new construction in addition to $\frac{1}{2}$ of the value of the wall, unless the owner chooses to move his wall up to the boundary.

An adjoining owner who intends to request such common ownership shall first ask the owner if he prefers to move his wall to the boundary or pull it down. The owner shall give notice of his election within a period of 15 days, and may then proceed with said building or demolition within six months from the day on which he gave notice of his decision.

ARTICLE 876 - Attachment of a wall to boundary wall

If an adjoining owner wishes to avail himself of a wall placed along the boundary line only for the purpose of anchoring his own wall to it, he is not bound to make it a party wall in accordance with Article 874, but shall indemnify the other owner for such anchoring.

ARTICLE 877 - Constructions contiguous to boundary wall

An adjoining owner may, without requesting that the boundary wall be held in common, erect constructions along the boundary in contiguity to said wall, provided such construction is not supported by the construction already in existence.

This provision is also applicable in the case provided by Article 875; but in such case the neighbor is only bound to pay for the value of the soil.

ARTICLE 878 - Enclosure walls

Enclosure walls and all other isolated walls of a height not over three meters are not taken into consideration for the purpose of computing distances referred to in Article 873.

When such walls are placed along boundaries they may be made party walls even for the purpose of giving support to constructions thereon, provided there be no other construction already in existence at a distance less than three meters on the other side of the wall.

ARTICLE 879 - Buildings exempted from distance restrictions and compulsory co-ownership

Buildings which are a part of the public domain or subject to the regime thereof, and buildings which are recognized as having historical, archeological or artistic interest in accordance with the pertinent laws, are exempted from compulsory co-ownership. An adjoining owner may not even take advantage of the right granted by Article 877.

Constructions erected along boundaries with public streets and squares are not subject to the provisions regulating distances, but pertinent laws and regulations shall be observed.

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ARTICLE 880 - Party wall (dividing wall) presumed to be in common

A dividing wall which is a separation between buildings shall be presumed to be in common in all of its height, or, in the case of uneven height, up to the point at which one of the buildings becomes higher.

Walls dividing yards, gardens, kitchen gardens or inclosures in the fields are likewise presumed to be in common.

ARTICLE 881 - When a dividing wall is presumed to be exclusively owned

A dividing wall between fields, yards, gardens or kitchen gardens is presumed to be owned exclusively by the proprietor against whose land the coping inclines, and by reason of the fact of such incline.

If there are projections such as cornices and corbels, and apertures penetrating to a depth of over one-half of the thickness of the wall, which appear to have been built as part of the wall, said wall is presumed to be in exclusive ownership of the proprietor on whose side said projections and apertures happen to appear, even if only some of said projections and apertures are present.

If one or more of such projections or apertures are on one side and one or more on the other side the wall is considered to be held in common; in any event, the position of the coping prevails over all other indications.

ARTICLE 882 - Repairs of party wall

The necessary repairs or rebuilding of a party wall are made at the expense of all who have a right to the wall, and in proportion to their interest therein, unless the expense results from the acts of one of the parties.

The co-owner of a party wall may exonerate himself from the obligation of contributing to the repairs or rebuilding by giving up his right of ownership, provided no building belonging to him be actually supported by such wall.

Such renunciation does not exonerate the renouncing owner from the obligation to carry out repairs and rebuildings caused by his own acts.

ARTICLE 883 - Demolition of building supported by party wall

An owner who wishes to pull down a building supported by a party wall may renounce the common ownership of such wall, but is bound to carry out the repairs and work resulting from demolition necessary to avoid damage to the adjoining owner.

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ARTICLE 884 - Supporting and anchoring of beams and chains on party wall

A co-owner of a party wall may build against a wall held in common and cause beams to be placed in such wall within five centimeters of the thickness thereof, saving to the adjoining owner the right of diminishing the beam until it does not exceed one-half of the thickness of the wall if the adjoining owner should wish to fix beams, drill a hole or build a chimney against such wall in the same place. The co-owner may also pierce a party wall with bolts and chains, provided he maintains that same distance. In all cases the co-owner is bound to repair the damages caused by his works.

A co-owner may not drill holes or perform any other work on the party wall which would jeopardize its stability or damage it in any way.

ARTICLE 885 - Increase in height of party walls

A co-owner may increase the height of a party wall but is liable for all expenses connected with the construction and conservation of the superimposed part. An adjoining owner, in accordance with Article 874, may compel such increase in height to be held in common.

If the wall cannot support the additional weight of the superimposed part, the builder is bound to reconstruct or re-inforce the wall at his own expense. When increased thickness of the wall is required, such additional increase must be taken from the builder's property, unless technical necessities demand that it be taken from the adjoining owner's property. In either case the wall which has been reconstructed or increased in thickness remains common property and the adjoining owner must be indemnified for all damages caused by the performance of the work. When technical reasons necessitate the additional thickness to be taken from the adjoining owner's property, the latter has also the right to claim the value of one-half of the soil covered by such additional thickness.

If the adjoining owner intends to acquire common ownership of the superimposed section of the wall, the expenses incurred for the reconstruction or strengthening of the wall shall be taken in consideration in determining the value thereof.

ARTICLE 886 - Construction of enclosure walls

Anyone may compel an adjoining owner to contribute one-half of the expense necessary for the construction of enclosure walls dividing their respective houses, court yards and urban gardens.

The height of such walls shall be of three meters unless local regulations or agreements provide otherwise.

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ARTICLE 887 - Urban property on different levels

If, in an inhabited locality, two adjacent properties are placed on different levels, the owner of the property placed on the higher level is bound to bear all expenses connected with the construction and conservation of the wall from its foundation up to the level of his soil, and both owners shall share for the remaining section and height of the wall.

One-half of the wall shall be built on the soil of the lower property and one-half on the higher.

ARTICLE 888 - Exoneration from liability to contribute

An adjoining owner may exonerate himself from contributing to the expenses of construction of the enclosure or dividing wall by giving up, without compensation, one-half of the soil on which such dividing wall is to be built. In this case the wall belongs to the party who built it, except for the adjoining owner's power to cause the wall to be held in common according to Article 874, free from the obligation of paying for one-half of the soil where it was constructed.

ARTICLE 889 - Distances for wells, tanks, ditches, and pipes

An adjoining owner who wishes to dig a well, tank, cesspool or manure compost near a boundary, shall keep a distance of at least two meters between the boundary and the nearest point of the internal perimeter of said work even if there is a dividing wall along the boundary.

A distance of at least one meter from the boundary shall be kept for pipes of pure or impure water, gas pipes and similar pipes and their ramifications.

In all cases the provisions of local regulations remain unaffected.

ARTICLE 890 - Distances for structures and stores of injurious or dangerous substances

An adjoining owner who wishes to build furnaces, chimneys, salt stores, stables and similar constructions near a boundary or who wishes to store moist, explosive, or otherwise injurious substances, or to install machinery liable to cause damage near the boundary, shall maintain the distances prescribed by the regulations, or, in the absence thereof, he shall keep the distances necessary to avoid affecting the solidity, healthiness and safety of the adjoining property, regardless of a dividing wall placed along the boundary.

ARTICLE 891 - Distances for canals and ditches

An adjoining owner who wishes to dig ditches or canals near a boundary shall maintain a distance from the boundary equal to the depth of such canal or ditch, if not otherwise provided by local regulations. The distance is measured from the boundary to the edge of the nearest bank, which shall be

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naturally escarped or artificially supported. If the boundary is marked by a ditch held in common or by a private way, the distance is measured from side to side or from the side to the farther rim of the way.

ARTICLE 892 - Distances for trees

An adjoining owner who wishes to plant trees near a boundary shall maintain the distances established by the regulations, or, in the absence thereof, by local customs. In the absence of local customs, the following distances from the boundary shall be observed:

1. Three meters for trees with tall trunks. For this purpose, trees with tall trunks are those whose trunk, whether single or divided in branches, reaches a considerable height, such as walnut, chestnut, oak, pine, cypress, elm, poplar, plane and similar trees.
2. One and one-half meters for trees with short trunks. Such trees are those whose trunks are not higher than three meters and are divided into branches.
3. One-half meter for vines, shrubs, live hedges and fruit bearing plants not higher than two and one-half meters.

However, a distance of one meter shall be maintained for hedges made of alder, chestnut or other similar plants which require periodical pruning close to the stump, and of two and one-half meters for locust hedges. Distances are measured from the boundary line to the girth of the trunk of the tree as determined at the time of planting, or from the boundary line to the spot where the tree was planted.

The aforementioned distances do not have to be observed if there is a privately owned or a party wall along the boundary, provided the plants are kept at a height not exceeding said wall.

ARTICLE 893 - Trees near roads, canals and on the border of woods

The pertinent regulations and, in the absence thereof, local customs are followed for determining distances of trees growing or planted in the woods, on the border of non-wooded terrain or along roads or canal banks when such woods, canals or roads are privately owned. In the absence of regulations or customs, the distances prescribed in the preceding Article shall be observed.

ARTICLE 894 - Trees placed at an illegal distance

An adjoining owner may request that trees and hedges which are planted or growing at a distance less than that required in the preceding Articles shall be uprooted.

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ARTICLE 895 - Prohibition to re-plant trees at an illegal distance

When an adjoining owner has acquired a right to keep trees at a lesser distance than the aforementioned, if the tree dies, is cut, or is uprooted, it can be replaced only by maintaining the legal distance.

This provision is not applicable when the tree is one of a row of trees along a boundary.

ARTICLE 896 - Cutting of roots and overhanging branches

A proprietor on whose property the branches of an adjoining owner's tree overhang may at any time compel such adjoining owner to cut off such branches, and he can himself cut the roots extending on his estate, except for the local customs and regulations in such cases.

If local customs do not provide otherwise, the fruits which have fallen naturally from these trees belong to the person on whose estate the fruits have fallen.

If the fruits belong to the owner of the tree in pursuance of local customs, the provision of Article 843 is applicable for the gathering of such fruits.

ARTICLE 897 - Ditches owned in common

Every ditch between two properties is presumed to be held jointly.

A ditch is presumed to belong to the owner who uses it to drain his lands, or to the owner of the property on whose side the embankment is, or on whose side the earth has been heaped up for a period of at least 3 years.

If one or more of these indications are on one side and one or more on the other, the ditch shall be presumed to be held in common.

ARTICLE 898 - Hedges held in common

Hedges between two properties are presumed to be held jointly and are maintained at joint expense unless there is a boundary mark or other evidence to the contrary.

If only one of the properties is enclosed, the hedge is presumed to belong to the owner of the enclosed property, or, if there is an existing boundary mark, to the owner on whose side the hedge is found to be relative thereto.

ARTICLE 899 - Trees held in common

Trees sprouting from jointly held hedges are presumed to be held in common. Trees sprouting on the boundary line are presumed to be held in common, unless there is a deed or other evidence to the contrary.

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Trees serving as boundary or growing in a hedge held in common cannot be cut except by mutual agreement or unless the judicial authorities have recognized the necessity or conveniences of such removal.

SECTION VII

OF THE RIGHTS OF LIGHT AND OF VIEW OVER THE PROPERTY
OF A NEIGHBOR.

ARTICLE 900 - Kinds of windows

Windows or other apertures looking over a neighbor's property are of two kinds:

1. Lights, when they let in light and air on the neighbor's property but do not permit view over such property;
2. Views or prospects, when they permit an outlook over the property with a direct, oblique or lateral view.

ARTICLE 901 - Lights

Lights or openings on neighboring property shall be provided with the following:

1. Iron bars suitable to ensure the safety of the neighbor and an attached metal grating of which the meshes shall have an opening of not over three square centimeters.
2. A base at a height of not less than two-and-one-half meters above the floor or pavement of the place into which it is intended to give light and air, if the windows are on the ground story, and of not less than two meters above the floor or pavement on upper stories.
3. A base at a height of not less than two-and-a-half meters from the soil of the neighboring property, except where the whole premises or part thereof are on a level lower than the soil of the neighbor and local conditions do not permit maintaining said height.

ARTICLE 902 - Apertures lacking the prescribed requirements for lights

Apertures which are not views or prospects are considered as lights or windows, even if the provisions of the preceding Article have not been observed with respect to such lights.

A neighbor always has the right to require that said lights be made to comply with the provision of Article 901.

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ARTICLE 903 - Lights made in privately owned wall and on party wall

The owner of a wall immediately adjoining the estate of another person can make apertures therein. If the wall is a party wall, neither owner may make lights without the consent of the other; but the owner who has increased the height of a party wall may open such lights in the upper section of the wall to which the neighbor has declined to contribute.

ARTICLE 904 - Right to close up lights

The presence of lights in a wall does not prevent a neighbor from acquiring common ownership of the wall or from erecting constructions adjacent to said wall. The person who acquires common ownership of the wall may not close up the lights unless his buildings are supported by the wall.

ARTICLE 905 - Distance for opening of direct outlooks and balconies

No direct outlooks may be opened over an enclosed property, or over the roof of a neighbor, unless there is a distance of one and one-half meters between the property of the neighbor and the outside facing of the wall on which such direct outlook can be obtained.

Likewise no person may build balconies or other projections, terraces, solariums and similar constructions which are provided with rails permitting an outlook over the neighbor's property, unless there is a distance of one and one-half meters between said property and the outer line of these constructions.

The prohibition is not effective if there is a public street between the two neighboring properties.

ARTICLE 906 - Distance for openings affording lateral or oblique views

No aperture which affords a lateral or oblique view over a neighbor's property shall be opened without maintaining the distance of 75 centimeters, to be measured from the nearest side of the window or from the nearest projection.

ARTICLE 907 - Distance of buildings from openings and windows

When the right to have direct lights or windows over the property of a neighbor has been acquired, the neighboring proprietor shall not construct at a distance of less than 3 meters from the window, such distance being measured according to the provision of Article 905.

If such direct view constitutes an oblique view also, the distance of three meters must be maintained also from the side of the window from which such oblique view can be obtained.

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If it is desired to have the new construction supported by the wall from which such direct or oblique view is obtained, the constructions shall terminate at a distance of at least three meters from the edge of said lights.

SECTION VIIIOF THE DRIPPING OF WATERS FROM ROOFSARTICLE 908 - Rain water dripping from the eaves

Every owner must construct his roofs in such a way that the rain water falls on his land, and he may not permit it to fall on the neighbor's property.

