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CIVIL AFFAIRS HANDBOOK - ITALY

SECTION 3F: Book Six - ITALIAN CIVIL CODE

- Jan. 1945

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ARMY SERVICE FORCES MANUAL **M 353-3F**

CIVIL AFFAIRS HANDBOOK

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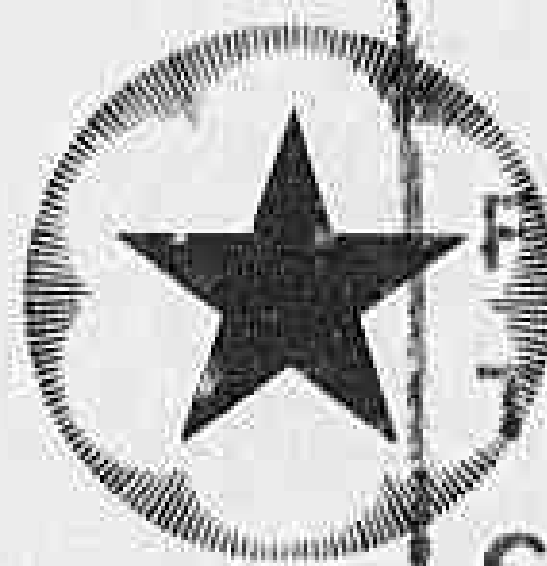
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HEADQUARTERS, ARMY SERVICE FORCES

20 JANUARY 1945

ARMY SERVICE FORCES MANUAL

M 353-3F
Civil Affairs

CIVIL AFFAIRS HANDBOOK

ITALY

SECTION 3F: BOOK SIX

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Headquarters, Army Service Forces 20 January 1945

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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

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HEADQUARTERS, ARMY SERVICE FORCES
Washington 25, D.C., 20 January 1945

Army Service Forces Manual M 353 - 3F, Civil Affairs Handbook, Italy, Section 3F, Book Six, 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 481 (21 Sep 43)]

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Major General,
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DISTRIBUTION:

AAF (5); AGF (5); ASF (2); Special Distribution.
For explanation of symbols, see FM 21-6.

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This translation of the Sixth 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

OFFICERS USING THESE HANDBOOKS ARE REQUESTED TO MAKE SUGGESTIONS AND
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INTRODUCTIONPurposes 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
3F Book Six - Italian Civil Code
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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
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15. Education
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CIVIL AFFAIRS HANDBOOK
TOPICAL OUTLINE (CONT'D)

This handbook is a translation of Book Six 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 AND ECONOMIC ORGANIZATION) 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 Six 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

<u>Corte di Cassazione</u>		<u>Court of Cassation</u>	
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

<u>Corte d'Appello</u>		<u>Court of Appeals</u>	
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.
	No. varia		No. varies
			1 section for Magistracy of Labor

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of law only

di diritto

Computer

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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

Procurement General of the
Court of Cassation

Public
Attorney

Procuratore Generale presso la
Corte di Cassazione

Pubblico Ministero

Court of Appeals

16
President of Court of Appeals
Councillors of Court of Appeals

5
Sections
of C. of A.
No. varies
1 section for
Magistracy of Labor

Assize Court	No.	91	Circuit	Criminal only for certain specified crimes	None
	J.	7			
	T.J.				
	S.M.				
	App.				

Juvenile Court	No.	24	
	J.	3	
	T.J.	District	
	S.M.	Under 18	
	App.	Special session of Court of Appeals	

Regional Tribunal of Public Waters	No.	J. T.J.	App.
	8		
	3		
		Municipalities of Cagliari, Florence, Milan, Naples, Palermo, Rome, Turin, Venice	
			Supreme Tribunal) No.1 of Public Waters(J.12

Territorial Jurisdiction District

Subject Matter Unlimited

Appeal From Tribunals

Public
Attorney
Procurator General of
Court of Appeals

Corte d'Appello

18
Presidente di Corte d'Appello
Consiglieri di Corte d'Appello

5
Sezioni No. varia
di C. d'A. Una sezione per
Magistratura del Lavoro

Corte d'Assise	{	No.	91	
		G.V.	7	
		C.T.		Circolo
		C.		Penale per deter- minati reati
		App.		Inappellabile

Tribunale del Minorenni	No.	24	Sub- divisions
	G.V.	3	
	C.T.	Distretto	
	C.	Sotto anni 18	
	App.	Sezione speciale di Corte d'Appello	

Tribunale delle Acque Pubbliche	(No. G.V. C.T.)	8 3	Comuni di Cagliari, Firenze, Milano, Napoli, Palermo, Roma, Torino, Venezia	Tribunale Supremo delle)	No.1 (112
	App.			Acque Pubbliche	

Distretto

Limitata

Das Tribunal li

Procuratore Generale di
Corteo di Milano

Numero Collegio

**Numero dei
Giudici
Votanti**

Sud-divisioni

**Tribunale
delle
Acque
Pubbliche**

Competenza per

Competence

Annela 110

Pubblico

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	Prosecutor for the King

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<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

XXIII

competenza del pretore o della corte d'assise - in materia civile oltre 5000 lire o indeterminabile

over Subject Matter

competenza del pretore o della corte d'assise - in materia civile oltre 5000 lire o indeterminabile

Appello Dalle sentenze dei pretori
 Pubblico Ministero Procuratore del Re
 Appeal From judgments of local magistrates:
 Public Attorney Procurator for the King

Pretura Local Magistrate's Court

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.

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'inamovibilit .

**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 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

SIXTH BOOK OF THE PROTECTION OF RIGHTS

TITLE ONE

OF RECORDATION

CHAPTER I

OF RECORDATION OF DEEDS CONCERNING IMMOVABLES

ARTICLE 2643 - Deeds subject to recordation.

The following must be made known to the public by means of recordation:

1. Contracts transferring ownership of real property.
2. Contracts which establish, transfer or modify rights of usufruct on real property, surface rights and the rights of grantors and emphyteutic tenants.
3. Contracts which establish joint ownership of rights mentioned in items 1 and 2.
4. Contracts which establish or modify predial servitudes, rights of use on real property and rights of habitation.
5. Acts inter vivos renouncing rights mentioned in preceding items.
6. Decrees passed in the case of execution levied on property, whereby ownership or other rights in real property are transferred, except in the case of sale to a third party buyer for the release of real property from mortgages.
7. Deeds and judgments for the redemption of emphyteutic property.
8. Contracts of lease of real property for a period in excess of nine years.
9. Deeds and judgments evidencing the release or transfer for a period in excess of three years of rents or leases not yet expired.
10. Contracts of partnership and of association conveying the enjoyment of real property or other rights in rem in real property, when the period of duration of the partnership or association is in excess of nine years or is undetermined.

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11. Documents evidencing the establishment of syndicates, with the same effects as those indicated in the preceding item.
12. Contracts of antichresis.
13. Compromises concerning litigation relative to the rights mentioned in the preceding items.
14. Judgments which cause the establishment, transfer or modification of one of the rights mentioned in the preceding items.

ARTICLE 2644 - Effects of recordation.

The deeds mentioned in the preceding Article have no effect with respect to third parties who have acquired, under any title, rights in real property on the basis of deeds recorded or entered prior to the recordation of said deeds.

After the recordation, any other recordation or entry of rights acquired against the maker of such recordation is without effect, even if the acquisition of such rights is prior to the recordation.

ARTICLE 2645 - Other deeds subject to recordation.

Any other deed or decree producing any of the effects of contracts mentioned in Article 2643 must likewise be made public, for the effects set forth in the preceding Article, unless it appears that recordation is not required by law or is required for different purposes.

ARTICLE 2646 - Recordation of partitions.

Partitions concerning real property and measures for the division of real property by judgment sale must be recorded as well as the documents serving as a basis for the allotment of aliquot shares and the minutes witnessing the drawing of aliquot shares.

The petition for judicial partition and the document witnessing objections thereto, as set forth in Article 1113, must also be recorded for the effects specified in said Article.

ARTICLE 2647 - Establishment of dowry, community of gains of the spouses and family estate.

The spouse who is given the dowry, both spouses or the spouse entitled to the family estate must attend to the recordation of the dowry, the community of gains or the family estate, respectively, when it involves real property.

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If a clause providing for the use of dowry funds for the purchase of real property was stipulated in accordance with Article 183, or if real property is acquired with the profits of the community of gains, recordation must be made of the dowry or community of gains after each of such purchases. The same rules are applicable in the case of reinvestment of funds in real property and of exchange of dowry property.

Recordation of the obligation (vinculum) arising from the family estate established by will must be made ex officio by the Registrar together with the recordation of the acquisition causa mortis.

The dowry vinculum and the vinculum resulting from the community of gains as well as the establishment of the family estate may not be raised against third parties until they are recorded, without affecting the provisions of the third paragraph of Article 169 on the subject of family estate.

ARTICLE 2648 - Acceptance of inheritance and acquisition of legacy.

Acceptance of inheritance involving acquisition or sale or release from rights set forth in items 1, 2 and 4 of Article 2643 and the acquisition of legacies involving it, must be recorded.

Recordation of the acceptance of the inheritance is made on the strength of a declaration by the appointed heir contained in a public document or a private writing with signature authenticated or judicially verified.

If the appointed heir performs any act involving tacit acceptance of the inheritance, recordation may be requested on the basis of such act, provided it is evidenced by a judgment, a public act or a private writing with signature authenticated or judicially verified.

Recordation of the acquisition of a legacy is made if evidenced by an authenticated transcript of the will.

ARTICLE 2649 - Assignment of property to the creditors.

Assignments of property which a debtor makes to his creditors in order for the latter to proceed with the liquidation of such property and division of the proceeds, must be recorded when such assignments include real property.

Any recordation or entry of rights acquired against the debtor have no effect with respect to the creditors if made after recordation of the assignment.

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ARTICLE 2650 - Progressive recordation.

In cases where, as a result of the preceding provisions, a deed evidencing an acquisition is subject to recordation, subsequent recordations or entries affecting the rights of a purchaser do not produce effects if such deed was not recorded.

When such prior deed was recorded, subsequent recordations or entries produce effects in accordance with their progressive order, except for the provision of Article 2644.

Legal mortgages in favor of the seller and those in favor of a participant in a division of property, entered at the same time as the recordation of the document of purchase or of partition, take precedence over previous recordations and entries affecting the rights of the purchaser or of the participant in a division of property, who must compensate for differences in the value of the property.