If there are public channels, the owner shall cause the rain waters to flow therein by means of gutters or canals. In all cases the local regulations and the police regulations governing waters shall be observed.

SECTION IXOF WATERSARTICLE 909 - Right of owner to use waters found on his property

Owners of the soil have the right to make use of the waters found therein, except for the provisions of Special Laws concerning public and subterranean waters.

An owner may also dispose of these waters in favor of other persons when the rights of third parties do not bar such use; however, having used the waters, the owner may not direct them to the detriment of the property of others.

ARTICLE 910 - Use of waters bounding or running through a property

When a natural flow of water, which is not public water and to which no other person has rights, bounds or runs through a property, the owner may use the water as it flows past to irrigate his land and to run his industries, provided he restores to the ordinary channel the percolated waters and the residues.

ARTICLE 911 - Opening of new streams and other works.

He who wishes to open springs, or to tap springs by establishing a pipe-line, or in general to perform works for the purpose of pumping water from the subsoil or of building canals or aqueducts or of excavating to narrow or broaden stream-beds, to increase or diminish the slope, or

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to change the form thereof, shall observe the distance and perform the works necessary in such a way as not to injure the property, springs, pipe-line ends, canals or aqueducts, in addition to maintaining the distances specified in Article 891 and intended for the irrigation of lands or for domestic or industrial uses already existing.

ARTICLE 912 - Reconciliation of contrary interests

If a controversy arises between owners to whom non-public waters may be of use, the judicial authority must balance the private interest of the owners, with respect to the advantages which may accrue to industry or agriculture from the use for which such water is destined.

The judicial authorities may direct that the owners who have suffered a diminution of their rights be indemnified.

In all cases the laws and provisions regarding waters and hydraulic works shall be observed.

ARTICLE 913 - Water flow

Lower properties, with respect to higher ones, are compelled to receive the waters flowing naturally therefrom, provided no work of man has intervened. The owner of the lower property cannot stop such flow and the owner of the higher property can do nothing to make it more burdensome.

If diversion of the natural water flow becomes necessary in either property for the purpose of agrarian adjustment, an indemnity is due the owner whose property has suffered damage by reason of such diversion.

ARTICLE 914 - Associations for the purpose of regulating water flow

Whenever works for the adjustment of the water flow, suppression of stagnation or gathering of waters becomes necessary to satisfy the demands of production, the administrative authorities, upon request of a majority of the interested parties, or even ex-officio, may form an association among the owners of the properties who derive benefits from said works. The provisions of the second and third paragraphs of Article 921 are applicable to such associations.

ARTICLE 915 - Repairs of banks and levies

Whenever banks or levies which hold back waters have been wholly or partly destroyed or razed, or whenever the construction of new levies is required by reason of a natural deviation of the water course, if the owner fails to make the construction or repairs without delay, any one of the owners who has suffered or may suffer damage thereby may cause such repairs or construction to be made, having previously received authorization from the local magistrate, who shall order such measures as are justified by the urgency of the case.

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The work shall be carried out in such manner that the owner of the property where the work is being performed suffers no damage, except the temporary damage caused by the carrying out of such work.

ARTICLE 916 - Removal of encumbrances

The provisions of the preceding Article are also applicable in the case of removal of encumbrances which have materialized on the surface of a property or in a ditch, brook, or drainage or other channel, by reason of substances clogging the flow of water therein in such manner as to damage or threaten to damage neighboring property.

ARTICLE 917 - Expenses for repairs, construction or removal

All proprietors to whom an advantage accrues from the conservation and construction of levies and from the removal of encumbrances, shall share in the necessary expenses in proportion to the advantage accruing to each.

However, if the destruction of the levies, the deviation of the waters or the clogging of the water course is attributable to the negligence of one particular owner, the expenses for conservation, construction or repairs are chargeable to such owner exclusively, except in all cases, for compensation for damage to others.

ARTICLE 918 - Voluntary associations to share reservoirs

Owners of neighboring property who wish to unite and share the waters flowing from the sources of the same reservoir or from adjoining reservoirs, can form an association for that purpose.

The consent of the interested parties and the regulations of the association shall be recorded in a written document.

The regulations of the association shall be decided upon by a majority of the owners calculated on the basis of the extent of the land for which the water is being used.

ARTICLE 919 - Dissolution of the association

The association shall not be dissolved without the favorable vote of over three-quarters of the participants calculated as in Article 918 or when a partition requested by one of the interested parties can take place without causing serious damage.

ARTICLE 920 - Regulations

Except for the provisions of the preceding Article, the provisions established for common ownership are applicable to such voluntary associations.

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ARTICLE 921 - Obligatory associations for improvement of water use

In the case indicated by Article 918, associations may also be formed ex-officio by the administrative authorities for the purpose of procuring a better utilization of waters.

The provisions established for land improvement associations shall be observed in the formation and operation of such associations. These associations may also proceed with expropriation of private rights, by paying the indemnities which are due.

CHAPTER III

OF THE DIFFERENT WAYS OF ACQUIRING PROPERTY

ARTICLE 922 - Modes in which property may be acquired

Property is acquired by appropriation, discovery, accession, union, commingling, usucaption, the result of contract, succession causa mortis, and other methods established by law.

SECTION I

OF APPROPRIATION AND DISCOVERY

ARTICLE 923 - Acquisition by appropriation

Movables which are not owned by anyone are acquired by appropriation. Property which has been abandoned, and animals which may be hunted or fish which may be caught, fall in this category.

ARTICLE 924 - Beehives

The owner of beehives has a right to follow his bees onto another person's property, but is bound to pay an indemnity for damages caused to such property; if he fails to pursue them within two days, the owner of the property where the bees happen to have alighted may take and appropriate them.

ARTICLE 925 - Domesticated animals

Domesticated animals may be pursued by their owners onto another person's property, but the proprietor of such property has a right to be compensated for any damage thereto.

Domesticated animals may be appropriated unless claimed within twenty days from the time when their owner became cognizant of their whereabouts.

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ARTICLE 926 - Migrations of pigeons, rabbits and fish

Rabbits or fish which go from one warren or fish pond into another warren or fish pond belong to the owner of the latter provided such rabbits or fish have not been attracted there by fraud or artifice.

The same provision is applicable to pigeons migrating to other pigeon houses, except for the various provisions of law with respect to carrier pigeons.

ARTICLE 927 - Found objects

He who finds a moveable object shall return it to the owner thereof and if he is ignorant of the identity of the owner, he shall surrender it without delay to the podesta (mayor) of the place where he found such object, indicating the circumstances in which it was found.

ARTICLE 928 - Publication of the finding

The mayor shall publish a statement to the effect that the object has been found. Such statement shall be placed on the bulletin board of the commune on two consecutive Sundays, and each notice shall remain posted for three days.

ARTICLE 929 - Acquisition of property in found objects

At the expiration of one year after the last day of publication, without the appearance of the owner, the object or, if circumstances have required its sale, its value, becomes the property of the finder.

Either the owner or the finder, in claiming the object, or its value, is bound to pay the expenses which have been incurred.

ARTICLE 930 - Reward due the finder

The owner shall pay as a reward to the finder, if the latter requests it, one-tenth of the amount or of the value of the found object.

If such amount or value is in excess of 10,000 liras, the reward for the amount in excess is one-twentieth thereof.

If the object has no commercial value, the amount of the reward is set by the judge according to his considered estimate.

ARTICLE 931 - Possessor or holder of the object placed on a par with the owner thereof

According to circumstances, the possessor or holder of the found object is placed on the same status as the owner thereof, with regard to the effects of the provisions of Article 927 and following.

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ARTICLE 932 - Treasure trove

A treasure is a valuable movable, hidden or buried in the earth, in which no one can prove title.

The treasure belongs to the owner of the property on which it is found. If the treasure is found on another person's property, and it was discovered there only by chance, one-half of it belongs to the owner of the property where it was found, and one-half to the finder. The same provision applies if the treasure is discovered in another person's movable.

In the case of discovery of objects having historical, archeological, paleontological or artistic value, the provisions of special laws are applied.

ARTICLE 933 - Flotsam, jetsam and plants growing on seashore. Aircraft wreckage

Rights to flotsam and jetsam, or right to plants and herbs which grow on the seashore, are regulated by special laws.

Special laws are also applied to the finding of aircraft or aircraft wreckage.

SECTION IIOF ACCESSION, MISAPPROPRIATION, UNION AND COMMINGLINGARTICLE 934 - Works above and under the soil

Any planting, construction or work existing above or under the soil belongs to the owner of the latter, except for the provisions of Articles 935, 936, 937 and 938, and unless the title deed or laws provide otherwise.

ARTICLE 935 - Work performed by the owner of the soil with another's material

If the owner of the soil has undertaken construction, planting or work with materials which did not belong to him, said owner shall pay for the value of such materials unless separation is requested by the owner of the materials or unless such separation cannot be made without causing serious damage to the construction or without destruction of the planting. The owner of the soil is also liable for compensation for damages, even when separation takes place, if he is guilty of gross negligence.

In any event the materials used cannot be claimed after six months from the day in which the owner thereof had notice of their incorporation.

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ARTICLE 936 - Work performed by third persons with their own materials

When planting, construction or other work has been undertaken by a third person and with such person's own materials, the owner of the soil has a right to retain it or to compel such person to remove it.

If the owner of the soil elects to retain such work, he may choose whether to reimburse the owner of the materials for the value thereof and for the value of the labor, or for a sum equal to the enhanced value of the property.

If the owner of the soil requires the removal of the work, it shall be removed at the expense of the person who undertook it. Such person may even be required to pay damages.

The owner of the soil cannot compel a third person to remove the planting, construction or other work if he was cognizant, and did not oppose, the performance thereof, or when such planting, construction or other work was undertaken by a third party in good faith.

The removal cannot be requested after six months from the day on which the owner of the soil had notice of the incorporation.

ARTICLE 937 - Works performed by a third person with another's materials

When planting, construction or other work have been undertaken by a third party with materials which did not belong to him, the owner of such materials may claim them, after separation of the same at the expense of the third person, provided the separation may be accomplished without serious damage to the work or to the property.

The materials may not be claimed after six months from the day on which the owner of the materials had notice of their incorporation.

If the separation of the materials is not requested or if the materials cannot be separated, the third person who used the materials and the owner of the soil who was in bad faith are liable, jointly and severably for the payment of an indemnity equal to the value of such materials. The owner of the materials may even claim such indemnity from the owner of the soil in good faith, within the limits of the balance of the price which is still due the owner of the materials. The latter may also claim the payment of damages both from the third person who used the materials without his consent and from the owner of the soil who allowed his soil to be used in bad faith.

ARTICLE 938 - Occupation of a section of adjoining property

If a section of an adjoining property is occupied, in good faith, by the construction of a building, and if the owner of the property does

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not oppose it within three months from the day on which the construction started, the judicial authorities, considering the circumstances, may assign to the builder the ownership of the building and of the occupied section. The builder is obliged to pay to the owner of the soil double the value of the occupied section, as well as compensation for damages.

ARTICLE 939 - Union and commingling

When a thing has been formed by the union or mixture of several materials belonging to different proprietors but which can be separated without inconvenience, each proprietor retains the ownership of his portion and has the right to cause the separation of the materials. Otherwise, the ownership becomes ownership in common in proportion to the value of the materials belonging to each proprietor.

However, when one of the materials may be regarded as the principal material or greatly exceeds the other material in value, although it is used to ornament another material, the proprietor of the most valuable material acquires ownership of the entire thing. The latter is obliged to pay to the owner of the other material the value of the material which has been mixed or incorporated; but if the incorporation or commingling took place without the consent of the owner of the principal material and was caused by the owner of the accessory material, the first is only liable for the enhanced value of the principal material or the value of the accessory material, whichever is the lesser.

Moreover compensation for damages is due in case of gross negligence.

ARTICLE 940 - Misappropriation of materials

If a person uses materials which he does not own to form a new thing, he acquires ownership thereof by reimbursing the proprietor of the material for the value of same, regardless of whether the material can be restored to its previous condition, unless the value of the materials notably exceeds that of the workmanship. In this case the thing belongs to the proprietor of the materials who shall pay for the value of the workmanship.

ARTICLE 941 - Alluvion

Adjunctions and deposits of soil which add themselves continuously and imperceptibly to property bordering a river or stream belong to the owner of the property, except for the provision of special laws.

ARTICLE 942 - Derelictions

Derelictions formed by currents of water, which retreat imperceptibly from one bank and are added to the other belong to the owner of the latter bank, and the owner of the opposite bank cannot claim the land which he has lost.

Such right does not apply to derelictions caused by the sea.

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ARTICLE 943 - Lakes and ponds

The owner of a lake or of a pond retains the land covered by the water when the water is at the level of the outlet of such lake or pond, even if the volume of water should decrease. The owner does not acquire any right to the lands which the water covers in case of extraordinary rise.

ARTICLE 944 - Avulsion

If a river or stream carries away from an adjoining property by sudden action of water, a considerable tract of land which can be identified on a lower riparian property, or on the opposite shore, the owner of the property to which such tract of land has been annexed acquires ownership thereof. He shall, however, reimburse the other proprietor for the increased value resulting to his property by the avulsion.

ARTICLE 945 - Islands and accretions

Islands and accretions which are formed in the beds of rivers or streams belong to the public domain. If the island was formed by avulsion, the owner of the property from which the tract of land was carried away retains the ownership. The same rule is applicable if a river or stream, by opening for itself a new branch, cuts off and surrounds the property or part of the property of a neighboring proprietor and makes an island of it.

ARTICLE 946 - Dried bed of a river

If a river or stream forms a new bed and abandons its former one, the riparian owners acquire the ownership of such former bed. They shall divide such dried bed up to the middle of the river, according to the size of the riparian property of each owner.

ARTICLE 947 - River bed changes caused by alterations of the water course

The provisions of Articles 941, 942, 945 and 946 are not applicable if the alluvions or changes of the river beds are caused by alterations of the course of the river, land reclamation, or other similar causes.