ARTICLE 2651 - Recordation of judgments.

Judgments evidencing extinguishment by prescription, or acquisition by usucaption or by other means not subject to recordation, of rights set forth in items 1, 2 and 4 of Article 2643, must be recorded.

ARTICLE 2652 - Petitions concerning deeds subject to recordation - effects of recordation with respect to third parties.

When the following judicial petitions refer to rights set forth in Article 2643, they must be recorded for the effects listed alongside of each:

1. Petitions for termination of contracts and those set forth in the second paragraph of Article 648 and in the last paragraph of Article 793, petitions for rescission of contracts, petitions for the revocation of donations and those set forth in Article 524.

Judgments granting such petitions do not prejudice the rights acquired by third parties on the basis of deeds recorded or entered prior to the recordation of such petitions.

2. Petitions made for the purpose of securing execution of contractual duties in specific form.

Recordation of the judgment granting such petitions has precedence over recordations or entries made against the defendant after the recordation of said petition.

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3. Petitions for the purpose of securing judicial verifications of signatures to private writings the contents of which are a deed subject to entry or recordation.

The recordation or entry of the deed included in such writing is effective from the date on which the pertinent petition was recorded.

4. Petitions for the purpose of verifying simulation of acts subject to registration.

Judgments granting such petitions do not prejudice the rights acquired by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of the petition.

5. Petitions for the revocation of acts subject to recordation, when such acts are performed in prejudice to the creditors.

Judgments granting such petitions do not prejudice the rights acquired for a consideration by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of the petition.

6. Petitions for the purpose of causing acts subject to recordation to be declared null or to be annulled and petitions for the purpose of attacking the validity of recordation.

If such petition is recorded after five years from the date of recordation of the act or deed which is being attacked, the judgment granting such petition does not prejudice the rights acquired under any title by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of the petition.

However, if the object of the petition is to cause annulment of an act for causes other than legal incapacity, the judgment granting such petition does not prejudice the rights acquired by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of the petition, even if it was recorded before the expiration of five years from the date of recordation of the act which is attacked, provided in this case that said third parties made the acquisition for a consideration.

7. Petitions for the purpose of contesting the basis of an acquisition cause mortis.

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Except for the provisions of the second and third paragraphs of Article 534, if the recordation of such petition is made after five years from the date of recordation of the acquisition, the judgment granting such petition does not prejudice third parties in good faith who have acquired, under any title, rights from an apparent heir or legatee on the basis of a deed entered or recorded prior to the recordation of the petition.

8. Petitions for abatement of donations or testamentary provisions for infringement on the rights of forced heirs.

If the recordation of such petition is made after ten years from the opening of the succession, the judgment granting it does not prejudice third parties who, for a consideration, have acquired rights on the basis of a deed entered or recorded prior to the recordation of the petition.

9. Petitions for revocation and those registering objections by third parties to judgments subject to recordation for the reasons set forth in items 1, 2, 3 and 6 of Article 395 of the Code of Civil Procedure and in the second paragraph of Article 404 of the same code.

If the petition is recorded after five years from the recordation of the judgment which is attacked, the judgment granting the petition does not prejudice rights acquired by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of said petition.

ARTICLE 2653 - Other petitions and deeds subject to recordation.

The following petitions must also be recorded:

1. Petitions for the purpose of reclaiming ownership or other rights in rem of enjoyment on real property and the petitions for the purpose of ascertaining such rights.

A judgment passed against the defendant indicated in the recordation of the petition has effect also against those who acquired rights from same, on the basis of a deed recorded after the recordation of the petition.

2. Petitions for reversion of emphyteutic property.

A judgment pronouncing reversion is also effective with respect to those who acquired rights from the emphyteutic tenant,

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on the basis of a deed recorded after the recordation of the petition.

3. Petitions and declarations of redemption in the sale of real property.

If the recordation of such petitions and declarations is made after sixty days from the expiration of the time limit for the exercise of redemption, the rights acquired by third parties after the expiration of said time limit on the basis of a deed entered or recorded prior to the recordation of the petition or declaration, are unaffected.

4. Petitions for separation of immovable property which are part of the dowry, and petitions for the dissolution of spouse's community of gains concerning immovable property.

A judgment pronouncing such separation or dissolution has no effect against third parties who, prior to the recordation of the petition, have validly acquired from the husband rights relative to dotal property or to property which is part of the community of gains of the spouses.

5. Acts and petitions which break the continuity of usucaption of real or immovable property.

Such interruption has no effect with respect to third parties who acquired rights from the possessor of the property on the basis of a deed entered or recorded prior to the recordation of said act or petition.

ARTICLE 2654 - Noting of petitions or deeds subject to recordation.

The recordation of petitions and deeds set forth in the two preceding Articles must also be noted at foot of the entry of recordation, when it refers to deeds entered or recorded.

ARTICLE 2655 - Notation of deeds and judgments.

When a deed entered or recorded is declared null, or is annulled, cancelled, rescinded, revoked or subject to a resolute condition, the declaration of nullity or, respectively, the annulment, cancellation, rescission, revocation or fulfilment of the condition must be noted at foot of the recordation or entry of the deed.

Judgments causing the reversion of emphyteutic property must likewise be noted at the foot of the recordation of the pertinent petition.

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If such notations are not made, subsequent entries or recordations against the person who secured the declaration of nullity or the annulment, cancellation, rescission, revocation or reversion against the person in whose favor the resolute condition has become operative, have no effect. After the entry of the notation, the entries or recordations already made have their effect in accordance with their respective order of progression.

The notation is made on the basis of the judgment or agreement evidencing one of the aforementioned facts; in the case of conditions, it may be made on the strength of the unilateral declaration of the contracting party against whom such condition has become operative.

ARTICLE 2656 - Formalities for the entering of notations.

Notations are made in accordance with the provisions set forth in the following Articles relative to recordation, insofar as they are applicable.

ARTICLE 2657 - Deeds entitled to recordation.

Recordation may only be made on the basis of a judgment, a public act, or a private writing with signature authenticated or judicially verified.

Judgments and acts which have occurred in a foreign country must be certified.

ARTICLE 2658 - Documents to be presented to the Registrar.

The party who requests the recordation of a paper must present to the Registrar of Real Property, an authenticated copy of such paper, if it consists of public acts or judgments, or else the original instrument, if it consists of a private writing, unless the latter was deposited in public archives or in the records of a Notary. In this case, the presentation by the Archivist or the Notary of an authenticated copy showing that the writing contains the requisites of the preceding Articles, is sufficient.

For the recordation of judicial petitions, presentation of an authenticated copy of the pertinent instrument, together with the record of service on the other party is necessary.

ARTICLE 2659 - Note of recordation.

Whoever requests recordation of an act inter vivos must present to the Registrar of Real Property Records, together with the copy of such act, a note made in duplicate, containing the following information:

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1. The surname, given name, the father's name and the domicile or residence of the parties.
2. The instrument for which recordation is requested, and the date of such instrument.
3. The surname and given name of the public official who received the act or authenticated the signatures, or the judicial authority who passed judgment.
4. The nature and location of the property to which the act refers, with the indications required by Article 2826.

If the acquisition, renunciation or modification of the right is subject to time limits or conditions, this must be mentioned in the note of recordation. Such mention is not necessary if, at the time of recordation of the act, the suspensive condition has become fulfilled, the resolute condition has not become operative, or the time limit has expired.

ARTICLE 2660 - Recordation of acquisitions causa mortis.

Whoever requests the recordation of an acquisition causa mortis must present, in addition to the deed indicated by Article 2648, the death certificate of the "de cuius" and a copy or an original extract of the will, if the acquisition is made on the basis thereof.

Duplicate statements containing the following information must also be presented:

1. The surname, given name, father's name, domicile and residence of the heir or legatee and of the deceased.
2. The date on which death occurred.
3. If the succession descended by operation of law, the relationship between the deceased and the heir, and the share of inheritance to which the latter is entitled.
4. If it is a testamentary succession, the form and date of the will and the name of the public official who received such will or has it in deposit.
5. The nature and the location of the property with the indications required by Article 2826.

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6. The condition or time limit, when attached to the testamentary provision, except in the case set forth by the second paragraph of the preceding Article, as well as the substitutions derived from fidei-commissae, when provided for in accordance with Article 692.

ARTICLE 2661 - Subsequent recordings on the basis of the same document.

When the recordation of an acquisition causa mortis is applied for and another acquisition derived from the same succession has been recorded on the basis of the same document, presentation of the document witnessing acceptance is sufficient if the acquisition is made in the capacity of an heir. If such subsequent recordation is made in the same office as the first, the previous recordation must also be indicated, and if in a different office, a certificate of the previous recordation must be presented.

If the person who made the previous recordation presented an extract of the will, another extract or a copy of the entire will must be attached to the application for new recordation, if necessary.

ARTICLE 2662 - Recordation of acquisitions causa mortis by one in place of another.

When an acquisition causa mortis is dependent on the renunciation or death of one of the participants in the inheritance, the person who requests the recordation must present the document witnessing such death or renunciation, mentioning it in an annotation.

If, on the other hand, the acquisition is dependent on other causes preventing any of the participants from inheriting, it is not necessary to present a document warranting such cause, but the applicant is liable for damages if his declarations are untrue.

When any of the causes interfering with the inheritance is ascertained after the recordation of the acquisition causa mortis, such cause will be noted at the foot of said recordation, provided it is evidenced by a document in proper form.

ARTICLE 2663 - Office where recordation must be made.

Recordation must be made in each office of real property records of the jurisdiction where the property is located.

ARTICLE 2664 - Conservation of instruments - recordation and return of annotation.

The Registrar of Real Property Records must keep in the archives, in special volumes, the instruments which are delivered to him and must

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enter in the special register of recordation the contents of annotations, stating the day of delivery of the deed, the serial number given to such instrument in the progressively numbered register, and the number of the volume in which the instrument was entered.

The Registrar must return to the applicant one of the duplicate originals of the annotation, on which the Registrar must certify the recordation made by him, with the aforementioned information.

ARTICLE 2665 - Omissions or errors relative to annotations.