CHAPTER IVOF ACTIONS IN DEFENSE OF PROPERTYARTICLE 948 - Real actions

The owner may claim his property from any person who has it or detains it, and may prosecute an action for recovery even if such person, upon demand, ceases through his own act to possess or to detain the property. In this case the defendant is bound, at his own expense, to recover the object for the plaintiff, or in lieu thereof, to pay the corresponding value as well as compensation for damages.

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If the owner recovers his property directly from a possessor or detainer he is bound to return to a previous possessor or detainer any sum received in lieu of said object.

Real actions are never barred, but the effects of acquisition of the property by other persons through usucaption remain unaffected.

ARTICLE 949 - Action to quiet possession and title

A proprietor may take action for the purpose of causing rights asserted by others in his property to be declared non-existent, if he has reason to believe that such asserted rights may cause him prejudice.

If disturbance and molestation are also present the proprietor may request that the cessation thereof be ordered, in addition to the penalty for compensation for damages.

ARTICLE 950 - Action for the fixing of boundaries

When the boundary between two properties is uncertain, each of the owners may request that it be judicially settled. All means of proof are admissible.

In the absence of other elements, the judge shall abide by the boundaries which have been fixed in tax charts.

ARTICLE 951 - Action for the marking of boundaries

If the boundary markers between two adjoining properties are lacking or cannot be identified, each of the owners has a right to request that such markers be placed or replaced at joint expense.

TITLE THREEOF THE SURFACEARTICLE 952 - Establishment of surface rights

The owner of the soil may establish a right to erect and maintain a construction above his soil in another person, who thus acquires ownership of the construction.

He may likewise alienate a construction already in existence on his soil, separately from the ownership of the soil.

ARTICLE 953 - Establishment of the right for a specified period

If such right has been established for a specified length of time, the right to the surface terminates at the expiration of the term, and the owner of the soil becomes the owner of the construction.

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ARTICLE 954 - Termination of surface rights

Termination of surface rights at the expiration of a term, causes termination of the rights in rem imposed by the owner of the soil. All legal claims connected with the soil also extend to the construction except for the provisions of the first paragraph of Article 2816 regarding liens.

Lease contracts with reference to constructions cover only the current year, computed from the time of the expiration of the term.

Loss of the construction does not cause the termination of surface rights, except for agreements to the contrary.

The right to erect a construction on another person's soil terminates by prescription through non-usage of such right for a period of twenty years.

ARTICLE 955 - Subsoil constructions

The preceding provisions are also applicable when rights are granted to erect and maintain constructions underneath another person's soil.

ARTICLE 956 - Prohibition of separate ownership of plantings

Ownership of plantings shall not be established or transferred separately from the ownership of the soil.

TITLE FOUR

OF EMPHYTEUSIS

ARTICLE 957 - Provisions to be observed

Emphyteusis is regulated by the provisions contained in the following Articles unless the title deed provides otherwise.

The title deed, however, cannot derogate from the provisions contained in Article 958, the second paragraph of Article 961, and Articles 962, 965, 968, 971 and 973.

ARTICLE 958 - Duration

Emphyteusis may be perpetual or with a time limit. Emphyteusis cannot be established for a period of less than twenty years.

ARTICLE 959 - Rights of emphyteutic tenant (grantee under the contract of emphyteusis)

The emphyteutic tenant has the same rights as would the owner with

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respect to the fruits of the soil, treasure trove, and utilization of the subsoil in accordance with the provisions of special laws.

The rights of the emphyteutic tenant include rights acquired by successions.

ARTICLE 960 - Obligations of emphyteutic tenant

The emphyteutic tenant has the obligation to improve the property and pay to the grantor a periodical rental. This may consist of a sum of money or of a fixed amount of natural products.

The emphyteutic tenant has no right to cancellation or reduction of the rental because of the unusual sterility of the property or loss of the fruits.

ARTICLE 961 - Payment of rental

Payment of rental is an obligation binding all persons participating in the emphyteusis and the heirs of the emphyteutic tenant for the duration of the contract.

If partition is made and the property descends so as to be separately enjoyed by the emphyteutic tenants or the heirs, each is liable for the obligation deriving from the emphyteusis, in proportion to the value of his share.

ARTICLE 962 - Revision of the rental

Ten years after the establishment of the emphyteusis, and every tenth year thereafter, the parties may request a revision of the rental if such rental has become either too little or too onerous in relation to the actual value of the property. Such value is determined without taking into account the improvements made by the emphyteutic tenant or the losses for which he is not responsible.

Such revision is not permissible if the actual value of the property is not manifestly doubled or halved with respect to its initial value or to the value which was ascertained in a previous revision.

ARTICLE 963 - Total or partial destruction of the property

The grant of emphyteusis terminates when the emphyteutic property is completely destroyed.

If a considerable part of the property is destroyed and the rental appears to be out of proportion to the value of the remaining part thereof, the emphyteutic tenant may, according to the circumstances, request an

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adequate reduction of the rental, or renounce his rights by restoring the property to the grantor, except for his right to be reimbursed for improvements made on the remaining part of the property.

A request for reduced rental and renunciation of the right is not admissible after the lapse of one year from the time of the destruction of the property.

If the property is insured and the insurance has been taken out also in favor of the grantor, the indemnities are divided between the grantor and the emphyteutic tenant in proportion to the value of their respective rights.

In the event of expropriation for the public interest, the indemnity is divided according to the provisions of the preceding Article.

ARTICLE 964 - Taxes and other burdens.

Taxes and other burdens connected with the property are chargeable to the emphyteutic tenant, except for the provisions of special laws.

If by virtue of the deed establishing the emphyteusis, such taxes and burdens are chargeable to the grantor, such obligation may not exceed the amount of the rental.

ARTICLE 965 - Manner in which the rights of the emphyteutic tenant may be disposed of

The emphyteutic tenant may dispose of his rights in connection with the emphyteusis by document inter vivos or causa mortis.

No compensation is due the grantor as a result of alienation of the emphyteutic tenant's rights.

The deed establishing the emphyteusis may prohibit the emphyteutic tenant from disposing of all or part of his rights, by documents inter-vivos, for a period of time not exceeding twenty years.

If there has been alienation in spite of this prohibition, the emphyteutic tenant is not exonerated from his obligations toward the grantor and is liable in solido for his obligation toward same.

ARTICLE 966 - Preemption in favor of grantor

In the event of alienation of emphyteutic rights, the grantor has preference, all conditions being equal. The emphyteutic tenant must notify the grantor of the intended sale and the price. The grantor must exercise his right of preemption within thirty days. In the lack of notification, the grantor may redeem the emphyteutic rights from the purchaser and from any other person having claim on such rights within a year from the time

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when the grantor becomes cognizant of the sale.

If there are several grantors and preemptive rights are not exercised by them jointly, even one grantor may exercise all such preemptive rights, and in this event such grantor takes the place of the emphyteutic tenant with reference to the other grantors.

ARTICLE 967 - Rights and obligations of the emphyteutic tenant and of the grantor in case of alienation

In the event of alienation, the new emphyteutic tenant is bound in solido with the preceding one for the unpaid rentals.

The preceding emphyteutic tenant is not exonerated from his obligations until notice of the deed of purchase is given to the grantor.

In the event of alienation of the grantor's rights, the purchaser may not claim fulfilment of the obligations of the emphyteutic tenant until the latter has been notified of said alienation.

ARTICLE 968 - Subemphyteusis

Subemphyteusis is not permitted.

ARTICLE 969 - Recognition

The grantor may demand documentary recognition of his right from the person in possession of the emphyteutic property, one year before the twentieth year.

No compensation is due for such document. All expenses connected with the document are chargeable to the grantor.

ARTICLE 970 - Prescription of rights of emphyteutic tenant

The rights of the emphyteutic tenant are barred by protracted failure to use such rights for a period of twenty years.

ARTICLE 971 - Redemption

An emphyteutic tenant may redeem the property after twenty years from the establishment of the emphyteusis. The deed of emphyteusis may establish a period longer than twenty years but not in excess of forty.

Even if no time limit for redemption is included in the deed, if the deed contains an improvement plan previously agreed upon, the emphyteutic tenant may not effect the redemption until such improvements have been accomplished.

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If there are several emphyteutic tenants, one alone may effect the redemption provided it includes the entire property. In this case, the person who redeems is substituted for the grantor in the latter's rights toward the other emphyteutic tenants, except for a proportionate reduction of the rental in the latter's favor.

If there are several grantors, redemption may be effected for the share belonging to each one.

Redemption is effected through the payment of a sum equal to the principle represented by the annual rental computed on the basis of the legal interest. The procedure is established by special laws.

ARTICLE 972 - Right of re-entry and restitution

The grantor has the right of re-entry of the emphyteutic property in the following instances:

1. If the emphyteutic tenant damages the property or fails in his obligation to improve same.
2. If the emphyteutic tenant is in default of two annual rentals, provided that restitution will not take place if the emphyteutic tenant pays the rentals which have fallen due before the rendering of a judgment by the court of first instance granting a request for restitution.

A request for restitution does not bar the emphyteutic tenant from his right to redeem the property, whenever the conditions indicated in Article 971 are present. However, redemption is not permitted if restitution is demanded on the basis of paragraph one of this Article and when such case is of considerable importance. In this event, the judicial request for restitution has precedence over the request for redemption even if the latter was the first to be instituted, provided no judgment, even of the first instance, has intervened permitting redemption.

ARTICLE 973 - Express rescission clause

The grantor's declaration that he intends to avail himself of an express rescission clause in the deed does not bar the exercise of the right of redemption except when the grantor exercises his right of re-entry in accordance with the preceding Article.

ARTICLE 974 - Rights of creditors of emphyteutic tenant

Creditors of the emphyteutic tenant may appear in suits for restitution in order to protect their rights, and may also avail themselves, if

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necessary, of redemption rights belonging to the emphyteutic tenant; they may offer compensation for damages and post bond for the future.

Creditors whose mortgage on the emphyteutic property was entered prior to the recording of the request for restitution and who were not notified of such request sufficiently beforehand to participate therein, retain the right of redemption even after restitution has taken place.

ARTICLE 975 - Improvements and increments

At the termination of the emphyteusis, the emphyteutic tenant is entitled to reimbursement for improvements to the property, in proportion to the increased value of the same brought about by such improvements as may be ascertainable at the time of restitution.

If proof is furnished in court of the existence, in general, of improvements, the emphyteutic tenant may retain the property until his claim is satisfied.

If the grantor wishes to retain such increments made by the emphyteutic tenant as may be removed without damage to the property, he shall pay the value thereof computed at the time of restitution. If the increments cannot be separated without damage and constitute an improvement to the property, the provision of the first paragraph of this Article is applicable.

ARTICLE 976 - Leases made by emphyteutic tenants

The provisions of Article 999 are applicable to leases concluded by the emphyteutic tenant.

ARTICLE 977 - Emphyteusis established by juridical persons

The provisions of the preceding Articles are also applicable to grants of emphyteusis by juridical persons, unless special laws provide otherwise.

TITLE FIVE

OF USUFRUCT, USE AND HABITATION

CHAPTER I

OF USUFRUCT

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SECTION I

GENERAL PROVISIONS

ARTICLE 978 - Establishment

Usufruct is established by law or by the intent of persons. It may also be acquired by usucaption.

ARTICLE 979 - Duration.

The duration of the usufruct may not exceed the life span of the usufructuary.

Usufruct established in favor of juridical persons may not last for over thirty years.

ARTICLE 980 - Ceding of usufruct by usufructuary

A usufructuary may cede his right of usufruct to others for a definite period of time or for the duration of the usufruct, unless this is prohibited by the deed establishing the usufruct.

Notice of such cession must be given to the owner; the usufructuary and his grantee are liable in solido to the owner until notification.

SECTION II

OF THE RIGHTS DERIVED FROM USUFRUCT

ARTICLE 981 - Definition

A usufructuary has the right to the enjoyment of the property, but shall respect its economic purpose.

A usufructuary may enjoy all the profits which may be obtained from the property subject to the usufruct, within the limits established in this Chapter.

ARTICLE 982 - Possession of the property

A usufructuary has the right to acquire possession of property of which he enjoys the usufruct, except for the provisions of Article 1002.

ARTICLE 983 - Accession

The right of usufruct extends to all increases due to accession.

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If after the commencement of the usufruct, the owner has undertaken constructions or plantings on the property subject to usufruct, with the consent of the usufructuary, the latter is bound to pay interest on the sums thus employed. This provision is also applicable if the constructions or plantings were made by order of public authorities.

ARTICLE 984 - Fruits

All fruits, natural and civil, belong to the usufructuary for the duration of the usufruct. If the transfer of enjoyment of the property between the usufructuary and the owner takes place during a crop year or in the course of a production period of greater length, the total quantity of the fruits are divided between the two in proportion to the duration of the respective rights in said current period.

The expenses connected with the production and gathering of the fruits are chargeable to the owner and usufructuary in the proportion indicated in the preceding paragraph and within the limits of the value of the fruits.

ARTICLE 985 - Improvements

A usufructuary has a right to an indemnity for such improvements to the property which is the object of the usufruct as may exist at the time of restitution.

Such indemnity shall consist either of the amount of the expense involved in the improvements or the increased value to the property brought about by such improvements, whichever is the lesser.

The judicial authorities considering the circumstances of a case may provide that the payment of any indemnity indicated in the preceding paragraphs shall be made in installments, requiring, in such instances, adequate security.

ARTICLE 986 - Increments

A usufructuary may create any increment which does not alter the economic purpose of the property.

He may, at the termination of the usufruct, remove such increments as may be removed without damage to the property, unless the owner prefers to retain ownership of such increments. In this case the usufructuary is entitled to an indemnity either of an amount equal to the cost of the increments, or of the value of the increments at the time of restitution, whichever is the lesser.

If the increments cannot be separated without damaging the property and constitute an improvement thereof, the provisions relative to improvements are applicable.

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ARTICLE 987 - Mines, quarries and turf pits

A usufructuary has a right to the enjoyment of mines and quarries which are already open and in operation at the commencement of the usufruct. He may not open other mines and quarries without the consent of the owner. A usufructuary shall compensate the owner for damages which may be ascertained at the termination of the usufruct as resulting from prospecting and exploitation of minerals for which the usufructuary secured permission.

If such permission is obtained by the owner or by a third party, they shall owe the usufructuary an indemnity proportionate to the diminished enjoyment of the property during the period of usufruct.