Omissions or errors concerning any of the information required to be included in the annotations set forth in Articles 2658 and 2660 does not affect the validity of the recordation unless leading to uncertainties as to persons, property or juristic relationship to which the instrument, judgment or petition refer.

ARTICLE 2666 - Persons affected by the validity of recordation.

Regardless of who makes a recordation, it benefits all interested parties.

ARTICLE 2667 - Acts performed for incapacitated person.

The representatives of incapacitated persons, and those who have given assistance thereto, must attend to the recordation of deeds, judgments and judicial petitions subject to recordation and in connection with which they have exercised their duties.

Non-recordation may also be set up against minors, interdicts and any other incapacitated person, except for the action of recourse by said parties against the tutors, administrators or curators who had the duty to attend to the recordation.

Non-recordation may not be raised by the persons who had the duty to attend thereto for the persons they represented or administered, nor by their heirs.

ARTICLE 2668 - Cancellation of recordation.

Cancellation of the recordation of petitions set forth in Articles 2652 and 2653 and of the notes related thereto, is made when the interested parties consent to such cancellation, or when it is ordered judicially on the basis of a judgment which may no longer be appealed.

Cancellation will be ordered judicially when such a petition is denied or when the suit has become extinguished by renunciation or inactivity of the parties.

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The indication of conditions or time limits related to the deeds recorded must be cancelled when the failure or the fulfilment of the condition or the expiration of the time limit is evidenced by a judgment or by a declaration, even unilateral, of the party against whom the suspensive condition has become operative or the resolute condition has failed of fulfilment, or else when the initial time limit has expired.

ARTICLE 2669 - Recordation prior to the payment of registration tax.

Recordation may be requested, even if the registration tax to which the deed is subject has not been paid, if such deed is a public act executed within the State or a judgment pronounced by a judicial authority within the State.

In the latter case, however, the applicant must present to the Registrar a copy of such judgment, in addition to the notation set forth by Article 2659, and said copy must be certified and forwarded immediately, by the Registrar, to the official who is the collector for the aforementioned tax.

ARTICLE 2670 - Expenses for recordation.

The expenses for recordation must be advanced by the applicant, except for the latter's right to be reimbursed by the interested party.

If there are several interested parties, each must reimburse the person who made the recordation for the part of expenses corresponding to their share of interest.

ARTICLE 2671 - Duties of public officials.

Notaries or other public officials who have received or authenticated deeds subject to recordation have the duty to attend to the making of such recordation within the shortest possible time, and are liable for damages in case of delay, except for the fines provided by special laws, if they permit thirty days to elapse from the date on which they received or authenticated such deed.

The provisions and penalties of special laws charging other persons with the duty of requesting the recordation of specified deeds, is unaffected.

ARTICLE 2672 - Special laws.

The provisions of special laws which require the recordation of deeds which are not considered in the present Chapter and the other provisions which are not incompatible with those contained in this Chapter are unaffected.

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CHAPTER II

OF NOTORIETY OF REAL PROPERTY REGISTERS AND OF LIABILITY
OF REGISTRARS

ARTICLE 2673 - Duties of Registrar.

A Registrar of Real Property Records must deliver to all applicants a copy of recordations and notations, or a certificate reciting the absence thereof.

He must, likewise, permit examination of his registers during the hours established by regulations; however, the taking of copies of recordations, entries or notes is not permitted.

A Registrar must also deliver copies of documents which are deposited with him in the original, or of documents the originals of which are on deposit with a Notary or a public archive outside the jurisdiction of the Tribunal where the Registrar has his office.

ARTICLE 2674 - Performance of acts connected with the office of Registrar.

A Registrar may refuse to accept annotations and deeds drawn in unintelligible handwriting, and shall not receive them when they lack the requisites set forth by Article 2657, the first paragraph of Article 2660, and Articles 2821, 2835 and 2837.

In all other cases, the Registrar shall not refuse or delay to receive delivery of the deeds which are presented, nor to make the recordations, entries or notations requested, nor to forward copies or certificates. The Registrar is liable for damages to the parties in case of delay or refusal.

The parties may, for this purpose, cause an immediate entry in the minutes by a Notary or by a judicial officer assisted by two witnesses.

ARTICLE 2675 - Liability of Registrar.

A Registrar is liable for damage caused by the following reasons:

1. Omission, in the registers under his care, of recordations, entries and corresponding notations, as well as errors made in such operations.
2. Omission, in his certificates, of recordations, entries or notations, as well as errors therein, unless the omission or error is caused by insufficient information for which he is not accountable.

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3. Unduly made cancellations.

ARTICLE 2676 - Differences between registers, copies and certificates.

If there are differences between what is shown on the register and what is shown in the copies or certificates delivered by the Registrar of Real Property Records, that which is shown in the register has preference, without affecting the liability of the Registrar for damages caused by errors in the copies or certificates.

ARTICLE 2677 - Office hours for application of recordations and entries.

A Registrar may not receive any application for recordation or entry except during the hours, specified by regulations, in which the office is opened to the public.

ARTICLE 2678 - General register.

A Registrar is bound to keep a general serial register, in which he must post, daily, at the time of delivery, all deeds delivered to him for recordation, entry, or notation.

This register, divided in rows of cases, must indicate the serial number, the date of application, the applicant, the persons for whom the application is made, the deeds presented together with the annotation, the object of the request, that is, whether for the purpose of recordation, entry or notation, and the persons in whose respect the recordation, entry or notation must be made.

Immediately after delivery of the deed or annotation, the Registrar must deliver a free receipt on unstamped paper to the applicant, such receipt to state the serial number.

ARTICLE 2679 - Other registers to be kept by Registrar.

In addition to the general register, the Registrar must keep the following special registers:

1. Register for recordations.
2. Register for entries subject to renewal.
3. Register for entries not subject to renewal.
4. Register for notations.

The Registrar must also keep any other register which is prescribed by regulations.

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ARTICLE 2680 - System for bookkeeping.

The general register and the registers for recordations, entries and notations, must be viséed on each sheet by the President or by a Judge of the Tribunal of the jurisdiction in which the effice of the Registrar is located, indicating in the pertinent minute book the number of sheets and the date on which they were viséed.

These registers must be written without interruptions, blank spaces, interlineations or additions. The words which are erased must be approved by the Registrar at the foot of each sheet with his signature and the indication of the number of words erased.

At the end of each day, the registers must be closed and signed by the Registrar.

The continuity of dates, sheets and serial numbers must be strictly observed.

ARTICLE 2681 - Prohibition of removal of registers.

The aforementioned registers may not be removed from the office of the Registrar, except by order of a Court of Appeals, for an acknowledged necessity, with the precautions specified by said Court.

ARTICLE 2682 - Penalties provided for Registrars.

Registrars are bound to abide by all the provisions of this Title as well as the other provisions of pertinent laws in discharging their duties, and, in case of non-observance, they are subject to a fine up to ten thousand liras.

CHAPTER III

OF RECORDATION OF DEEDS CONCERNING SOME ITEMS OF MOVABLE PROPERTY

SECTION I

OF RECORDATION OF VESSELS, AIRCRAFT AND AUTOMOBILES

ARTICLE 2683 - Property for which public records are required.

The deeds set forth in the following Articles must be made known to the public by means of recordation, as well as with the other formalities prescribed for public records when they concern the following:

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1. Vessels and crafts entered in the registers indicated by the Code of Navigation.
2. Aircraft entered in the registers of the same Code.
3. Automobiles entered in the public registers for automobiles.

ARTICLE 2684 - Deeds subject to recordation.

The following deeds are subject to recordation for the effects set forth by Article 2644:

1. Contracts which transfer ownership or establish joint ownership.
2. Contracts which establish or modify rights of usufruct or of use, or which transfer the right of usufruct.
3. Acts inter vivos for the renunciation of rights mentioned in the preceding items.
4. Compromises concerning controversies relative to rights indicated by preceding items.
5. Decrees whereby the ownership or the other rights mentioned in the preceding items are transferred in suits for expropriation.
6. Judgments which establish, modify or transfer any of the rights mentioned in the preceding items.

ARTICLE 2685 - Other deeds subject to recordation.

Partitions and other acts mentioned in Article 2646, the establishment of the dowry, the community of gains of spouses, the acceptance of inheritance, and the acquisition of legacies which involve acquisition or release from the rights set forth by items 1 and 2 of Article 2684 must be recorded.

Such recordation has the same effects as those established for immovable property.

ARTICLE 2686 - Judgments.

Judgments which provide for the acquisition, modification or extinction of any of the rights mentioned in items 1 and 2 of Article 2684 on the basis of an unrecorded deed, must be recorded.

ARTICLE 2687 - Assignment of property to the creditors.

The assignment of property made by a debtor to the creditors in order for the latter to proceed with the liquidation and partition of the

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proceeds, must be recorded for the attainment of the effects indicated by Article 2649.

ARTICLE 2688 - Progressive continuity of recordations.

In the cases where, by virtue of the preceding provision, a deed of acquisition is subject to recordation, subsequent entries or recordations do not produce effects if the original deed of acquisition was not recorded.

When such original deed of acquisition was recorded, subsequent entries or recordations produce their effect in accordance with their order of progression, except for the provisions of Article 2644.

ARTICLE 2689 - Usucaption.

Judgments evidencing the acquisition by usucaption of one of the rights indicated by items 1 and 2 of Article 2684 must be recorded.

ARTICLE 2690 - Petitions concerning deeds subject to recordation.

The following petitions must be recorded when they concern the rights indicated by Article 2684:

1. The petitions indicated by items 1, 2, 3, 4 and 5 of Article 2652, for the effects therein indicated.
2. Petitions for ascertaining any of the contracts indicated by items 1 and 2 of Article 2684.

The recordation of judgments granting such petition has precedence over recordations and entries made against the defendant prior to the recordation of the petition.

3. Petitions for a declaration of nullity or for causing the annulment of deeds subject to recordation, and petitions for the purpose of attacking the validity of recordations.

Judgments granting such petitions do not prejudice the rights acquired, under any title, by third parties in good faith on the basis of a deed recorded or entered prior to the recordation of such petition, if such judgment was made public after three years from the date of recordation of the deed which is attacked. However, if the petition is for the purpose of causing a declaration of annulment for a cause other than legal incapacity, the judgment which grants such petition does not prejudice the rights acquired by third parties in good faith, on the basis of

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a deed entered or recorded prior to the recordation of the petition, even if the latter was recorded before the expiration of a three-year period from the date of recordation of the deed which is attacked, provided in this case that said third parties made the acquisition for a consideration.

4. Petitions for the purpose of contesting the basis of an acquisition causa mortis.

Except for the provisions of the second and third paragraphs of Article 534, if the petition is recorded after three years from the date of recordation of the deed which is attacked, the judgment granting the petition does not prejudice third parties in good faith who have acquired, under any title, rights from an apparent heir or legatee on the basis of a deed entered or recorded prior to the recordation of the petition.

5. Petitions for reduction of donations and testamentary provisions infringing on the rights of forced heirs.

If the recordation is made after three years from the opening of the succession, the judgment granting the petition does not prejudice third parties who, for a consideration, have acquired rights on the basis of a deed entered or recorded prior to the recordation of the petition.

6. Petitions for revocation and petitions of third party objectors against judgments subject to recordation for the reasons set forth by items 1, 2, 3 and 6 of Article 395 of the Code of Civil Procedure and by the second paragraph of Article 604 of the same Code.

If the petition is recorded after three years from the recordation of the judgment which is attacked, the judgment granting such petition does not prejudice the rights acquired by third parties in good faith on the basis of a deed entered or recorded prior to the recordation of the petition.

ARTICLE 2691 - Other petitions and deeds subject to recordation.

The petitions and deeds set forth by items 1, 3, 4 and 5 of Article 2653 must also be recorded. for the effects therein indicated, when they refer to properties set forth in Article 2683.

ARTICLE 2692 - Note of recordation of petitions and deeds.

The recordation of petitions and deeds set forth in the two preceding Articles must also be noted in accordance with the formalities prescribed

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by Article 2654.

Moreover, the provisions of the first, third and fourth paragraphs of Article 2655 and those of Article 2656 must be observed.

ARTICLE 2693 - Recordation of seizure or sequestration.

Decrees ordering sequestration for the preservation of property, for the effects set forth by Article 2906, must also be recorded, after notification thereof. Deeds of pledge for the effects provided by Articles 2913, 2914, 2915 and 2916 must likewise be recorded.

ARTICLE 2694 - Reference to other laws.

The provisions of the Code of Navigation and of special laws requiring the recordation of deeds which are not considered in this Chapter and the other provisions which are not incompatible with this Chapter, are unaffected.

ARTICLE 2695 - Forms and formalities of recordation.

The form and the formalities for the recordations indicated in this Chapter are regulated by the Code of Navigation, insofar as they concern vessels or aircraft, and by special laws when they concern automobiles.

In absence of such provisions, the rules concerning the recordation of deeds relative to immovable property are applicable.

SECTION II

OF RECORDATION OF OTHER MOVABLE PROPERTY

ARTICLE 2696 - Reference.

The provisions of the pertinent laws are observed for the recordation of specified deeds concerning other moveable property for which recordation is prescribed.

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TITLE TWOOF EVIDENCECHAPTER IGENERAL PROVISIONSARTICLE 2697 - Burden of proof.

Whoever intends to enforce a right in a suit must prove the facts which establish the grounds for such rights.

Whoever sets up as a defense the invalidity of such facts or else asserts that said rights are modified or extinguished must prove the facts on which the defense is based.

ARTICLE 2698 - Agreements concerning the burden of proof.

Agreements whereby the burden of proof is reversed or modified are null when the rights concerned may not be disposed of by the parties or when the reversal or modification causes the exercise of rights by one of the parties to be excessively difficult.

CHAPTER IIOF DOCUMENTARY EVIDENCESECTION IOF PUBLIC INSTRUMENTSARTICLE 2699 - Public instrument.

A public instrument is an instrument drawn with the required formalities by a Notary or by other public officials authorized to convey faith and credit to such an instrument in the place where it is drawn.

ARTICLE 2700 - Validity of public instruments.

Until a complaint for fraud is lodged, a public instrument constitutes full proof of the origin of the instrument by the public official who has drawn it, as well as of the declarations of the parties and of the other facts which the public official performed or certifies as having taken place in his presence.

ARTICLE 2701 - Transformation of public instruments.

A document drawn by a public official who is incapacitated or incompetent, or which does not observe the required formalities, has the same evidential value as a private writing, when it is signed by the parties.

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SECTION IIOF PRIVATE WRITINGSARTICLE 2702 - Validity of private writings.

Until a complaint for fraud is lodged, a private writing constitutes full proof of the origin of the declarations of the person who signed such writing, if the person who is affected by such writing acknowledges the signature or if it is legally considered to be acknowledged.

ARTICLE 2703 - Certified signature.

A signature which is certified by a notary or by another authorized public official is considered to be recognized.

Certification consists of a statement by a public official that the signature was affixed in his presence. The public official must previously verify the identity of the person who makes the signature.

ARTICLE 2704 - Date of private writing with respect to third parties.

The date of a private writing in which the signature has not been certified is not certain and cannot be presumed with respect to third parties, except from the date on which the writing was recorded or from the date of death or supervening physical incapacity of the person or persons who signed it, or from the date on which the contents of such writing are reproduced in public instruments, or from the date on which other circumstances occur which establish with equal certainty that the writing was drawn up previously.

The date of private writings containing unilateral declarations which are not directed to any specified person may be ascertained with any kind of evidence.

The judge, considering the circumstances of a case, may allow the introduction of any kind of evidence to ascertain the date of acquittance of a debt.

ARTICLE 2705 - Telegrams.

Telegrams have the same evidence-bearing value as a private writing, if the original delivered from the transmitting office is signed by the sender, or if it was delivered or sent for delivery by the sender himself, even without signing it.

The signature may be authenticated by a Notary.

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If the identity of the person who signed the original of the telegram was certified with the formalities prescribed by regulations, proof to the contrary is permitted.

The sender may also indicate in the telegram if the original was signed with or without certification.

ARTICLE 2706 - Correspondence between the original and the reproduction of a telegram.

The reproduction of a telegram delivered to the addressee is presumed to correspond to the original, until proof to the contrary.

If the sender compared the copy with the original of the telegram, in accordance with the provisions of the pertinent rules, he is presumed to be exonerated from negligence for any difference between the original and the reproduction.

ARTICLE 2707 - Private papers and books of account.

Private papers and books of account constitute evidence against those who wrote them in the following cases:

1. When they expressly state the receipt of a payment.
2. When they contain an express indication that the entry was made to substitute for the lack of a document evidencing the person who is indicated as being the creditor.

ARTICLE 2708 - Notations at foot, in the margin or on the back of a document.

A notation made by a creditor at the foot, in the margin or on the back of a document left in his possession constitutes evidence if such notation is for the purpose of releasing a debtor, even if the notation is not signed by said creditor.

A notation by a creditor at the foot, in the margin, or on the back of an acquittance or of a copy of the document held by the debtor witnessing the debt, has the same effect.

SECTION III

OF COMMERCIAL BOOKS OF UNDERTAKINGS SUBJECT TO RECORDATION

ARTICLE 2709 - Evidence against traders.

The books and other commercial accounts of undertakings subject to recordation constitute evidence against a trader.

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A person who intends to avail himself of such evidence, however, may not select the contents of such books or commercial accounts.

ARTICLE 2710 - Evidence among traders.

When the books, regularly kept, are stamped and certified, they constitute evidence among traders for the relationships connected with the exercise of the undertaking.

ARTICLE 2711 - Surrendering and submitting books and other accounts.

The surrender of books, commercial accounts and correspondence may be ordered by the Judge only in the course of litigation concerning the dissolution of a company, the joint ownership of property, or successions causa mortis.

In all other cases, the Judge may order, even ex officio, that the books be submitted in order to select therefrom excerpts relative to a controversy.

He may also order that separate accounts, letters, telegrams or invoices relative to the litigation be submitted.

SECTION IVOF MECHANICAL REPRODUCTIONSARTICLE 2712 - Mechanical reproductions.

Photographic or cinematographic reproductions, phonographic recordings and, in general, all other mechanical representations of facts or things, constitute full evidence with respect to the facts or things represented if the persons affected by such recordings or reproductions do not deny their correspondence to the actual facts or things concerned.

SECTION VOF TOKENS USED AS COUNTERMARKSARTICLE 2713 - Tokens used as countermarks.

Tokens used as countermarks constitute full evidence among those who customarily account in such manner for the true articles they deliver or receive in retail.

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SECTION VI
OF COPIES OF DEEDSARTICLE 2714 - Copies of public instruments.

The copies of public instruments, forwarded with the required formalities, by authorized public depositaries, constitute the same evidence as the original recordation.

The copies of public instruments for which there is an original constitute the same evidence as the original, when forwarded by public depositaries of such original authorized to make the remittance.

ARTICLE 2715 - Copies of original private writings which are deposited.

The copies of private writings deposited in public offices and forwarded by authorized public depositaries have the same validity as the original writing from which they originate.

ARTICLE 2716 - Lack of original deed or of deposited copy thereof.

If the original of a public instrument or of a copy thereof deposited in the care of a public depositary is lacking, full faith is given to a copy forwarded in accordance with Article 2714; but if such copy, or even the copy existing in the care of a public depositary when the original is lacking, shows erasures, interlineations, insertions or other visible defects, the evidence bearing value is left to the discretion of the Judge.

In the absence of the original of a private writing, the copies forwarded in accordance with Article 2715 are likewise entitled to full faith; but if they show erasures, interlineations, insertions or other visible defects, it is also left to the discretion of the Judge to determine the evidential value thereof.

In all cases, questions concerning the authenticity of the missing original are unaffected.

ARTICLE 2717 - Evidence value of other copies.

Copies released by public officials in cases not included in the preceding Articles have validity as prima facie evidence in writing.

ARTICLE 2718 - Evidence bearing value of partial copies.

Partial copies, or reproductions of excerpts released with the required formalities by public officials who are the depositaries and are duly

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authorized to release them, constitute full evidence only for that part of the original which such copies reproduce literally.

ARTICLE 2719 - Photographic copies of writings.

Photographic copies of writings have the same validity as the originals if their correspondence to such originals is certified by a competent public official, or else is not expressly challenged.

SECTION VII

OF DEEDS OF IDENTIFICATION OR FOR RENEWAL

ARTICLE 2720 - Evidence value.