ARTICLE 988 - Treasure trove

The right of the usufructuary does not include claim to the treasure trove discovered on the property during the period of the usufruct, except for the rights he may have as finder.

ARTICLE 989 - Forests, single trees and trees in a row

If the usufruct includes forests or rows of trees suitable for cutting, or if it includes forests or trees of tall trunk for the purpose of timber production, a usufructuary may proceed with the cutting down of trees as regularly cut, maintaining the original density of the forests or of the rows of trees and providing, if necessary, for their replacement.

A usufructuary must follow the uniform local customs, in addition to the forestry laws and regulations, as to the manner, extent, order and period to be observed in the cutting.

The same rules are applicable to single trees of high trunk scattered throughout the country suitable for cutting.

ARTICLE 990 - Trees of tall trunk uprooted, broken or dead

Trees of tall trunks which have been uprooted, broken, or which are killed by accident, belong to the owner. A usufructuary may only use such trees for the repairs which he is bound to make.

ARTICLE 991 - Fruit trees

Fruit trees which die and those which are uprooted or broken by accident belong to the usufructuary, who is obliged to replace such trees with others.

ARTICLE 992 - Poles for vines and for other cultivations

A usufructuary may take from the woods the poles which are necessary for vines and for other cultivations, observing always the uniform local customs.

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ARTICLE 993 - Seedlings

A usufructuary may use cuttings kept in tree nurseries but must follow the uniform local custom as to the time and manner of transplanting the seedlings.

ARTICLE 994 - Death of herd of cattle or flock of sheep

If a herd of cattle or a flock of sheep is included in the usufruct, the usufructuary is obliged to make good the number of dead out of the new born cattle or sheep from time to time when the number of the herd or flock becomes less than the original number.

If the entire herd or flock dies for a cause not attributable to the usufructuary, the latter is only bound to account to the owner for the hides or their value.

ARTICLE 995 - Property which is consumed through use

If the usufruct includes property which is consumed thru use, the usufructuary may use it and is obliged to pay the value thereof at the termination of the usufruct, according to the agreed estimate.

In the absence of an estimate, a usufructuary may choose between paying for the property according to its value at the time of termination of the usufruct or replacing it with other property equal in quality and in quantity.

ARTICLE 996 - Property subject to deterioration

If the usufruct includes property which, though not consumed at once, gradually deteriorates, the usufructuary has a right to make use of it for the purpose for which intended, and at the expiration of the usufruct he is obliged only to restore such property in the state in which he found it.

ARTICLE 997 - Plants, factories and machinery

If the usufruct includes plants, factories or machinery used for productive purposes, the usufructuary is obliged to repair and to replace the parts which deteriorate during the period of the usufruct, in such manner as to ensure the regular functioning thereof. If the usufructuary has borne expenditures in excess of the ordinary repairs, the owner is bound to pay him an adequate indemnity at the expiration of the usufruct.

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ARTICLE 998 - Tools and live stock

Tools and live stock of a property must be returned in equal quantity and quality. The amounts which are lacking or in excess shall be adjusted in currency, according to the value computed at the termination of the usufruct.

ARTICLE 999 - Leases made by the usufructuary

Leases made by the usufructuary which are still in effect at the termination of the usufruct, if evidenced by public document or by a private writing bearing a date prior to the expiration of the usufruct, continue to run for the agreed length of time, but not over five years from the termination of the usufruct.

If the termination of the usufruct takes place by reason of the expiration of the period set for the usufruct, the leases only run for the current year; in the case of rural property when the principal harvest takes place every two or every three years, the leases only run for such two or three year period which is current at the time of the termination of the usufruct.

ARTICLE 1000 - Collection of principal

The concurrence of the owner and of the usufructuary is necessary for the collection of principal constituting property which is subject to usufruct. Payments made to one only of said parties cannot be raised in defense to the other party, except, in all instances, for the provisions concerning transfers of credits.

Principal which has been collected shall be re-invested in an interest bearing manner, and the usufruct transferred thereto. If the parties do not agree as to the mode of re-investment, the judicial authorities shall make the pertinent provisions.

SECTION IIIOF THE OBLIGATIONS ARISING FROM USUFRUCTARTICLE 1001 - Obligation of restitution - diligence

A usufructuary is bound to return the property subject to the usufruct at the termination thereof, except for the provisions of Article 995.

He is bound to use the diligence expected of a good pater familias in the enjoyment of the property.

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ARTICLE 1002 - Inventory and security

A usufructuary takes things in the state in which they are found.

He is bound to make an inventory of the property, at his expense, having previously notified the owner. If the usufructuary has been exempted from making an inventory, it may be requested by the owner, at the owner's expense.

A usufructuary shall, moreover, give adequate security.

Parents who have the legal usufruct of the property of their minor children are exempted from giving security. A seller or a donor who reserves the usufruct of the property to himself is also exempted, but if he conveys the usufruct, the assignee is bound to give security.

A usufructuary cannot obtain possession of the property before fulfilling the obligations indicated above.

ARTICLE 1003 - Absence or insufficiency of security

The following provisions are observed if a usufructuary does not give the security he is bound to give:

The immovables are leased out or placed under management, except for the power of the usufructuary to have a house included in the usufruct assigned to him for his habitation. The management, with the assent of the usufructuary, is entrusted to the owner or to a third party selected by mutual agreement between the owner and the usufructuary; in the absence of agreement the judicial authorities shall make the appointment.

The property in form of currency is placed out at interest. Bearer securities are made payable to the order of the owner, subject to the obligation of usufruct, or are deposited in care of a third person selected by the parties, or with a credit institution the designation of which, in case of disagreement, is made by the judicial authorities.

The merchandise is sold and the proceeds are likewise placed out at interest. In these instances, the interest on the principal, the income, rents, and hire belong to the usufructuary.

In the case of movables which deteriorate through use, the owner may request that they be sold and the proceeds be treated as the proceeds of merchandise. The usufructuary, however, may demand that the movables necessary for his own use be set apart for him.

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ARTICLE 1004 - Expenses chargeable to the usufructuary

The expenses and, in general, the burdens connected with the custody, management and ordinary upkeep of the property are chargeable to the usufructuary. Necessary extraordinary repairs resulting from the usufructuary's neglect to make the repairs for keeping the property in good order are likewise chargeable to the usufructuary.

ARTICLE 1005 - Extraordinary repairs

Extraordinary repairs are chargeable to the owner.

Extraordinary repairs are those necessary to insure the solidity of main walls and vaults, the replacing of beams, the reconstruction, in toto or in considerable part, of roofs, attics, stairs, banks, aqueducts, sustaining walls and enclosure walls.

During the usufruct, the usufructuary shall pay the owner the interest on the sums expended for extraordinary repairs.

ARTICLE 1006 - Refusal of the owner to make repairs

If the owner refuses to make the repairs chargeable to him, or delays the carrying out thereof without justifiable reason, the usufructuary may make such repairs at his own expense. Such expenses shall be reimbursed, without interest, at the expiration of the usufruct. The usufructuary may retain as security for reimbursement the immovable which has been repaired.

ARTICLE 1007 - Partial destruction of accessory

The provisions of the two preceding Articles are also applicable in the event of partial destruction, due to crumbling away by age or accident of a building which forms a necessary accessory to the property subject to usufruct.

ARTICLE 1008 - Taxes and other burdens chargeable to the usufructuary

A usufructuary, for the duration of his right, is liable for all the annual charges, such as taxes, rentals and land taxes, and other burdens chargeable against the income.

For the year in course at the beginning and at the end of the usufruct those charges are divided between the owner and the usufructuary in proportion to the duration of their respective rights.

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ARTICLE 1009 - Taxes and other burdens chargeable to the owner

The owner is liable for payment of the burdens in connection with the property during the usufruct, unless the law provides otherwise, but the usufructuary shall pay the owner the interest on the sums paid out.

If a usufructuary advances the amount for which the property is liable, he is entitled to reimbursement of the principal at the end of the usufruct.

ARTICLE 1010 - Liabilities of inheritance consisting of usufruct

The usufructuary of an inheritance or of a share thereof, is liable wholly or in proportion to his share, for the annual charges and for the payment of the interest on debts or legacies with which the inheritance may be burdened.

The usufructuary may choose to advance the amount necessary for the payment of the principal represented by said debts or legacies; this amount shall be returned to him, without any interest, at the end of the usufruct.

If the usufructuary is unable or unwilling to make such advance, the owner has the choice of paying such sum, on which the usufructuary will owe him interest during the continuance of the usufruct, or of causing a portion of the property subject to the usufruct to be sold, sufficient to cover what is due.

If payment of the debts requires alienation of the property, such alienation takes place by mutual agreement between the owner and the usufructuary, except for intervention of the judicial authorities in case of disagreement. In the case of compulsory seizing of the property, the levy must be against both.

ARTICLE 1011 - Retention of sums which have been advanced

In the cases indicated in the second paragraph of Article 1009 and the second paragraph of Article 1010, a usufructuary has the right to retain so much of the property in his possession as is sufficient to cover the amount to which he is entitled.

ARTICLE 1012 - Encroachments during the usufruct and actions relative to servitudes.

If, during the continuance of the usufruct, a third party makes any encroachment upon the property or interferes in any way with the rights of the owner, the usufructuary is bound to notify the owner, and

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if he fails to do so, he is liable for any damages to the owner which may result therefrom.

A usufructuary may cause the recognition of the existence of a servitude in favor of the property or of the non-existence of a servitude claimed thereon; in these instances he is obliged to summon the owner to appear in the suit.

ARTICLE 1013 - Expenses of litigation

Expenses of litigation involving either the property or the usufruct are borne by the owner and the usufructuary in proportion to their respective interest therein.

SECTION IV

OF THE EXPIRATION OR MODIFICATION OF THE USUFRUCT

ARTICLE 1014 - Termination of usufruct

In addition to the contents of Article 979, usufruct terminates:

1. By prescription resulting from non-use for twenty years.
2. By merging of the usufructuary and the ownership in the same person.
3. By the total loss of the property upon which the usufruct was established.

ARTICLE 1015 - Wrongful use of the usufructuary

The usufruct may also cease by the wrongful use which the usufructuary makes of the enjoyment of his right in alienating or damaging the property or in permitting it to deteriorate for want of ordinary repairs.

The judicial authorities may, according to circumstances, order the usufructuary to give security, if exempted therefrom, or the property to be leased or placed under management at the expense of the usufructuary, or even order the owner to recover possession of the property with the obligation of paying annually to the usufructuary a fixed amount for the continuance of the usufruct.

Creditors of the usufructuary may intervene in suits for the protection of their rights; they may offer to repair the damage done and to give guarantees for the future.

ARTICLE 1016 - Partial loss of the property

If a part of the thing subject to usufruct is destroyed, the usufruct continues on what remains.

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ARTICLE 1017 - Loss of the property through negligence or fraud of third parties

If the destruction of the thing subject to usufruct is not due to accident, the indemnity due from the person who is liable for the damage becomes subject to the usufruct.

ARTICLE 1018 - Destruction of a building on the property subject to usufruct

If the usufruct includes a building which is in any way destroyed, the usufructuary has the right of enjoyment of the area which was occupied by such building and of the materials.

The same provision is applicable if the usufruct applies only to a building. In this case, however, if the owner intends to re-build, he has the right to occupy said area and to use the materials, by paying to the usufructuary, for the duration of the usufruct, the interests on an amount corresponding to the value of the area and of the materials.

ARTICLE 1019 - Loss of the property insured by the usufructuary

If the usufructuary insured the property or paid premiums on the property already insured, the indemnity which is due from the insurer becomes subject to the usufruct.

If an owner intends to reconstruct a building which has been destroyed with the amount received as indemnity, the usufructuary cannot oppose it. In this case the usufruct is transferred to the reconstructed building. However, if the amount used for the reconstruction is greater than the amount reserved in usufruct, the right of the usufructuary in the new building is limited to the former value thereof.

ARTICLE 1020 - Requisition and expropriation

If the property is requisitioned or expropriated in the public interest, the usufruct is transferred to the resulting indemnities.

CHAPTER IIOF USE AND HABITATIONARTICLE 1021 - Use

He who has the right of use of a thing may utilize it, and if it produces fruits, he may gather such as are necessary for his personal wants and those of his family.

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Such wants shall be estimated on the basis of the social status of the person having the right.

ARTICLE 1022 - Habitation

He who has the right of habitation in a house may use it as a dwelling, within the limits of his need and that of his family.

ARTICLE 1023 - Extent of family

The family includes also the children born after the commencement of the right of use or habitation, even though at the time when the right originated the person was not married. Adopted children, acknowledged natural children and foster children are also included, even if the adoption, acknowledgment or fosterage occurs after the commencement of such right. Parties living with the person entitled to such right for the purpose of rendering services to him or to his family are also included in the family.

ARTICLE 1024 - Surrender of rights prohibited

The rights of use and habitation cannot be surrendered or leased.

ARTICLE 1025 - Obligations connected with use and habitation

He who has the use of a property and takes all the fruits thereof and he who has the right of habitation and occupies the whole house, is bound to pay the expenses of cultivation, ordinary repairs and taxes in the same manner as a usufructuary.

If he takes only a part of the fruits or occupies only a part of the house, he contributes thereto in proportion to that which he enjoys.

ARTICLE 1026 - When provisions regarding usufruct may be applied

The provisions relative to usufruct are applicable to use and habitation, when compatible.

TITLE SIX

OF PREDIAL SERVITUDES OR SERVITUDES ON LAND

CHAPTER I

GENERAL PROVISIONS

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ARTICLE 1027 - Definition

Predial servitudes are burdens laid on one property for the use of a property belonging to another.

ARTICLE 1028 - Interpretation of use

The use may also consist of a greater convenience or an advantage to the dominant property. It may likewise be connected with the industrial use of the property.

ARTICLE 1029 - Servitudes created for future advantages

The establishment of a servitude for the purpose of assuring future advantages to a property is permissible.

Servitudes for the benefit of a building to be constructed or of a property to be acquired, or servitudes placed upon such building or property are likewise permitted; in this case the establishment of the servitude is not effective until the day when the building is constructed or the property acquired.

ARTICLE 1030 - Additional services

The owner of the servient property is not bound to perform any act to enable the person entitled to the servitude to exercise it, unless the law or deed provides otherwise.