A deed of identification or for renewal constitutes full evidence for the declarations contained in the original instrument, unless, by producing the latter, it is proved that there was an error in the identification or renewal.

CHAPTER III

OF PROOF BY WITNESSES

ARTICLE 2721 - Permissibility and limitations.

Proof of contracts by witnesses is not permitted when the value of the subject matter is in excess of five thousand liras.

However, the judicial authorities may permit evidence by witnesses even beyond such limit, in consideration of the qualifications of the parties, the nature of the contract or other circumstance.

ARTICLE 2722 - Added covenants or stipulations contrary to the contents of a document.

Proof by witnesses is not permitted when it contemplates added covenants or stipulations contrary to the contents of a document, alleging that such covenants or stipulations were entered into before or at the same time as the contract.

ARTICLE 2723 - Stipulations made after the drawing of a document.

When it is alleged that, after the drawing of a document, a stipulation contrary to such document has been added, the judicial authorities may permit proof thereof by witnesses only when, in consideration of the qualifications of the parties, the nature of the contract, and all other circumstances, it appears likely that verbal additions or modifications might have occurred.

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ARTICLE 2724 - Exceptions to prohibition of proof by witnesses.

Proof by witnesses is permitted in all cases:

1. When there is some evidence in writing: this consists of any writing originating from the person against whom the petition is directed or from his representative, which makes the alleged fact appear likely.
2. When it has been morally or materially impossible for the contracting party to secure any written evidence.
3. When the contracting party has lost, without negligence on his part, the document which constituted evidence.

ARTICLE 2725 - Deeds for which evidence in writing or written form is required.

When pursuant to law or by intention of the parties, a contract must be evidenced in writing, the proof by witnesses is permitted only in the case set forth by item 3 of the preceding Article.

The same rule is applicable when the written form for a contract is prescribed under penalty of nullity.

ARTICLE 2726 - Evidence of payment or release.

The provisions set forth for proof by witnesses of contracts are also applicable to payment of or release from a debt.

CHAPTER IVOF PRESUMPTIONSARTICLE 2727 - Elements.

Presumptions are the consequence which the law or the Judge deduces from a fact which is known in order to establish a fact which is not known.

ARTICLE 2728 - Evidence against legal presumptions.

Legal presumptions relieve the parties in whose favor they are established from submitting any evidence.

No evidence may be introduced against presumptions on the basis of which the law declares certain deeds to be null or for which the law does not permit trial, unless such evidence is permitted by the law itself.

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ARTICLE 2729 - Mere presumptions.

Presumptions which are not established by law are left to the discretion of the Judge, who shall only permit them when they are important, precise and concordant.

Presumptions are not admissible in cases where the law bars proof by witnesses.

CHAPTER VOF CONFESSIONARTICLE 2730 - Elements.

Confession is a declaration of the truth by one party concerning facts unfavorable thereto and favorable to the other party.

Confessions are judicial and extra-judicial.

ARTICLE 2731 - Capacity required for confession.

Confession is not valid unless it originates from a person capable of disposing of the right to which the facts that are confessed have reference. When a confession is made by a representative, it is only valid within the limits and with the formalities for which he may bind the party represented.

ARTICLE 2732 - Revocation of confession.

A confession may not be revoked unless it is proved that it was induced by error of fact or violence.

ARTICLE 2733 - Judicial confession.

A confession is judicial, when it is made in the course of a suit.

Such confession constitutes full evidence against the person who made it, provided it does not concern facts relative to rights which may not be disposed of.

In the case of necessary co-parties in the litigation, a confession made by some only of the co-parties is left to the discretion of the Judge.

ARTICLE 2734 - Declarations added to confession.

When other facts or circumstances tending to invalidate, modify or extinguish the effects of the fact which has been confessed are united with

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the declaration set forth by Article 2730, all of such declarations constitute full evidence if the other party fails to contest the truth of the facts or circumstances which have been added. If they are contested, it is left to the Judge to value, in accordance with circumstances, the evidence value of such declarations.

ARTICLE 2735 - Extra-judicial confession.

Extra-judicial confessions made to the opposing party or his representatives have the same evidence value as a judicial confession. If the confession is made to a third party, or if it is included in a will, the value thereof is left to the discretion of the Judge.

Extra-judicial confessions may not be proved by witnesses if they concern subject for which proof by witnesses is not permitted by law.

CHAPTER VIOF OATHSARTICLE 2736 - Kinds of oaths.

Oaths are of two kinds:

1. Oath decisory, whereby one party refers back to the other for the total or partial decision of the cause.
2. Oath supplementary, whereby an oath is required ex officio by the Judge from either party in a cause, when full evidence is lacking to support either the petition or the defense but there is some evidence to support one or the other, or else an oath which one party refers back to the other for the purpose of establishing the value of the property which is the subject of the petition, if its value cannot be ascertained otherwise.

ARTICLE 2737 - Capacity of the parties.

The conditions set forth by Article 2731 are required in order to defer an oath.

ARTICLE 2738 - Validity.

If an oath which has been deferred is given, the other party is not permitted to prove the contrary, nor may such party demand revocation of the judgment if the oath has been declared to be false. Such party may, however, demand compensation for damages in case of criminal conviction for false oath. If criminal conviction may not be imposed by reason of extinguishment of the crime, the Civil Judge may recognize such crime for the sole purpose of determining compensation for damages. In the case of necessary co-parties in the litigation, the value of an oath made by some only of the co-parties is left to the discretion of the Judge.

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TITLE THREE

OF LIABILITY IN RESPECT TO PERSONAL ESTATE, OF
CAUSES FOR PREFERENCE AND OF CONSERVATION OF
GUARANTEES WHICH SECURE PROPERTY

CHAPTER I

GENERAL PROVISIONS

ARTICLE 2740 - Liability in respect to personal estate.

A debtor is liable for the performance of his obligations with all his present and future property.

Limitations upon such liability are not permitted except in cases established by law.

ARTICLE 2741 - Co-claimancy of creditors and causes for preference.

Creditors have equal rights to be paid out of the property of their debtors, except for lawful preferences.

Privileges, pledges and mortgages are lawful causes for preference.

ARTICLE 2742 - Indemnity subrogated to property.

If the property subject to privilege, pledge or mortgage, has deteriorated or is lost, the sums due by the insurers to indemnify such loss or deterioration are restricted to the payment of privileged, pledge or mortgage claims, in accordance with the degree of such claims, unless such funds are used to make up for the loss or deterioration of the property.

Upon petition of the interested parties, the judicial authorities may order necessary precautions to make certain that sums due by insurers are used for the reinstatement or repair of the property.

The insurers are released if they make payment after thirty days from the date of the loss or damage, provided no objection has been raised within that period. However, in the case of real property encumbered with recordations, the insurers are not released, until, without objections being raised, thirty days have elapsed from notice to the creditors who are recorded of the fact which has given rise to the loss or damage.

Sums due for compulsory servitudes, forced joint ownership or expropriation in the public interest are, likewise, restricted to the payment of the aforementioned claims, observing the provisions of special laws in the case of expropriation in the public interest.

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ARTICLE 2743 - Reduction of security.

When the property given in pledge or subject to mortgage is lost or damaged, even by an act of God, in such manner as to become insufficient for the security of the creditor, the latter may demand adequate security on other properties and, in absence thereof, he may demand immediate payment of his claim.

ARTICLE 2744 - Prohibition to apply "commissaria lex".

Agreements whereby it is stipulated that upon failure of payment of the claim within the established time limit, ownership of property mortgaged or given in pledge descend to the creditor, are null. Such a stipulation is null even if made after the establishment of the mortgage or pledge.

CHAPTER IIOF PRIVILEGES (PREFERENCES AND LIENS)SECTION IGENERAL PROVISIONSARTICLE 2745 - Basis for privileges.

The law grants privileges by reason of the character ("cause") of the claim. The law, however, may subordinate the establishment of privileges to the agreement of the parties; privileges may also be conditional upon special forms of public notice.

ARTICLE 2746 - Kinds of privileges.

Privileges may be general or special.

The first may be exercised upon all movable property of the debtor; the second upon specified movable or immovable property.

ARTICLE 2747 - Validity of privileges.

General privileges may not be exercised in prejudice to the rights of third parties in movable property constituting the subject matter thereof, except for the provisions of Articles 2913, 2914, 2915 and 2916.

Unless the law provides otherwise, special privileges upon movable property, provided the particular situation to which such privilege attaches exists, may be exercised in prejudice to rights acquired by third parties after the establishment of said privileges.

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ARTICLE 2748 - Validity of special privileges with respect to pledges and mortgages.

Unless the law provides otherwise, special privileges upon movable property may not be exercised in prejudice of pledge creditors.

Unless the law provides otherwise, creditors who have privileges upon immovable property are preferred to mortgage creditors.

ARTICLE 2749 - Items covered by privileges.

Privileges which may be granted to a claim extend to ordinary expenses for intervention in a suit for levying execution. They also extend to the interest which is due for the year which is current at the time of distraint, and to the interest for the preceding year.

Interest which matures subsequently is privileged within the limits of legal interest up to the time of the sale.

ARTICLE 2750 - Privileges on vessels and aircraft and privileges established by special laws.

Privileges upon vessels, freight and cargo and privileges upon aircraft, freight and cargo are regulated by the Code of Navigation.

If there are no provisions to the contrary, the provisions of this Chapter are applicable to privileges set forth by special laws.

SECTION IIOF PRIVILEGES UPON MOVABLE PROPERTYSUB-SECTION AOF GENERAL PRIVILEGES UPON MOVABLE PROPERTYARTICLE 2751 - Claims for funeral expenses, illness, support and remuneration.

The following claims are entitled to general privileges upon movable property, in the order listed below:

1. Funeral expenses considered necessary in accordance with custom.
2. Medical expenses sustained during the last six months of life of a debtor.

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3. Supplies of foodstuff, clothing and lodging, within the limits of strict necessity, made in favor of the debtor and his family during the last six months.
4. Remuneration due, under any form, to workers in subordinate capacities for the last six months, and all indemnities due by reason of cessation of employment.
5. Remuneration due for the last year to workers in professional capacities, or any other person performing mental work.
6. Commissions derived from agents' relationships, and indemnities due for the cessation of such relationship.
7. Claims for support for the last three months in favor of persons to whom support is due by operation of law.

ARTICLE 2752 - Claims for direct taxation by the State and by local subdivisions thereof.

The claims of the State for direct taxation, except those for land taxation, have general privileges upon the movable property of the debtor when such claims are included in the general list for the year in which the collector proceeds or intervenes in the levy of execution of the property of the debtor, and for the preceding year.

In the case of additional tax lists, the privilege may not be exercised for an amount higher than the amount of taxes for the last two years.

Claims for duties, taxes and tolls by communes and provinces, provided for by local fiscal laws, have the same privileges, subordinate to the privileges of the State, except for the taxes set forth by Articles 2771 and 2773.

ARTICLE 2753 - Claims for dues on social security.

Claims due to non-payment, by employers, of social security dues, in accordance with social security laws, have general privileges upon the movable property of such employers.

ARTICLE 2754 - Claims for premiums on insurance against accidents and occupational diseases.

Claims for premiums and dues for insurance against accidents and occupational diseases have also general privileges upon the movable property of employers, together with the interests attached thereto, as well as claims for additional sums due as a penalty for the year current at the

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time of the levy of execution and for the two preceding years, in accordance with the laws relative to compulsory insurance against accidents and occupational diseases.

SUB-SECTION BOF PRIVILEGES UPON SPECIFIED MOVABLE PROPERTYARTICLE 2755 - Expenses for acts of conservation or expropriation.

Claims for legal fees in connection with acts for conservation or expropriation of movable property, in the common interest of creditors, have a privilege on such property.

ARTICLE 2756 - Claims for services and expenses for improvement and conservation.

Claims for services and expenses resulting from the conservation or improvement of movable property have a privilege on such property, provided it is still in the care of the person who performed the services or sustained the expenses.

Such privilege is effective also in prejudice of third parties who have acquired rights in said property, when the person who performed the services or sustained the expenses was in good faith.

The holder of the claim may retain the property subject to privilege until his claim is satisfied, and may also sell such property in accordance with the provisions for the sale of property which is pledged.

ARTICLE 2757 - Claims for allotments and works necessary for agricultural production.

Claims for allotments of seeds, fertilizers, and insecticides and claims for irrigation waters, as well as claims for work of cultivation and harvest during the agricultural year, have a privilege on the crops of which such cultivation and harvest is a part.

Said privilege may be exercised as long as the crops are located on the property or its appurtenances.

The provision of the second paragraph of Article 2756 is applicable.

ARTICLE 2758 - Claims for indirect taxation.

Claims of the State for indirect taxation have a privilege on the

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movables contemplated by such taxation and on other properties set forth by the pertinent laws, with the effects therein indicated.

Privileges connected with inheritance taxes may not be exercised in prejudice of creditors who have exercised their rights of separation of the property of the deceased from that of the heir.

Claims of communes for consumption taxes, in accordance with special laws, have the same privilege, subordinate to the privilege of the State.

ARTICLE 2759 - Claims for taxes on capital, business and wages.

Claims of the State for taxes on capital, business and wages, due for the current and for the preceding year, in connection with the exercise of commerce, industry, trade or profession have a privilege on the movables used in such connection, and on the merchandise located in the premises used for that purpose or in the habitation of the taxpayer, in accordance with the pertinent special law.

Claims of provinces and communes for taxes in industry, commerce, trades and professions and additional claims therefor, have the same privilege, subordinate to the privilege of the State.

ARTICLE 2760 - Claims of innkeepers.

Claims of innkeepers for supplies and services rendered to the guests have a privilege on the property brought by said guests into the inn or its appurtenances, and which is still to be found therein.

Said privilege may also be exercised in prejudice of third parties who have rights in said property, unless the innkeeper was cognizant of such rights at the time when the property was brought into the inn.

ARTICLE 2761 - Claims of carriers, mandataries, depositaries and sequestrators.

Claims arising from the contract of carriage and claims for money paid by the carrier on account of the goods, have a privilege on the property which has been transported, as long as such property is with the carrier.

Claims arising from the execution of a mandate have a privilege on such property of the principal as is held by the mandatary for the execution of the mandate.

Claims arising from deposit or from sequestration by agreement in favor of depositaries or sequestrators have, likewise, a privilege on the

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property held by such depositary or sequestrator, by reason of the deposit or sequestration.

The provisions of the second and third paragraphs of Article 2756 are applicable to said privileges.

ARTICLE 2762 - Machinery vendors' privilege.

Whoever sells machinery for a price higher than thirty thousand liras has a privilege for the unpaid purchase price of the machinery sold and delivered, even if such machinery is incorporated in, or attached to, an immovable owned by the buyer or by a third party.

Said privilege is conditional upon the recordation of documents witnessing the sale and the claim in the register indicated by the second paragraph of Article 1524. The recordation is made in the Tribunal having jurisdiction over the place where the machinery is located.

The privilege continues for a period of three years from the date of the sale, and may be exercised until the machinery is to be found in the possession of the buyer in the place where the recordation was made, except in the case of fraudulent embezzlement.

The privilege set forth in this Article may also be exercised by banks authorized to grant loans with privilege on the machinery, when such banks have advanced to the buyer the purchase price for the acquisition. The privilege may be exercised provided that the document witnessing the financing indicates the purpose, the amount and the expiration of the claim, as well as a precise description of the machinery subject to privilege, and provided that such document is recorded in accordance with the second paragraph of this Article.

In the case of co-claimancy of privileges by the bank and by the seller, the holder of the claim who recorded first has preference.

ARTICLE 2763 - Claims for emphyteutic rentals.

The claims of landlords for rentals due by the emphyteutic tenant for the current and for the preceding year have a privilege on the crops of the current year and on the crops gathered previously, provided such crops are located on the property or its appurtenances.

ARTICLE 2764 - Claims of landlords.

Claims for leases and rentals of real property have a privilege on the crops of the current year and on those gathered previously, as well as

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on all that which is used to furnish the immovable or to cultivate the leased property.

Said privilege is effective for the claims of the current year, the preceding year and subsequent year, if the lease bears certain date; otherwise, for the claims of the current and the subsequent year.

Claims arising from failure to make repairs chargeable to the tenant, claims for damages caused to the leased immovable, those for failure to return supplies, and all other claims arising from non-performance of the contract, have the same privilege.

The privilege on the crops is effective while such crops are located on the property or its appurtenances. The privilege may be exercised also against sub-tenants.

The privilege on the property which is used to furnish the leased immovable or to cultivate the property is effective also if such property is owned by the sub-tenant, within the limits for which the landlord has a right of action against the latter.

The privilege on the property which is used to furnish the leased immovable is effective also with respect to third parties, as long as such property is located in the immovable, unless it is proved that the landlord was cognizant of the rights of such third party at the time when the property was brought into the immovable.

When the property which is used to furnish the house or the leased property, or else to cultivate the property, is removed from the immovable, without the consent of the landlord, the latter retains a privilege on such property, provided he requests sequestration thereof with the formalities set forth by the Code of Civil Procedure for sequestration for conservation purposes, within thirty days from the time when the property was taken away, in the case of movables used to furnish or cultivate rural property, or within fifteen days, in the case of movables used to furnish the house.

In all cases, the rights acquired after the removal by third parties who were not cognizant of the existence of privileges, are unaffected.

ARTICLE 2765 - Claims arising from contracts of metayer and of metayage association between landlord and farmers.

The landlord in contract of metayer or metayage association and the farmer have a privilege for claims arising from their contracts on their respective shares of the crops and on the goods which are used to cultivate or furnish the property subject to metayage.

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The privilege on the crops is effective while such crops are located on the property or its appurtenances.

The provisions of the last three paragraphs of Article 2764 are applicable.

ARTICLE 2766 - Claims of agricultural credit institutions.

Institutions extending agricultural credit have a privilege on the crops of the property for loans made for carrying on agricultural pursuits and for the use, handling and processing of the products thereof.

Such institutions have the same privilege on the property acquired through loans extended for the purchase of livestock, machinery and agricultural tools.

A privilege on the crops of the property and on all that which is used to cultivate or furnish said property may moreover be established to secure the claims set forth in the preceding paragraph and claims for loans extended to improve the property, such privilege to be exercised within the limits of the value exceeding the amount of the claims secured by the privileges set forth in the two preceding paragraphs.

The privileges set forth in this Article are regulated by special laws.

ARTICLE 2767 - Claims for compensation for damages by the insured.

In the case of civil liability insurance, the claim of the injured party for compensation has a privilege on the indemnity due by the insurer.

ARTICLE 2768 - Claims arising from crimes.

The State and other persons indicated by the Penal Code have a privilege on the property sequestered for claims arising from crimes, in accordance with the provisions of said Penal Code and of the Code of Penal Procedure.

ARTICLE 2769 - Sequestration of the property subject to privilege.

If a creditor who has a privilege on movable property, has well founded reasons to fear the removal of such property from the particular situation upon which the existence of the privilege is conditioned, he may demand sequestration of such property for the purpose of conservation.

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SECTION IIIOF PRIVILEGES ON IMMOVABLESARTICLE 2770 - Claims for acts of conservation or expropriation.

Claims arising from legal expenses sustained for acts of conservation or expropriation of immovable property for the common interest of creditors have a privilege on the proceeds of the sale of such immovable.

The claim of a purchaser of an immovable for expenses sustained to secure a declaration of release of the immovable from mortgages has the same privilege.

ARTICLE 2771 - Claims for land taxes and other direct taxation.

Claims of the State for land taxes included in the regular list of the year in which execution is levied and of the preceding year, as well as claims of communes and provinces for additional taxes for the same period, have a privilege on all the immovables of the taxpayer which are located within the territory of the commune in which the tax is collected, and on all crops, leases and rents of such immovables, without prejudice to special forms of levy of execution, authorized by law.

Claims of the State for any other kind of direct taxation on the immovables have the same privilege on the property covered by such taxation, in accordance with special laws.

In the case of extra tax lists, said privilege may not be exercised for an amount higher than the amount of taxation for the last two years.

ARTICLE 2772 - Claims of the State for indirect taxation.

Claims of the State for any other indirect taxation have also a privilege on the immovables affected by such taxation. Such privilege may not be exercised in prejudice of rights acquired previously by third parties on the immovables.

In the case of additional registration taxes, said privilege may not even be exercised in prejudice to rights acquired by third parties after registration of the deed.