ARTICLE 1031 - Establishment of servitudes

The establishment of servitudes may be voluntary or obligatory. Servitudes may also be established through usucaption or by act of the head of the family.

CHAPTER II

OF OBLIGATORY SERVITUDES

ARTICLE 1032 - Manner in which established

When the owner of a property has the right, by operation of law, to secure from the owner of another property the establishment of a servitude, this servitude, in the absence of a contract, is established through a court judgment. It may also be established through a decree of the administrative authorities, in the cases which are specially determined by the law. The judgment shall designate the conditions of the servitude and specify the amount of the indemnity which is due.

Before payment of the indemnity, the owner of the servient property may oppose the exercise of the servitude.

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SECTION I

OF AQUEDUCTS AND COMPULSORY DRAINAGE

ARTICLE 1033 - Obligation not to impede the flow of water

The owner is bound to let waters of all kinds flow through his property for the purpose of conducting such waters to parties who have, even temporarily, the right to use them for their own wants or for rural or industrial purposes.

Houses, yards, and gardens and their plots, are exempted from this servitude.

ARTICLE 1034 - Installing of new aqueducts

He who has the right of conducting waters through another person's property is bound to construct the necessary aqueduct for that purpose, and may not cause the waters to flow through aqueducts which are already in existence and which are utilized to carry other water.

The owner of the servient property may, however, oppose such construction by permitting the waters to flow through the aqueducts already in existence, when this can be done without considerable damage to the required right of conduit. In this case, an indemnity is due the owner of the aqueduct in an amount determined with reference to the quantity of water to be carried, the value of the aqueduct, the works required in connection with the additional flow, and the greater expenses for upkeep.

The owner of the servient property is not allowed the alternative indicated in the preceding Article with regard to public administration.

ARTICLE 1035 - Crossing of aqueducts

Whoever wishes to conduct waters through another person's property may cross beneath or above the aqueducts already in existence, regardless of whether such aqueducts belong to the owner of the property or to others, provided he performs the work necessary to avoid all damage or alteration to said aqueducts.

ARTICLE 1036 - Intersection of rivers or roads

If intersection of public roads or public waters is required for the conduit of the waters, the laws and regulations regarding roads and waters must be observed.

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ARTICLE 1037 - Conditions necessary for the establishment of servitudes

Whoever wishes to conduct waters over another person's property must prove his ability to dispose of such waters for the period covered by his request; he must also prove that the water is sufficient for the required purpose; and that such required conduit of the waters is the most convenient and the least prejudicial to the servient property considering the conditions of the adjoining properties, the slope, and other conditions connected with the conduit and discharge of the waters.

ARTICLE 1038 - Indemnities

Whoever wishes to conduct waters over another person's property, before undertaking the construction of an aqueduct, must pay the estimated value of the land to be occupied, without deducting taxes and other charges connected with the property, in addition to indemnity for damages, including such damages as may be caused by dividing the property in two or more sections or other damages caused by intersecting the property.

However, in the case of land used only as a dump for extracted materials or for discharge, payment of only one-half of the value of the land is due, without deducting taxes and other burdens attached to the property. The owner of the servient property may make plantings in these same lands, as well as remove and carry away the materials which have piled up, provided this is done without causing damage to the aqueduct, its discharge and its repair.

ARTICLE 1039 - Indemnity for temporary passage of water

If the conducting of waters is requested for a period not in excess of nine years, the payment of the values and indemnities indicated in the preceding Article is limited to one-half thereof, but with the obligation to put the property in its original condition at the expiration of the period.

The temporary passage may be made permanent prior to the expiration of this period through payment of the remaining one-half, together with the legal interest computed from the day on which the passage commenced; after the expiration of the period the amounts paid in connection with the temporary concession are no longer taken into consideration.

ARTICLE 1040 - Use of aqueduct

Whoever owns an aqueduct on another person's property may not introduce therein a greater quantity of water if the aqueduct lacks capacity therefor or if damage may result to the servient property. If the chan-

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neling of a greater quantity of water requires new construction, such construction cannot be performed before the nature and quality thereof is determined, or before payment is made of the sum due for the land to be occupied and for damages, in the manner established in Article 1038.

The same provisions are also applicable when the substitution of an underground passage by a channel bridge, or vice versa, is required in connection with the passage of water through an aqueduct.

ARTICLE 1041 - Bed of the aqueduct

The owner of the servient property may, at all times, cause the bed of the aqueduct to be permanently determined by means of bench marks or plates to be placed at certain fixed points. However, if the owner fails to avail himself of this right at the time of concession of the aqueduct, he is bound to pay one-half of the necessary expenses.

ARTICLE 1042 - Obligations in connection with the use of water courses adjacent to other persons' properties

If a water course prevents access to the owners of adjacent properties, or the pursuance of irrigation or water drainage works, those who utilize such water course, are obliged, in proportion to the benefit they derive therefrom, to construct and maintain bridges or other accesses thereto adequate for an easy and safe crossing, as well as underground pipes, canal bridges or other similar works for the maintenance of irrigation or drainage, except for the rights originating from the deed or by usucaption.

ARTICLE 1043 - Compulsory drainage

The provisions of the preceding Article relative to the passage of water are also applicable if such passage is requested for the purpose of draining superfluous waters which a neighbor may refuse to admit to his property.

Such discharge may also be requested for impure waters, provided the necessary precautions to avoid any prejudice or nuisance are taken.

ARTICLE 1044 - Land reclamation

Without violating the provisions relative to land reclamation and forestry restrictions, an owner who intends to dry up or reclaim his lands by means of drainage, filling in, or by other means, has, by paying in advance the pertinent indemnities and with the least possible damage, the right to conduct the drainage waters through pipes or ditches over the property which separates his lands from a water course or other outlets.

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If the dehydration appears to be adverse to the interests of those who utilize the waters coming from the swampy property, and if such adverse interest cannot be reconciled by means of work involving an expenditure proportionate to the purpose, the judicial authority shall make provisions to assure the prevailing interests, taking into consideration the general demands of production. If dehydration takes place, an adequate indemnity may be granted to those who opposed it.

ARTICLE 1045 - Use of pipes and ditches belonging to others

Owners whose properties are intersected by pipes and ditches belonging to others, or who could in other ways avail themselves of the work performed as a result of the provisions of the preceding Article, have the right to use such facilities to improve their own properties, provided no damage results to the properties which have already been improved; said owners shall bear the additional expenses of changes made for the purpose of permitting such facilities to be useful to the intersected properties; and they shall, moreover, bear a proportionate share of the expenses already sustained and of the expenses required for the upkeep of such facilities, which become common property.

ARTICLE 1046 - Provisions applicable to performance of work

The provisions of the second paragraph of Article 1033 and Articles 1035 and 1036 are applicable to the performance of the work mentioned in the preceding Articles.

SECTION IIOF THE RIGHT OF ATTACHING OR FASTENING SLUICESARTICLE 1047 - The servitude

Whoever has the right to receive waters from rivers, torrents, streams, canals, lakes or reservoirs may, if necessary, attach or fasten a sluice to the banks, but is obliged to pay an indemnity and to construct and maintain such works as are necessary to avoid any damage resulting therefrom.

ARTICLE 1048 - Duties of users

In receiving and using waters according to the preceding Article, any damage which may result from stagnation, overflow or diversion of the water, shall be avoided with respect to the lower riparian and the upper riparian users.

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SECTION III

OF THE COMPULSORY SUPPLY OF WATER TO A BUILDING
OR A PROPERTY

ARTICLE 1049 - Providing water for a building

If a house or its out-buildings lack the water necessary for the supply for men, or animals, or other domestic purposes, and said water cannot be procured without excessive expenditure, the owner of an adjoining property must allow the superfluous water on his property to be used, in an indispensable quantity, for such necessities.

Before the commencement of the work, payment of the value of the water, in the quantity demanded, shall be made, such payment to consist of one annual charge. All expenses connected with the tapping and drawing off of the water must also be borne. Moreover, the provisions of the first paragraph of Article 1038 are applicable.

In the absence of an agreement, a judgment shall establish the manner of drawing off of the water and the indemnity which is due.

When changes from the original conditions take place, the drawing off may be stopped upon demand of either party.

ARTICLE 1050 - Supply of water to a property

The provisions set forth in the preceding Article are also applicable if the owner of a property lacks water to irrigate it and the waters of an adjoining property are sufficient partially to provide such irrigation, after satisfying all domestic, agricultural or industrial needs of the property where the waters are.

The provisions of this Article and of Article 1049 are not applicable if the waters are being disposed of as a result of a concession granted by the administrative authorities.

SECTION IV

OF RIGHT OF WAY

ARTICLE 1051 - Right of way

An owner whose property is surrounded by properties belonging to others, and who has no way to a public road and cannot procure such way without excessive expenditure or inconvenience, has the right of

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passage over a neighboring property for the purpose of cultivation and the more convenient use of his own property.

Such passage shall be established over that part of the property where access to a public way is the shortest and of least injury to the servient property. Passage may also be established by means of an underground passage-way, when this is preferable in consideration of the advantages to the dominant and to the servient properties.

The same provisions are applicable if a person who has a right of way over another person's property requires an enlargement thereof for the above-mentioned purpose, or to make the passage available to vehicles which may also include automotive vehicles.

Houses, yards, gardens and their plots are exempted from this servitude.

ARTICLE 1052 - Right of way in favor of a property which is not inclosed

The provisions of the preceding Article are also applicable if the owner of a property has access to a public road but such access is unsuitable or insufficient for the needs of the property and cannot be enlarged.

Such right of way may be granted by the judicial authorities if the request is found to be in conformity with the demands of industry or agriculture.

ARTICLE 1053 - Indemnities

In the instances set forth in the two preceding Articles an indemnity is due in proportion to the damage occasioned by the passage.

If, in order to open the passage, it is necessary to encumber the servient property with permanent installations, or to abandon cultivation of a portion of such property, the owner who requests the right of way, before undertaking the work for such installation or commencing the use of the right of way, shall pay for the value of said portion of the servient property in the amount established by the first paragraph of Article 1038.

ARTICLE 1054 - Enclosing due to alienation or partition

If a property has become surrounded by reason of an alienation for a consideration, the owner has the right to receive from the other contracting party a right of way without paying any indemnity.

The same rule applies in the case of partition.

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ARTICLE 1055 - Termination of enclosing conditions

If the right of passage ceases to be necessary, it may be extinguished at any time upon demand of the owner of either the dominant or the servient property. The owner of the latter shall return any compensation he received, but the judicial authorities may provide for a reduction of the amount, in consideration of the duration of the servitude and of the damages which have been suffered. If the indemnity was agreed upon to be paid in annual installments, such contribution ceases with the following year.

SECTION VOF THE RIGHT OF WAY FOR TRANSMISSION OF ELECTRIC CURRENT
AND FOR CABLE CARS AND FUNICULAR RAILWAYSARTICLE 1056 - Passage for electric current installation

Owners are obliged to give right of way over their properties to electric current installations, in accordance with the pertinent laws.

ARTICLE 1057 - Right of way of cable cars

Owners are also obliged to give right of way over their properties for the cables of aerial funicular railways serving rural or industrial purposes and to allow on their properties the work, installations and occupation necessary for that purpose.

CHAPTER IIIOF VOLUNTARY SERVITUDESARTICLE 1058 - Mode of establishment

Predial servitudes may be established by agreement or by will.

ARTICLE 1059 - Servitude granted by one of the co-owners.

Servitudes granted by one of the owners of an undivided property are not established until the other owners grant it also, either jointly or separately.

However, a grant made by one of the co-owners independently from the other owners, binds the grantor, his heirs, or other persons whose rights derive from the heirs, not to place impediments in the way of the exercise of such grant.

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ARTICLE 1060 - Property subject to usufruct

An owner may impose on his property such servitudes as do not impair the rights of the usufructuary, without the consent of the latter.

CHAPTER IV

OF SERVITUDES ACQUIRED THROUGH USUCAPTION OR THROUGH
DESTINATION OF THE HEAD OF THE FAMILY

ARTICLE 1061 - Non-apparent servitudes

Non-apparent servitudes cannot be acquired through usucaption or by destination of the head of the family.

Non-apparent servitudes are those which do not require visible and permanent works to be constructed.

ARTICLE 1062 - Destination of the head of the family

Servitudes by destination of the head of the family are established when it appears, by any kind of evidence, that two properties which are actually divided, formerly belonged to the same owner, who caused or allowed the conditions to exist which resulted in a servitude. If the two properties cease to belong to the same owner with no provision made regarding the servitudes, they continue to exist actively and passively in favor of, or upon, the property which has been separated.

CHAPTER V

OF THE EXERCISE OF SERVITUDES

ARTICLE 1063 - Pertinent regulations

The duration and exercise of servitudes is regulated by the provisions in the title deed and, in the absence thereof, by the following provisions.

ARTICLE 1064 - Limits upon the right of servitude

The right of servitude includes everything necessary for its enjoyment.

If an owner wishes to enclose his property, he must allow a free and convenient passage through his property for the use of whoever has a right of servitude.

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ARTICLE 1065 - Exercise of servitude in accordance with deed or possession

Whoever is entitled to a servitude, can use it only in accordance with his deed or right of possession.

When in doubt as to the limits and conditions imposed on a servitude, it shall be deemed to have been established so as to satisfy the needs of the dominant property in the way least burdensome to the servient property.

ARTICLE 1066 - Servitudes based on possession.

Concerning servitudes established by possession, consideration is given to the exercise thereof in the preceding year and, in the instance of servitudes which are exercised at intervals longer than one year, to the last use made of the servitude.

ARTICLE 1067 - Prohibition to increase or decrease the burden of servitudes

The owner of a dominant property cannot make any change which would increase the burden of the servient property.

The owner of the servient property cannot perform any act tending to prevent the exercise of the servitude or to render it more inconvenient.

ARTICLE 1068 - Transfer of servitude to a different place

The owner of a servient property cannot transfer the use of a servitude to a different place from the one where such use has been originally established.

However, if this first designation should have become more burdensome to the servient property, or if it prevents the carrying out of work or repairs or the making of improvements, the owner thereof may offer to the owner of the dominant property another place equally convenient for the use of his rights, and the latter cannot refuse.

The transfer of the place for the use of the servitude may likewise be granted upon request of the owner of the dominant property, if he gives evidence that such transfer would be of considerable advantage to him and would cause no damage to the servient property.

The judicial authorities may provide also that the servitude be transferred to another property belonging to the owner of the servient property, or of a third party who acquiesces to such transfer, provided the use of the servitude is equally convenient to the owner of the dominant property.

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ARTICLE 1069 - Work carried out on servient property

The owner of the dominant property, in carrying out the work necessary for the maintenance of the servitudes, shall select such time and manner for such work as will cause the least inconvenience to the owner of the servient property.

The work shall be carried out at the expense of the owner of the dominant property unless the title deed or the law provides otherwise.

However, if the works benefit both properties, the expenses shall be borne in proportion to the advantages derived by each owner, respectively.

ARTICLE 1070 - Abandonment of servient property

When the owner of the servient property is obliged to bear the expenses necessary for the use and maintenance of the servitude, in accordance with the title deed or with the law, he may always exonerate himself from such obligation by renouncing the ownership of the servient property in favor of the owner of the dominant property.

If the use of the servitude is limited to one portion of the property renunciation may be limited to that portion.

ARTICLE 1071 - Partition of dominant or servient property

If the dominant property is partitioned, each portion retains its share of the servitude, without increasing the burden of the servient property.

If the servient property is partitioned, and the servitude falls on a specified portion of such property, the other portions are exempt from the servitude.

CHAPTER VI

OF THE EXTINGUISHMENT OF SERVITUDES

ARTICLE 1072 - Extinguishment by merger

Servitudes are extinguished when the ownership of the dominant and servient property is merged in one person.

ARTICLE 1073 - Extinguishment by prescription

Servitudes are extinguished by prescription through the non-user thereof for twenty years.

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This period begins from the day of discontinuance of the use of the servitude; however, in the case of negative servitudes or servitudes which do not require the intervention of man for their use (continuous servitudes), the period begins to run from the day on which the conditions which prevent the use of the servitude have come into being.

With respect to discontinuous servitudes, the period begins to run from the day on which the servitude could have been used but such use was not made.

The period in which the preceding owners of the right of servitude failed to avail themselves thereof is also counted for the purposes of extinguishment of the servitude.

If the dominant estate is owned in common by several persons, a right of servitude which is exercised by one of said persons bars the extinguishment of the servitude for all others.

A non-use which is suspended or interrupted by one of the co-owners benefits the other co-owners.

ARTICLE 1074 - Impossibility of use and cessation of usefulness

The fact that the use of a servitude has become impossible or that it has ceased to be useful does not extinguish the servitude until the lapse of the period indicated in the preceding Article.

ARTICLE 1075 - Limited exercise of servitude

Although a servitude is used in such a way that its usefulness is less than that contemplated in the title deed, such servitude is maintained in its entirety.

ARTICLE 1076 - Exercise of servitude not in accordance with title deed or right of possession

Although a servitude is used at a time different from the time designated by the title deed or by the right of possession, this does not bar the extinguishment of the servitude by prescription.

ARTICLE 1077 - Servitudes established on emphyteutic property.

Servitudes which the emphyteutic tenant establishes on the emphyteutic property are extinguished when the grant of emphyteusis terminates by completion of its duration, by prescription, or by devolution.

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ARTICLE 1078 - Servitudes established in favor of emphyteutic property, or of dower property or in usufruct

Servitudes established by the emphyteutic tenant in favor of the emphyteutic property do not cease at the termination of the grant of emphyteusis.

The same rule prevails for servitudes established by the usufructuary in favor of the property of which he enjoys the usufruct, and for the servitudes established by a husband in favor of the dower property.

CHAPTER VII

OF ACTIONS FOR THE PRESERVATION OF SERVITUDES

ARTICLE 1079 - Confirmation of servitudes and other protective measures

A person who is entitled to a servitude may require its recognition in a suit against any person contesting the use thereof, and may also require the cessation of any impediment or molestation. Restoration of previous conditions may also be requested in addition to compensation for damages.

CHAPTER VIII

OF CERTAIN SERVITUDES RELATIVE TO WATERS

SECTION I

SERVITUDES CONSISTING OF TAPPING OR DRAWING OFF OF WATER

ARTICLE 1080 - Continuous tapping

The right of continuous tapping of water may be exercised at all times.

ARTICLE 1081 - Unit of measurement of water

Servitudes which include an agreed and specified constant supply of water, shall have the pertinent quantity of water, determined with reference to the unit of measurement thereof.

Such unit of measurement applies to running water.

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This unit is represented by the flowing of a body of water in the constant quantity of one hundred liters per second and is measured in tenths, hundredths and thousandths.

ARTICLE 1082 - Shape of the opening and of intake apparatus

When the shape of the opening and of the intake apparatus for the drawing off of a specified and constant amount of running water has been determined, the parties may no longer request any modification thereof for excessive or insufficient supply of water, unless such excess or insufficiency is due to changes made in the distributory channel or in the water course when such waters are flowing.

If said shape has not been determined but the opening and intake apparatus have been constructed and owned for five years, the parties, after that period, may not even make claims based on excessive or insufficient supply, except in cases when changes have been made in the distributory channel or the water course.

In the absence of a provision in the title deed or of intake apparatus the shape shall be determined by the judicial authorities.

ARTICLE 1083 - Manner in which amount of water is determined

When the amount of water has not been determined but the drawing off is made for a definite purpose, the concession is deemed to have been made for the quantity of water necessary for such purpose and any interested party may at all times adjust the shape of the intake apparatus in such a manner as to ensure the necessary supply and prevent an excessive one.

However, if the shape of the opening and of the intake apparatus has been determined or if, in the absence of a title deed, a specified shape of intake apparatus has been used for five years, the parties may not assert any changes except in the case set forth in the preceding Article.

ARTICLE 1084 - Pertinent regulations

Servitudes consisting of the tapping of water are regulated by local customs whenever the title deed does not contain pertinent provisions or when it is impossible to relate such provisions to the right of possession.

In the absence of such use, the provisions of the following three Articles are applicable.

ARTICLE 1085 - Time when servitudes may be used

The right to tap summertime flow of water is exercised from the vernal equinox to the autumnal equinox; for the winter flow of water, from the autumnal equinox to the vernal equinox.

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Apportionment by day and night refers to natural days and nights.

The right to use waters on holidays is regulated by the list of legal holidays at the time when the right of use was agreed upon, or from the start of the right of possession.

ARTICLE 1086 - Distribution by rotation

• When water is distributed by rotation, the time required by the water to reach the intake opening of the user is charged to such user; the residue of the water belongs to the person whose term of rotation is expiring.

ARTICLE 1087 - Excess or escaped water

Excess or escaped waters contained in the bed of a distributory channel, in channels subject to distribution by rotation, can only be kept or drawn off by the user during his term of rotation.

ARTICLE 1088 - Changes in terms of rotation

Users of the same distributory channel may change or exchange their term of rotation, provided such changes do not cause damage to others.

ARTICLE 1089 - Water used for power

Whoever has the right to use water for power may not stop or retard the flow of such water by causing it to overflow or by impounding it, unless the title deed expressly provides for it.

ARTICLE 1090 - Upkeep of channel

The owner of the servient property, in servitudes consisting of the tapping or conduit of waters, may request of the owner of the dominant property that the channel be kept properly unobstructed and that the banks be in good state of repair at the expense of said owner of the dominant property, provided the title deed does not provide otherwise.

ARTICLE 1091 - Obligations of grantor extends to the place where water is delivered

Unless the title deed provides otherwise, the grantor of water coming from a spring or a channel is bound, with respect to the users, to perform all ordinary and extraordinary work necessary for the drawing off and carrying of the waters to the point where he makes delivery of it, to keep the constructions in good condition, to keep up the bed and the banks of the spring or channel, to perform the usual cleansing operations, and to

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use due diligence in order that the drawing off and the regular carrying of the water may be effected at the appropriate times.

ARTICLE 1092 - Deficiency of water.

Any insufficiency of water must be suffered by those who are entitled to take and use such water at the time when the deficiency occurs.

When there are several users, the deficiency of the water shall be suffered first by those whose title or possession is the most recent, and when conditions are equal, by the user who was the last to exercise his right.

However, the judicial authorities, thru decree in chambers, having heard the competent technical experts, may alter or curtail the terms of rotation of users and make other necessary provisions, taking into account the disposable quantity of water, customs, and the cultivations for which the water is intended.

A grantor of water rights is bound to decrease proportionately the supply agreed upon when the deficiency is due to natural causes or to acts of third parties. Likewise, indemnities are allotted for changes or curtailments of terms of rotation which have been ordered by the judicial authority.

ARTICLE 1093 - Reduction in the use of servitude

If a servitude contemplates rights to draw off water and, for reasons independent from the will of the owner, such reduction of water occurs so that there is not sufficient for the needs of the servient property, the owner of the latter may request reduction in the use of the servitude, taking into account the needs of both properties. In this case an adequate indemnity is due the owner of the dominant property.

SECTION II

OF SERVITUDES CONSISTING OF SEEP-
ING WATER AND RESIDUES OF WATER

ARTICLE 1094 - Active servitudes consisting of seeping water

Water which seeps or percolates from another property may constitute a servitude in favor of the property receiving such water for the purpose of preventing such water from being diverted.

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ARTICLE 1095 - Usucaption of active servitude consisting of seeping water

The valid period for usucaption of servitudes consisting of seeping water begins to run from the day on which the owner of the dominant property carried out visible and permanent works on the servient property for the purpose of gathering and conducting such water to the advantage of his own property. When a hole for the purpose of catching and conducting the seeping water has been made on the servient property, the normal clearing and maintenance of the banks thereof shall lead to the presumption that such hole was made by the owner of the dominant property, provided there is no title deed indication or proof to the contrary.

The existence of works constructed and maintained in the hole by the owner of the property where the hole exists is deemed to be an indication contrary to said presumption.

ARTICLE 1096 - Rights of the owners of the servient property

Servitudes consisting of seeping waters do not take away from the owner of the servient property the right to use the water freely to the advantage of his property, to change the cultivation, or to abandon the irrigation, wholly or in part.

ARTICLE 1097 - Right to water residues

When water is granted, reserved or owned for a specified use, with the obligation to return to the grantor or others the residue, the use of the water may not be altered to the detriment of the property to which restitution is due.

ARTICLE 1098 - Prohibition to divert seeping or residue waters

The owner of property bound to permit the flow of seeping or residue water may not divert any part thereof on the grounds of having added a greater amount of spring water or a different substance, but shall allow such seeping or residue water to flow in its entirety in favor of the dominant property.

ARTICLE 1099 - Substitution of spring water

The owner of property subject to a servitude of seeping or residue water may always be discharged from this duty by granting and ensuring to the dominant property spring water in the quantity determined by the judicial authorities, taking into account all the circumstances of the case.

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TITLE SEVEN

OF JOINT OWNERSHIP

CHAPTER I

OF JOINT OWNERSHIP IN GENERAL

ARTICLE 1100 - Pertinent regulations

When ownership or other rights in rem belong in common to several persons the following provisions are applied, unless the title deed or the law provides otherwise.

ARTICLE 1101 - Shares of participants

The shares of the participants in joint ownership are presumed to be equal.

The participants share in the advantages and burdens of the common ownership in proportion to their respective shares.

ARTICLE 1102 - Use of property constituting common ownership

Each participant may use the jointly owned property provided he does not alter its purpose and does not prevent the other participants from sharing in such use in accordance with their rights. For such use, a participant may contribute, at his own expense, to bring about changes which are necessary for the better enjoyment of the property.

A participant may not enlarge his rights in the jointly owned property to the detriment of the other participants, unless he performs acts necessary to change the title under which he is in possession.

ARTICLE 1103 - Disposition of shares

Each participant may dispose of his right in the property subject to joint ownership, and surrender to others the enjoyment of such property within the limits of his share.

The provisions of Chapter VI of Title Three of Book Six are observed for liens established by one of the participants in the common property.

ARTICLE 1104 - Obligations of participants

Each participant shall contribute to the expenses necessary for the upkeep and enjoyment of the jointly owned property and to the expenses

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which have been agreed upon by a majority of participants, except for his election to exonerate himself from such contributions by renouncing his right.

Renunciation does not benefit participants who have approved, even tacitly, the expenditure.

A grantee of a participant is bound jointly and severally with the grantor for the payments of the contributions due and not paid by said grantor.

ARTICLE 1105 - Administration

All the participants have the right to share in the administration of the jointly owned property.

The decisions of a majority of participants regarding acts of ordinary administration is binding on a dissenting minority, such majority of participants being calculated on the basis of the value of their shares.

It is necessary for the validity of the decisions of the majority that all participants be previously informed of the subject of their deliberation. In the absence of the necessary action for the administration of the jointly owned property, or of the formation of a majority, or if the decision which has been reached is not carried out, each participant may appeal to the judicial authorities, which shall make adequate provisions in chambers and may also appoint an administrator.

ARTICLE 1106 - Regulations governing joint ownership and appointment of administrator

Regulations for the ordinary administration and for the better enjoyment of the jointly owned property may be formulated by a majority as provided in the preceding Article.

The administration of the property may, in the same manner, be delegated to one or several of the participants, or even to an outsider, the powers and the obligations of the administrator being defined.

ARTICLE 1107 - Objections to regulations

Each dissenting participant may object before the judicial authorities to the regulations governing the jointly owned property, within thirty days from the time when such regulations were approved. For absentees, this period runs from the day on which they are notified of such approval. The judicial authorities shall settle all controversies in one judgment.

When the time limit indicated in the preceding paragraph has elapsed without objection being raised to the regulations, these regulations are

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effective also with respect to the heirs of each participant and those whose rights derive from the participants.

ARTICLE 1108 - New work and other acts exceeding ordinary administration

All kinds of new work for the purpose of improving the jointly owned property or to make the enjoyment thereof more profitable or convenient, provided such work does not prejudice the enjoyment of any one of the participants and does not involve too great an expenditure, may be agreed upon by a majority of participants representing at least two-thirds of the total value of the jointly owned property.

Other acts exceeding ordinary administration may be approved in the same manner provided that such acts be not prejudicial to the interest of any one of the participants.