The aforementioned privilege, in the case of inheritance taxes, may not be exercised in prejudice to creditors of the deceased who have recorded their mortgage within three months from his death, nor against creditors who have exercised the right of separation of the property of the deceased from that of the heir.

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ARTICLE 2773 - Claims for taxes levied by provinces and communes.

Claims of communes and provinces for taxes provided by law for local financing have a privilege on the immovables affected by such taxes.

Said privilege may not be set up against third parties who have previously acquired rights in the immovables.

ARTICLE 2774 - Claims for water concessions.

Claims of the State for fees due by grantees of public water concessions or of waters coming from canals belonging to the public domain, and claims for works performed ex officio, have a privilege on the plants concerned, in accordance with special laws.

Said privilege may not be set up against third parties who have acquired rights in the immovables prior to the concession, or, in the case of claims for work done, prior to the arising of the claims.

ARTICLE 2775 - Claims for contributions to improvement and land reclamation works.

Claims for contributions to improvement and land reclamation works have a privilege on the immovables which are benefited by such works.

The establishment of privileges for improvement work is subordinated to the observance of special laws.

ARTICLE 2776 - Subsidiary privilege on immovables.

In the case of unsuccessful levy of execution on the movable property for the claims set forth by Article 2751, the privilege is subsidiarily transferred to the proceeds of the sale of the immovables, giving preference to written claims.

SECTION IVOF PRIORITY OF PRIVILEGESARTICLE 2777 - Preference for legal expenses.

Claims for legal expenses set forth by Articles 2755 and 2770 are preferred to any other claim, even mortgage or pledge claims. Privileges declared in a general way to be preferred to any other by special laws, are subordinated to the privileges for claims for legal expenses.

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ARTICLE 2778 - Priority of other privileges on movable property.

Except for the provisions of the preceding Article, in the case of concurrence of claims having general or special privileges on the same property, the following order of priority is maintained:

1. Claims for land taxes, specified in Article 2771, when the privilege is exercised separately on the crops, rents and leases of immovables.
2. Claims of institutions extending agricultural credit, mentioned in the first two paragraphs of Article 2766.
3. Claims for services and expenses for conservation and improvement of movable property, mentioned in Article 2756.
4. Claims for seeds, fertilizers and insecticides and for providing irrigation water as well as claims for works connected with cultivation and harvest, mentioned in Article 2757.

When such claims are concurrent, those for harvest or gathering of fruits are preferred; claims for cultivation follow, and subsequently, the other claims mentioned in Article 2757.

5. Claims for indirect taxation, mentioned in Article 2758, unless special laws assign to such claims a different degree of preferential rights, and claims for taxation on floating capital, mentioned in Article 2759.
6. Claims of institutions exercising agricultural credit, mentioned in the third paragraph of Article 2766.
7. Claims, arising from criminal offenses, on the property sequestered, as set forth by Article 2768, in the cases and in accordance with the order established by the Penal Code and by the Code of Penal Procedure.
8. Claims for compensation for damages, mentioned in Article 2767.
9. Claims of innkeepers, mentioned in Article 2767.
10. Claims of carriers, mandataries, depositaries and sequestrators, mentioned in Article 2761.
11. Claims of vendors of machinery or of banks advancing the purchase price for the machinery, mentioned in Article 2762.

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12. Claims for emphyteutic rentals, mentioned in Article 2763.
13. Claims of landlord and claims arising from contracts of metayage and metayage associations, mentioned in Articles 2764 and 2765 respectively. When these two claims are concurrent, the claim of the landlord is preferred.
14. Claims for funeral expenses, for illness, supplies, remuneration, commission, indemnity and support, in the order indicated by Article 2751.
15. Claims of the State, for direct taxation, mentioned in the first paragraph of Article 2752.
16. Claims of local artificial persons for taxation, mentioned in the third paragraph of Article 2752; the contributions for insurance and the other accessory claims, mentioned in Articles 2753 and 2754.

ARTICLE 2779 - Co-claimancy of privileges and liens on automobiles.

If the privileges considered in the preceding Article are co-claimant with liens on automobiles mentioned in Article 2810, the latter follow, in order of priority, the privileges mentioned in the first seven items of Article 2778, and are preferred to all other claims mentioned in said Article.

ARTICLE 2780 - Priority of privileges on immovables.

When several privileged claims are concurrent on the proceeds of the sale of an immovable, the priority is the following:

1. Claims for direct taxation, mentioned in Article 2771.
2. Claims for contributions, mentioned in Article 2775.
3. Claims of the State for water concessions, mentioned in Article 2774.
4. Claims of the State for indirect taxation, mentioned in Article 2772.
5. Claims for taxation by communes and provinces, mentioned in Article 2773.

ARTICLE 2781 - Concurrence of special privileges and pledge claims.

When a claim entitled to a special privilege and a claim secured by pledge are concurrent, and one of the privileges must be preferred to the pledge, such privilege has priority on all other privileges which are secondary to the pledge, even if such privileges have a degree of priority.

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ARTICLE 2782 - Concurrence of equally privileged claims.

Equally privileged claims compete with each other in proportion to their respective amount.

The same provision is observed when there is concurrence of several privileged claims to which special laws assign, in a general way, priority over all other claims.

ARTICLE 2783 - Preference not determined by law.

When the law does not give a degree of preference to a specified special privilege, it takes a degree of priority lower than any other special privilege regulated by the Code.

CHAPTER IIIOF PLEDGESECTION IGENERAL PROVISIONSARTICLE 2784 - Elements.

A pledge is established to secure an obligation of a debtor or of a third party to the creditor.

Movable property, aggregations of movables, claims and other rights relative to movable property may be given in pledge.

ARTICLE 2785 - Reference to special laws.

The provisions of this Chapter do not affect special laws concerning particular forms and cases of pledging, nor those relative to institutions authorized to make loans against pledges.

SECTION IIOF PLEDGE ON MOVABLE PROPERTYARTICLE 2786 - Establishment.

A pledge is established by delivering to the creditor the property or the document conveying exclusive disposition of the property.

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The property or the document may also be delivered to a third person selected by the parties, or it may be placed in the custody of both parties in such manner as to make the disposition of the property by the pledgor impossible without the cooperation of the creditor.

ARTICLE 2787 - Preemptive rights of pledge creditor.

A creditor has the rights to exact payment with preemptive rights on the property received in pledge.

Preemption may not be enforced if the property given in pledge was not left in possession of the creditor or in care of a third party selected by the parties.

When the secured claim is in excess of five thousand liras, preemption may not be exercised if the pledge is not evidenced by a writing bearing certain date and containing sufficient information designating the claim and the property concerned.

However, if the claim is evidenced by a certificate or other writing of an artificial person who is duly authorized to transact, professionally, dealings in credit against pledge, the date of the writing may be ascertained with any kind of evidence.

ARTICLE 2788 - Preemptive rights for claims on interest.

Preemptive rights are also effective with respect to interest for the year current at the date of the pledge or, if the date is lacking, at the date of notification of the garnishment.

Preemptive rights are, moreover, exercised for interest which has matured subsequently, within the limits of the legal rate, until the date of the sale of the property pledged.

ARTICLE 2789 - Reclaiming of property by pledge creditor.

A creditor who has lost possession of the property received in pledge, has an action for replevin on said property if the pledgor was entitled to such action, and may, in addition, institute action for the safeguard of possession.

ARTICLE 2790 - Conservation of property and related expenses.

A creditor is bound to keep in custody the property received in pledge and is answerable, in accordance with the general rules, for loss or damage to such property.

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The pledgor is bound to reimburse for expenses incurred in the conservation of the property.

ARTICLE 2791 - Pledge of interest-bearing property.

Unless otherwise agreed upon, if the property given in pledge bears interest, the creditor may appropriate the fruits, apportioning them first against expenses and interest and then against the principal.

ARTICLE 2792 - Prohibition to use or dispose of property.

A creditor, without the consent of the pledgor, may not use the property pledged, unless such use is necessary for the conservation of the property. He may not give said property in pledge, or grant the enjoyment thereof to others.

In all cases, the creditor must allocate the proceeds from the property first against the expenses and interest and then against the principal.

ARTICLE 2793 - Sequestration of the property.

If a creditor commits abuses on the property given in pledge, the pledgor may demand sequestration thereof.

ARTICLE 2794 - Restitution of the property.

The pledgor may not demand restitution of the property until the principal and the interest are entirely paid up and until the expenses connected with the debt and with the pledge are reimbursed.

If a pledge was established by a debtor who has another debt towards the same creditor, and such debt, contracted after the establishment of the pledge, has matured before the payment of the previous debt, the creditor has the right to retain the property pledged, but only to secure the new claim.

ARTICLE 2795 - Advance sale.

If the property given in pledge deteriorates in such manner as to cause concern that it may become insufficient for the security of the creditor, the latter, giving advance notice thereof to the pledgor, may request from the Judge authorization to sell the property.

In the decree authorizing sale, the Judge also makes provision for the deposit of the purchase price to secure the claim.

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The pledgor may avert the sale and cause the return of the property pledged, by offering other property security, acknowledged by the Judge to be adequate.

In case of deterioration or shrinkage in value of the property given in pledge, the pledgor may likewise demand from the Judge authorization to sell the pledged property, or restitution thereof by offering another property security acknowledged by the Judge to be adequate.

The pledgor may demand from the Judge authorization to sell the property, if a favorable opportunity for sale arises.

In issuing the decree of authorization to sell the pledged property, the Judge provides for the conditions of the sale and the deposit of the purchase price.

ARTICLE 2796 - Sale of property.

A creditor may cause the sale of the property received in pledge, with the formalities set forth by the following Article, in order to recover that which is due him.

ARTICLE 2797 - Formalities for sale.

A creditor, before proceeding with the sale, must summon the debtor, through a court attendant, to pay the debt and accessories, warning him that if he fails to comply with the request the property will be sold. The summons must be served also on third persons who might have established the pledge.

If no objection is raised within five days from such summons, or if the objection is overruled, the creditor may cause the property to be sold at public auction or, if the property has a market price, he may sell it at the current price through a person authorized to make such sales. If the debtor does not have his residence or elected domicile in the place where the creditor has his residence, the time limit for objecting is determined according to Article 166 of the Code of Civil Procedure.

Acting upon the objection of the pledgor, the Judge may limit the sale to one among several items of property given in pledge, the value of which is sufficient to pay the debt.