The consent of all participants is necessary for acts involving alienation or establishment of rights in rem upon the jointly owned property, or for leases for a term greater than 9 years.

Liens, however, may be approved by a majority as indicated in the first paragraph, when the object of such liens is to assure restitution of amounts borrowed for the purpose of reconstruction or improvement of the jointly owned property.

ARTICLE 1109 - Objections to deliberations

Any dissenting participants may object before the judicial authorities to the decisions of the majority, in the following cases.

1. In the case set forth in the 2nd paragraph of Article 1105, if the decision is seriously prejudicial to the jointly owned property.
2. For failure to observe the provisions of the third paragraph of Article 1105.
3. If the decisions relative to new works or other acts exceeding ordinary administration are in contradiction to the provisions of the first and second paragraphs of Article 1108.

Objections shall be submitted within thirty days from the time of the decision, under penalty of prescription. For absentees, such time limit runs from the day on which they were notified of the decision. Pending judgment, the judicial authority may order that the provisions which have been decided upon, be suspended.

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ARTICLE 1110 - Reimbursement of expenses

A participant who has sustained expenses necessary for the upkeep of the jointly owned property is entitled to reimbursement if such expenditures were caused by negligence of other participants or of the administrator.

ARTICLE 1111 - Dissolution of joint ownership

Each of the participants may at all times request the dissolution of the joint ownership; the judicial authorities may order a reasonable delay, but never over five years, if the immediate dissolution may be prejudicial to the interests of others.

An agreement to maintain the joint ownership for a period, not exceeding ten years, is valid, and is also effective with respect to those whose rights derive from the participants. If a longer period has been stipulated, such period is reduced to ten years.

The judicial authority may, in grave circumstances, order the distribution of the joint ownership prior to the time agreed upon.

ARTICLE 1112 - Property which is not subject to partition

Dissolution of the joint ownership cannot be requested in the case of property which, if partitioned, would cease to serve the purpose for which intended.

ARTICLE 1113 - Presence during partition and objections

Creditors and those whose rights derive from a participant may intervene in the partition at their own expense, but may not object to partition already made unless they have given notice of their objection prior to such partition, and they retain, in all cases, their power to bring action for revocation or subrogation.

In the case of partition of immovable property, such objection must be entered in the public records prior to the entry of the document of partition, and in the case of partition ordered by the judicial authorities, prior to entry in the records of the application relative thereto.

A notice must be served on the registered creditors and those who have acquired rights on the movable property as a result of instruments which must be entered in the public record or which were entered in such record prior to the entry of the document of partition or of the entry of the document of partition or of the entry of the application for a

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judicial partition, for the purpose of making partition effective in respect thereto.

The fact that a creditor has received in advance in kind for claims arising from joint ownership cannot be used as defense against the persons specified in the preceding paragraph. The right to advance payments arising from a legal title anterior to joint ownership, or from collation, are excepted.

ARTICLE 1114 - Partition in kind

Partition is made in kind, if the property cannot be conveniently divided in parts corresponding to the shares of the participants.

ARTICLE 1115 - Obligations in solido of participants

Any participant may request that obligations attached to the jointly owned property which were contracted in solido and which have fallen due or which will fall due within the current year in which partition is demanded, be satisfied.

The amount necessary for the satisfaction of such obligations is deducted from the sale price of the jointly owned property and, if the partition is to be made in kind, an adequate fraction of the property is sold, unless the participants have made other agreements.

Participants who have satisfied a claim in solido and have not been reimbursed therefor, are entitled to a larger portion in the partition proportionate to their rights with respect to the other participants.

ARTICLE 1116 - Provisions applicable to partitions of inheritance

The provisions applicable to partition of inheritance are applicable to partitions of jointly owned property, provided they are not in contradiction with the above mentioned provisions.

CHAPTER IIOF TENANCY IN COMMON OF APARTMENT BUILDINGSARTICLE 1117 - Parts of premises which are held in common

The following parts of an apartment building are owned jointly by the owners of the various stories, or portions thereof, of said building, unless the title deed provides otherwise:

1. The soil upon which the building is erected, the foundations, the master walls, roofs and solariums, the stairways, the entrance gate, the vestibules, the alleys, the porches, the yards, and in general, all parts of the building which are necessary for the common use thereof.

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2. The janitor's premises and the living quarter for the janitor, the laundry, the quarters for central heating, drying yards, and for other similar services in common.

3. Works, installations and constructions of any kind for the common use and enjoyment, such as elevators, wells, cisterns, aqueducts, drainage, discharge channels, wells and gas works, and electric and heating installations and similar installations up to the point where they branch off into the premises which are owned exclusively by the co-owners.

ARTICLE 1118 - Rights of participants in parts owned in common

The rights of each co-owner in the parts indicated in the preceding Article are in proportion to the value of the story or portions thereof belonging to each proprietor, unless the title deed provides otherwise.

A co-owner may not exonerate himself from sharing in the expenses for the upkeep of said parts by renouncing his rights in same.

ARTICLE 1119 - No partitions permitted

The parts of an apartment building owned in common are not subject to partition unless such partition may be made without causing greater inconvenience to each co-owner.

ARTICLE 1120 - New works

The co-owner may, with the approval of a majority as indicated in the fifth paragraph of Article 1136, order all kinds of new works intended for the improvement or for the greater convenience or usefulness of parts owned in common. New works which may endanger the stability or safety of the building, as well as those which may alter its architectural plan or which may cause some parts owned in common to be inaccessible for the use and enjoyment even of one co-owner, are prohibited.

ARTICLE 1121 - Burdensome and luxurious new works

If the new works involve a very heavy expenditure or if they appear to be luxurious with respect to the special conditions and to the importance of the building, and if they consist of works, installations or constructions which are susceptible of separate use, co-owners who do not intend to avail themselves of such works are exonerated from contributing to any expense therefor.

If the separate use is not possible, the new works are not permitted unless a majority of the co-owners who have decided upon or approved such works intend to bear the total expenditures involved.

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In the case set forth in the first paragraph, the co-owners, their heirs, and those whose rights derive from the co-owners, may at any time be admitted to share the advantages of the new works by contributing to the expenses of their installation and upkeep.

ARTICLE 1122 - Works performed on parts of the building which are owned in common

The co-owners may not carry out, on their own stories or portions thereof, works which may cause damage to the parts of the building owned in common.

ARTICLE 1123 - Sharing of expenses

Expenses necessary for the upkeep and enjoyment of the parts of the building held in common, for the rendering of services for the common benefit, and for new works decided upon by the majority, are borne by the co-owners in a ratio proportionate to the value of the share of the property of each co-owner, unless agreements provide otherwise.

In the case of works intended to benefit the co-owners in different degrees, the expenses are divided in proportion to the use made by each of the co-owners, respectively.

If a building has several stairways, yards, solariums, works or installations intended to serve a part of the entire building, the expenses involved in their upkeep are chargeable to the group of co-owners who derive benefits therefrom.

ARTICLE 1124 - Upkeep and reconstruction of stairways

The stairways shall be maintained and reconstructed by the owners of the various stories served by such stairways. The expenses involved are divided between such owners in the ratio of one-half computed according to the value of the individual stories or portions thereof, and the other half in the ratio proportionate to the height of each story from the soil.

For the purposes of computing the one-half of the expenditures based on the value of the individual stories, the cellars, storage rooms, attics or dome rooms and the solarium, if not owned in common, are considered as stories.

ARTICLE 1125 - Upkeep and reconstruction of attics, vaults and ceilings

Expenses for the upkeep and reconstruction of attics, vaults and

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ceilings are divided in equal parts between the owners of the adjoining stories, charging the owner of the higher story for the flooring and the owner of the lower for the plastering, painting and decorating of the ceiling.

ARTICLE 1126 - Solarium for exclusive use

When a solarium or a portion thereof is not shared by all the co-owners, those who have the exclusive use thereof are bound to contribute one-third of the expenses involved in the repair or reconstruction of the flooring of such solarium; the other two-thirds are chargeable to all the co-owners of the building, or of that part of the building which is served by the solarium, in a ratio proportionate to the value of the story, or part thereof, of each co-owner.

ARTICLE 1127 - Construction superimposed on highest story of a building

The owner of the highest story of a building may erect new stories or constructions, unless the title deed provides otherwise.

The exclusive owner of a solarium has the same power.

This superstructure is not permitted if the condition of the building does not allow it.

The co-owners may, likewise, object to the construction if it is prejudicial to the architectural line of the building, or if it seriously curtails the admission of air or light in the lower stories.

Whoever erects the superstructure on a building shall pay the other co-owners an indemnity equal to the actual value of the area to be occupied by the new construction, divided according to the number of stories, including the story to be built, and deducting the amount of the share due by the person undertaking the construction. He is also obliged to reconstruct the solarium which the co-owners or group of co-owners had the right to use.

ARTICLE 1128 - Total or partial loss of the building

If the building is destroyed completely, or to an extent representing three-quarters of its value, each of the co-owners may request the sale at auction of the soil and of the materials, unless there are agreements to the contrary.

If the building is destroyed to a lesser extent, the co-owners in a meeting shall make decisions regarding the reconstruction of the portions of the building owned in common and each co-owner is obliged to share in that plan in proportion to his rights in such portion.

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The indemnities received as insurance on portions owned in common shall be used for such reconstruction.

A co-owner who does not intend to participate in the reconstruction of the building is obliged to turn over his rights to the other co-owners, including his rights in the portion held by him exclusively, for an amount corresponding to the evaluation made of such portion, unless he prefers to surrender his rights to only some among the co-owners.

ARTICLE 1129 - Appointment and revocation of administrator

When there are more than four co-owners, the meeting of co-owners shall appoint an administrator. If the meeting makes no provision to that effect, an administrator is appointed by the judicial authority upon request of one or more co-owners.

The administrator remains in office for one year and his appointment may be revoked at any time, by a meeting of co-owners.

It may be revoked also by the judicial authorities upon solicitation of any of the co-owners, not only in the instance set forth in the last paragraph of Article 1131 but also if the administrator fails to give an account of his management for two years, or if there is well-founded suspicion of serious irregularities.

The appointment and the termination of the appointment of the administrator, for any cause, shall be entered in a special register.

ARTICLE 1130 - Duties of administrator

The administrator shall:

1. Carry out the decisions of the meeting of co-owners and abide by the rules regulating the property owned in common.
2. Regulate the use of the property owned in common, and the common enjoyment of said property among the co-owners, in such manner as to assure the best enjoyment thereof for all co-owners.
3. Claim the contributions and provide for the expenses necessary for the ordinary upkeep of the portion of the building owned in common and for the use of the jointly owned facilities.
4. Perform all acts which are necessary for the conservation of the rights connected with the portions of the building owned in common.

At the end of each year the administrator shall render an account of his management.

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ARTICLE 1131 - Representation

The administrator represents the participants within the limits of the duties set forth in the preceding Article or within the limits of greater powers granted to him by the regulations formulated by the co-owners or by the meeting, and may proceed judicially either against the co-owners or against third parties.

The administrator may be made defendant in any suit concerning the portion of the building owned in common; notice of any decree of the administrative authorities with respect thereto is served on him.

When the summons or the decree involve questions beyond the limits of his duties, the administrator is bound to give notice thereof, without delay, to the meeting of co-owners.

If the administrator does not fulfil this obligation his appointment may be revoked and he may be liable for compensation for damages.

ARTICLE 1132 - Disagreement of co-owners with respect to litigation

If the meeting of co-owners decides to commence a litigation or to raise a defense to a demand made upon it, a dissenting co-owner may, by document, notice of which is served on the administrator, disassociate himself from responsibility with respect to the consequences of possible loss of the litigation. Notice of such document shall be given within thirty days from the day on which such co-owner has notice of the decision.

The dissenting co-owner has the right to recover any amount thus paid to the prevailing party.

If the outcome of the litigation is favorable to the co-owners, the dissenting co-owner who has derived benefit therefrom is obliged to contribute to the expenses of the lawsuit and those which cannot be exacted from the losing side.

ARTICLE 1133 - Decisions of the administrator

Decisions made by the administrator within the limits of his powers are binding on the co-owners.

An appeal against such decisions may be made to the meeting of co-owners, without prejudice to an appeal to the judicial authorities, in the instances and within the time limits set forth in Article 1137.

ARTICLE 1134 - Expenses sustained by a co-owner

A co-owner who, without the authorization of the administrator or the meeting of co-owners, has sustained expenses in connection with the

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property owned in common has no right to reimbursement unless such expenses are of an urgent nature.

ARTICLE 1135 - Duties of meeting of co-owners

In addition to the provisions set forth in the preceding Article, the meeting of co-owners shall provide the following:

1. Confirmation of the appointment of the administrator and his compensation, if any.
2. Approval of the estimate of necessary expenses for the year, and partition thereof among the co-owners.
3. Approval of the final accounting of the administrator and investment of assets left over from his administration.
4. Works other than those made for necessary maintenance, setting up a special fund, if necessary.

The administrator may not order works outside of ordinary maintenance unless they are urgent, but in this event he shall report thereon at the next meeting of the co-owners.

ARTICLE 1136 - Formation of the meeting of co-owners and validity of decisions

The meeting of co-owners is regularly constituted when there are present a number of co-owners representing two-thirds of the value of the entire building and a number of co-owners representing two-thirds of the participants in the joint ownership.

The resolutions adopted by a number of participants who represent a majority and at least one-half of the value of the building are valid.

If the meeting is prevented from making decisions through the absence of a quorum of participants, a second session of the meeting, on the day following the day of the first meeting and never more than ten days from same, shall then make its decisions; such decisions are valid if made by a number of votes representing one-third of the participants in the joint ownership and at least one-third of the value of the building.

Decisions regarding the appointment and revocation of the appointment of the administrator, decisions concerning the defense or prosecution of litigations relative to questions beyond the powers of the administrator, and decisions regarding the reconstruction of the building or extraordinary repairs of considerable importance, shall always be made by the majority as established in the second paragraph.

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ARTICLE 1135 - Duties of meeting of co-owners

In addition to the provisions set forth in the preceding Article, the meeting of co-owners shall provide the following:

1. Confirmation of the appointment of the administrator and his compensation, if any.
2. Approval of the estimate of necessary expenses for the year, and partition thereof among the co-owners.
3. Approval of the final accounting of the administrator and investment of assets left over from his administration.
4. Works other than those made for necessary maintenance, setting up a special fund, if necessary.

The administrator may not order works outside of ordinary maintenance unless they are urgent, but in this event he shall report thereon at the next meeting of the co-owners.

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The resolutions adopted by a number of participants who represent a majority and at least one-half of the value of the building are valid.

If the meeting is prevented from making decisions through the absence of a quorum of participants, a second session of the meeting, on the day following the day of the first meeting and never more than ten days from same, shall then make its decisions; such decisions are valid if made by a number of votes representing one-third of the participants in the joint ownership and at least one-third of the value of the building.

Decisions regarding the appointment and revocation of the appointment of the administrator, decisions concerning the defense or prosecution of litigations relative to questions beyond the powers of the administrator, and decisions regarding the reconstruction of the building or extraordinary repairs of considerable importance, shall always be made by the majority as established in the second paragraph.

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Decisions regarding new works, as set forth in the first paragraph of Article 1120, shall always be approved by a number of votes representing the majority of participants in the joint ownership and two-thirds of the value of the building.

The meeting cannot make decisions, unless it appears that all the co-owners have been summoned thereto.

An official report of the decisions made by the meeting shall be entered in a register kept by the administrator.

ARTICLE 1137 - Objections to decisions of the meeting

The decisions made by the meeting in accordance with the preceding Article are binding on all the co-owners. Any dissenting co-owner may appeal to the judicial authorities against decisions which are contrary to the law or regulations concerning joint ownership, but such appeal does not cause suspension of the carrying out of the decision unless such suspension is ordered by the judicial authorities.

A dissenting co-owner's appeal shall, under penalty of being barred, be submitted within thirty days from the time of the decision, and in the case of absent co-owners, thirty days from the time notice is received.

ARTICLE 1138 - Regulations of joint ownership

When the number of co-owners of a building is more than ten, a set of regulations shall be made up, containing the manner in which the property in common shall be used and the manner of sharing of expenses in accordance with the rights and obligations of each co-owner, the rules for maintaining the character of the building, and the rules relative to the administration.

Such co-owners may take the initiative for the formation of the regulations, or the revision of those already in existence.

The regulations shall be approved by the meeting by a majority as established in the second paragraph of Article 1136 and shall be entered in the register indicated in the last paragraph of Article 1129. The regulations may be attacked in accordance with Article 1107.

The rules contained in the set of regulations shall in no way affect the rights of each co-owner, as such rights may appear in documents of purchase or in agreements, and they may never derogate from the provisions of the second paragraph of Article 1118 and Articles 1119, 1120, 1129, 1131, 1132, 1136 and 1137.

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ARTICLE 1139 - Reference to rules of joint ownership

The provisions regarding joint ownership in general are observed in matters which are not specifically set forth in this Chapter.

TITLE EIGHT

OF POSSESSION

CHAPTER I

GENERAL RULES

ARTICLE 1140 - Possession

Possession is control over a thing, such control being manifested by acts corresponding to the exercise of ownership or of other rights in rem.

A thing may be possessed directly or through another person who holds it.

ARTICLE 1141 - Detention transformed into possession

The person who exercises the actual control over a thing is presumed to be the possessor thereof, unless it can be proved that such possession has originated from mere detention of the thing.

If a person commences to hold a thing for another, he cannot acquire possession thereof until the title to such thing is transferred either through the act of a third party or as the result of claims made by such holder against its owner.

This rule is also effective with respect to heirs under universal title.

ARTICLE 1142 - Intermediate possession presumed

A person presently in possession, having been in possession at an earlier time, is presumed to have been in possession during the intervening period.

ARTICLE 1143 - Presumption of previous possession

Previous possession is not presumed by present possession, unless the possessor has a title on which possession is based; in this event the

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possession is presumed to refer back to the date of the title.

ARTICLE 1144 - Acts which are suffered to be committed

Acts which have been performed by sufferance by other persons may not serve as foundation for acquiring possession.

ARTICLE 1145 - Possession of things which cannot be bought and sold

The possession of things, the ownership of which cannot be acquired, is without effect.

However, in private dealings, an action for reinstatement in possession is granted with respect to property belonging to the public domain and to the property of provinces and other municipalities which are subject to the regulations of public domain. In the event of an exercise of powers over property which may be the subject of grant on the part of the public administration, a right of action for the upkeep of such property is also granted.

ARTICLE 1146 - Inheritance of possession - Tacking of possession

Possession is continued by the heir and is effective from the opening of the succession.

An heir under a particular title may tack his possession to that of his grantor in order to enjoy the effects thereof.

ARTICLE 1147 - Possession in good faith

By possessor in good faith is meant a person who possesses a thing without knowledge of any infringement of another person's rights therein.

Good faith is of no avail if such ignorance is due to gross negligence.

Good faith is presumed, and it is sufficient if it existed at the time of acquisition of a thing.

CHAPTER II

OF THE EFFECTS OF POSSESSION

SECTION I

OF THE RIGHTS AND OBLIGATIONS OF A POSSESSOR WITH REFERENCE
TO RESTITUTION

ARTICLE 1148 - Acquisition of fruits

A possessor in good faith may appropriate the natural fruits which

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have been separated from the object in his possession, until the day of a judicial request for restitution of the property.

He owes the claimant the fruits gathered after the judicial petition for restitution of the property has been filed. He is likewise liable for the fruits which he could have gathered by using the diligence expected of a pater familias after the date of the judicial petition.

ARTICLE 1149 - Reimbursement of expenses incurred for the production and gathering of the fruits

A possessor who is bound to restore the fruits unlawfully gathered by him is entitled to reimbursement of the expenses in accordance with the second paragraph of Article 821.

ARTICLE 1150 - Repairs, improvements and increments

A possessor, even in bad faith, is entitled to reimbursement for expenses sustained for extraordinary repairs.

He is also entitled to an indemnity for improvements to the property, provided such improvements exist at the time of restitution.

If the possessor is in good faith, he is entitled to an indemnity commensurate with the increased value of the property due to the improvements; if he is in bad faith, he is entitled to an indemnity commensurate with the increased value or equal to the amount of the expense he has sustained, whichever is the lesser.

If the possessor is bound to restore the fruits, he is entitled also to reimbursement for expenses sustained for ordinary repairs made within the period of time for which the restitution of the fruits is due.

For increments made by the possessor to the property, the provisions of Article 936 are applicable. However, if such increments constitute improvement of the property and the possessor is in good faith, he is entitled to an indemnity commensurate with the increased value of the property.

ARTICLE 1151 - Payment of indemnities

The judicial authorities, considering the circumstances, may provide that the payment of indemnity set forth in the preceding Article be made in installments.

The judicial authorities, in this event, shall require adequate security.

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ARTICLE 1152 - Detention in favor of possessor in good faith

A possessor in good faith may retain the property until he receives the indemnity due him, provided that such indemnity was requested in the course of the action to regain possession and that a prima facie evidence of the existence of repairs and improvements was submitted.

A possessor in good faith has likewise the right to retain the property until the security ordered by the judicial authorities in the instance set forth in the preceding Article has been furnished.

SECTION II

OF THE POSSESSION IN GOOD FAITH OF
MOVABLE PROPERTY

ARTICLE 1153 - Effects of acquisition of possession

Movable property sold to a person by another person who was not the owner thereof becomes the property of the purchaser by virtue of possession of such property, provided the purchaser was in good faith at the time when he received the property and that a valid title exists to the transfer of the property.

The property is acquired free from the rights of third parties therein, unless such rights are evidenced by the title and provided the purchase is in good faith.

The rights of usufruct, of use, and of pledge, are acquired in the same manner.

ARTICLE 1154 - Knowledge of illegal origin of the property

The erroneous belief that the seller or a previous possessor of an object had acquired ownership thereof is of no avail to a person who has acquired the object knowing the illegal origin of the same.

ARTICLE 1155 - Acquisition in good faith and previous alienation to others

If a person alienates, through successive contracts, movable property to several persons, the party which, among the latter, has acquired the possession in good faith is preferred to the others, even if the title deed of such party is of a later date.

ARTICLE 1156 - Aggregation of movables and movables entered in public registers

The provisions of the preceding Articles are not applicable to aggregations of movables and movables which are entered in public registers.

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ARTICLE 1157 - Possession of securities

The effects of possession in good faith of securities are regulated by Title Five of Book Four.

SECTION III

OF USUCAPTION

ARTICLE 1158 - Usucaption of immovable property and of rights in rem therein

Ownership of immovable property and of the other rights of enjoyment in rem are acquired through continuous possession for twenty years.

ARTICLE 1159 - Decennial usucaption

A person who, in good faith, acquires an immovable from another person who is not the owner thereof, such purchase being based on a title sufficient for the transfer of the property and duly entered in the register, shall accomplish the usucaption of the immovable, in his own favor, after ten years from the date of the entry of such title.

The same provision is applicable in the case of acquisition of other rights of enjoyment in rem of the immovable.

ARTICLE 1160 - Usucaption of aggregation of movables

Usucaption of an aggregation of movables or of rights of enjoyment in rem therein is completed through continuous possession thereof for twenty years.

If a person acquires such property with a valid title in good faith from another person who is not the owner thereof, the usucaption is completed after the lapse of ten years.

ARTICLE 1161 - Usucaption of movable property

In the absence of a valid title, the ownership of movable property, and of the other rights of enjoyment in rem therein, are acquired through continuous possession thereof for ten years, if such possession is acquired in good faith.

If the possessor is in bad faith, the usucaption is completed after the lapse of twenty years.

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ARTICLE 1162 - Usucaption of movable property entered in public registers

A person who, in good faith, acquires movable property entered in the public register from another person who is not the owner thereof, such purchase being based on a title sufficient for the transfer of the property and duly entered in the register, shall accomplish the usucaption of the property in his favor after the lapse of three years from the date of entry in the register.

If the conditions set forth in the preceding paragraph are not present, usucaption is completed after the lapse of ten years.

These same provisions are applicable in the instance of acquisition of other rights in rem of enjoyment of the property.

ARTICLE 1163 - Defect in possession

Possession acquired in a violent or fraudulent manner is of no avail for the purposes of usucaption, except from the time when the violence or fraud ceases.

ARTICLE 1164 - Change in the title of possession

Whoever possesses the exercise of rights in rem in another person's property, may not accomplish the usucaption of such property, unless the title of his possession is changed either through the act of a third party or by reason of his taking exception to the right of the owner. The time necessary to accomplish usucaption runs from the date when the title of possession is changed.

ARTICLE 1165 - Provisions relative to prescription applicable

The general provisions relative to prescription and those relating to the causes for suspension, interruption and reckoning of time limits are observed with respect to usucaption, when applicable.

ARTICLE 1166 - When causes for impediment and suspension with respect to a third-party possessor are of no effect

Impediments due to conditions or time limits, and the causes for suspension indicated in Article 2942, are not effective with respect to third-party possessions of an immovable or of a right in rem therein, in usucaptions which are accomplished in twenty years.

Impediments due to conditions or time limits, and the causes for suspension which are mentioned in Article 2942, may not even be asserted as defense against third-party possessors with respect to prescription based on non-user of the rights in rem owned thereby in the property.

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ARTICLE 1167 - Interruption of usucaption through loss of possession

Usucaption is interrupted when the possessor has been deprived of his possession for more than one year.

The interruption is deemed not to have occurred if the action to recover possession has been instituted and possession is restored.

CHAPTER III

OF ACTIONS IN DEFENSE OF POSSESSION

ARTICLE 1168 - Action for recovery of possession

Whoever has been violently or fraudulently deprived of his possession may, within one year from the deprivation, request the recovery of said possession from the person who dispossessed him.

This action may be brought also by those who hold the property for another, unless such detention is due to reasons of service or hospitality.

If the dispossession was fraudulent, the time limit for requesting recovery runs from the day on which the dispossession is discovered.

Recovery of possession shall be ordered by the judge, even on the sole ground that the facts are public knowledge, and without delay.

ARTICLE 1169 - Recovery from a purchaser who was aware of the dispossession

Recovery may be requested also from a person who is in possession of the property by reason of an acquisition under particular title made with the knowledge that dispossession had taken place.

ARTICLE 1170 - Action to maintain possession

Whoever has been molested in the possession of an immovable, of rights in rem therein, or of an aggregation of movables, may within one year from the molestation, institute suit for maintaining possession of such property.

The action may be brought if the possession has lasted continuously and uninterruptedly for more than one year and was not acquired through violence or fraudulently. If the possession was acquired in a violent or fraudulent manner, the action may nevertheless be instituted after the lapse of one year from the day on which the violence or fraud has ceased.

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The person who has been dispossessed in a non-violent or fraudulent manner may also request to be reinstated in his possession, if the conditions set forth in the preceding paragraphs are present.

TITLE NINE

OF OBJECTIONS TO NEW WORKS AND ACTION BASED
ON ANTICIPATED INJURY

ARTICLE 1171 - Objections to new works

An owner, any person entitled to rights of enjoyment in rem, or a possessor, who has reason to believe that damage may ensue to the property owned or possessed by him from new works undertaken by others on his property or on another person's property, may object before the judicial authorities to such new works, provided the works are not completed and that one year has not elapsed from the commencement thereof.

The judicial authorities, being apprised of the facts in summary proceedings, may prohibit the continuation of the works or permit them to be carried out, requiring suitable security.

In the first instance, such security shall be requested in consideration of the compensation for damages caused by the suspension of the works, if the objection to such continuation appears to be unfounded in the decision regarding the merits; in the second instance, the security shall take into account the razing or partial demolition of the works and the compensation for damages which may be suffered by the plaintiff, if the latter secures a favorable judgment in spite of the permission to carry out the works.

ARTICLE 1172 - Action based on anticipated injury

An owner, any person entitled to other rights of enjoyment in rem, or a possessor, who has reason to fear that serious and proximate injury is impending with respect to the property owned or possessed by him from any construction, tree, or other object, may object before the judicial authorities to such facts and secure provisions, which, according to circumstances, will eliminate such danger.

The judicial authorities shall, when necessary, make provisions regarding the posting of security for possible damages.

END OF BOOK THREE

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