The parties may stipulate various forms for the sale of the property given in pledge.

ARTICLE 2798 - Assignment of the property in payment of debt.

A creditor may always petition the Judge that the property be assigned to him in payment, up to the limit of the debt, according to an estimate

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to be made by experts or according to the current price, if the property has a market price.

ARTICLE 2799 - Indivisibility of the pledge.

A pledge is indivisible and secures the claim until completely satisfied, even if the debt or the property given in pledge is divisible.

SECTION IIIOF PLEDGES CONSISTING OF CLAIMS AND OTHER RIGHTSARTICLE 2800 - Conditions for preemptive rights.

When claims are pledged, preemptive rights are not effective, except when the pledge is evidenced by a written document and when debtor has been notified of the establishment of the pledge of the claim, or when the pledging was approved by such debtor with a writing bearing certain date.

ARTICLE 2801 - Delivery of the document.

If the claim given in pledge is evidenced by a document, the pledgor is bound to deliver such document to the creditor.

ARTICLE 2802 - Collecting interest and performances in installment.

A pledge creditor must collect the interest or other income in installments, applying the amount thereof first to the expenses and interest and then to the principal.

He is bound to perform acts of conservation for the claim received in pledge.

ARTICLE 2803 - Collection of claim given in pledge.

A pledge creditor or pledgee is bound to collect the claim received in pledge at the time of expiration of such claim, and if the claim concerns money or other fungible things, he must make deposit thereof, upon request of the debtor, in the place agreed upon or determined by the judicial authorities. If the pledged claim becomes due, the creditor may retain from the amount he receives sufficient to satisfy his rights, returning the balance to the pledgor or, in the case of property not consisting of money, he may cause the sale or demand the assignment of the property in accordance with Articles 2797 and 2798.

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ARTICLE 2804 - Assignment or sale of claim given in pledge.

A pledge creditor who has not been paid may, in all cases, demand that the claim received by him as pledge be assigned to him in payment, up to the limit of his claim.

If the pledged claim has not yet expired, he may also cause its sale with the formalities set forth by Article 2797.

ARTICLE 2805 - Defenses which may be raised by the debtor of the claim given in pledge.

The debtor of a claim given in pledge may raise against a pledge creditor the defenses which would be available to him against his own creditor.

If said debtor accepted without reservation the establishment of the pledge he may not raise against the pledge creditor a set-off of the claim previously determined.

ARTICLE 2806 - Pledge of rights other than claims.

Pledges of rights other than claims are established with the formalities required for the assignment of the respective rights concerned, without affecting the provisions of the third paragraph of Article 2787.

The provisions of special laws are unaffected.

ARTICLE 2807 - Rules applicable to pledges consisting of claims.

The provisions of the preceding section are observed, insofar as they are applicable, to all that which is not regulated by this section.

CHAPTER IV

OF MORTGAGES

SECTION I

GENERAL PROVISIONS

ARTICLE 2808 - Establishment and effects of mortgages.

A mortgage grants to a creditor the right to foreclose the property securing his claim, even against a third party acquirer, and to have preferential rights on the proceeds of the foreclosure sale to satisfy his claim.

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A mortgage may be imposed on the property of a debtor or of a third party and is established by means of recordation in the register of immovable property.

Mortgages may be legal, judicial or voluntary.

ARTICLE 2809 - Determination of property mortgaged and indivisibility of mortgages.

Mortgages must be recorded on property indicated specifically and for a definite sum of money.

Mortgages are indivisible and apply in toto on all the properties mortgaged, on each of such properties and on all parts thereof.

ARTICLE 2810 - What may be mortgaged.

The following may be mortgaged:

1. Immovable property which is subject to sale, with all its appurtenances.
2. The usufruct of said property.
3. Surface rights.
4. The rights of emphyteutic tenants and those of the grantor on the emphyteutic property.

State incomes may also be mortgaged with the formalities set forth by the laws concerning public debt, and also vessels, aircraft and automobiles, in accordance with the pertinent laws concerning same.

Privileges recorded on automobiles in accordance with special laws are considered mortgages.

ARTICLE 2811 - Improvements and accessions.

A mortgage includes the improvements, as well as constructions and other accessions to the real property mortgaged, with the exceptions established by law.

ARTICLE 2812 - Rights established on mortgaged property.

Servitudes the establishment of which are recorded after the recordation of the mortgage may not be set up against the creditor mortgagee, who may represent the property as being free. The same provision is applicable

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to the rights of usufruct, use and habitation.

Such rights are extinguished with the foreclosure of the property, and the parties entitled may enforce their rights on the proceeds, with preferential rights with respect to mortgages recorded after the recordation of the aforementioned rights.

The provisions relative to third party purchasers are observed for those who have acquired surface rights or emphyteutic rights on property subject to mortgage and have recorded the purchase after the recordation of the mortgage.

Assignments and releases of unexpired rents or leases, not recorded or for a period less than three years, may be set up against creditors who are mortgagees only if bearing a date prior to distraint (upon default in the mortgage) and only for a period not in excess of one year from the date of the distraint.

Recorded assignments and releases may not be raised against mortgagee creditors whose claim antedate such recordation except for the period set forth by the preceding paragraph.

ARTICLE 2813 - Danger of damage to mortgaged property.

If the debtor, or a third party, performs acts which may cause the loss of or damage to the mortgaged property, the creditor may petition the judicial authorities to order the cessation of such acts or the necessary precautions to avoid prejudice to his security.

ARTICLE 2814 - Mortgage on usufruct and on naked property.

Mortgages established on usufruct are extinguished with the termination of the usufruct. However, if the termination is due to renunciation or misuse by the usufructuary or to acquisition of the naked property by the usufructuary, the mortgage continues until the fact occurs which would otherwise have terminated the usufruct.

If the naked property was encumbered by mortgage, the mortgagee, after termination of the usufruct, extends to the complete property. But in the cases where, in accordance with the provisions of the preceding paragraph, the mortgage on the usufruct continues, the extension does not prejudice the claim secured by such mortgage.

ARTICLE 2815 - Mortgage established on the rights of the grantor and of the emphyteutic tenant.

In case of redemption of the emphyteutic estate, the mortgage imposed on the estate of the grantor is applied to the price due for redemption; a

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mortgage imposed on the interest of the emphyteutic tenant is extended to include the complete property.

In the case of devolution or termination of the emphyteusis due to expiration of the term, the mortgage imposed on the interest of the emphyteutic tenant is applied to the amount due for improvements, without deducting the amounts due the grantor for unpaid rentals. Unless the cost of the improvements appears from a written document to have been agreed upon with the mortgagee, it must be determined judicially, the creditors having the right of rejoinder. Mortgages imposed on the interest of the grantor are extended to the complete property.

When emphyteusis is extinguished by prescription, the mortgage imposed on the interest of the emphyteutic tenant is extinguished.

If, for causes other than the ones aforementioned, the rights of the grantor and of the emphyteutic tenant are joined in the same person, the mortgages imposed on both interests continue to be effective separately from each other; but if the mortgage is imposed only on one or the other interest, the mortgage is extended to the complete property.

ARTICLE 2816 - Mortgage on surface rights.

Mortgages imposed on surface rights are extinguished in the case of devolution of the surface rights to the owner of the soil resulting from expiration of the term.

However, if the owner of the surface rights is entitled to any payments, such payments are applied to the mortgage recorded against him. Mortgages recorded against the owner of the soil do not extend to the surface subject to surface rights.

If, for other causes, the rights of the owner of the soil and of the owner of the surface rights are joined in one person, the mortgages imposed on both interests continue to be effective.

SECTION IIOF LEGAL MORTGAGEARTICLE 2817 - Persons entitled.

The following are entitled to legal mortgage:

1. The seller, on the immovables sold by him, for the fulfillment of obligations arising from the sale.

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2. Co-heirs, partners and other co-participants, for proper distribution of shares, on the share of immovables of the partitioners charged with such duty.
3. The wife, on the property of the husband, for the dowry, notwithstanding any agreement to the contrary.

This mortgage, unless restricted to specified property at the time of the establishment of the dowry, is recorded against all the property owned by the husband when the dowry is established or increased.

4. The State, on the property of criminal offenders and of persons with civil liability, according to the provisions of the Penal Code and of the Code of Penal Procedure.

SECTION III

OF JUDICIAL MORTGAGE

ARTICLE 2818 - Decrees from which judicial mortgages originate.

Any judgment to pay a sum, to fulfil other obligations, or to compensate for damages to be subsequently liquidated, constitutes a basis for recordation of a mortgage on the property of the debtor.

The same applies to other judicial decrees to which the law gives such effect.

ARTICLE 2819 - Arbitration.

A mortgage may be recorded on the basis of an award of arbitrators when such award has been made enforceable.

ARTICLE 2820 - Foreign judgments.

A mortgage may likewise be recorded on the basis of judgments issued by judicial authorities in foreign countries, after the validity of such judgments has been declared by the Italian judicial authorities, unless international agreements provide otherwise.

SECTION IV

OF VOLUNTARY MORTGAGE

ARTICLE 2821 - Grant of mortgage.

A mortgage may be granted even through unilateral declaration. The grant must be made by public deed or by private writing, under penalty of

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A mortgage may not be granted by will.

ARTICLE 2822 - Mortgage on other persons' property.

If a mortgage is granted by a person who does not own the property, recordation of such mortgage may be validly made only after the property has been acquired by such grantor.

If the mortgage is granted by a person acting as a representative, without possessing such qualification, recordation may be validly made only when the owner has ratified the grant of mortgage.

ARTICLE 2823 - Mortgage on property "in futuro".

A mortgage on property "in futuro" may be validly recorded only when such property comes into existence.

ARTICLE 2824 - Mortgage recorded on the basis of a voidable document.

The recordation of a mortgage on the basis of a voidable document is affirmed with the affirmation of such document.

ARTICLE 2825 - Mortgage on undivided property.

A mortgage established by one of the joint owners of property on his share produces effects with regard to such property, or such portion thereof as will be assigned to him in the partition.

If a participant is assigned, in the partition, property different from the property mortgaged by him, the mortgage is transferred to such other property, in the same priority, as in the original recordation and within the limits of the value of the property previously mortgaged, as such value is reckoned in the partition, provided such mortgage is again recorded, with the indication of such value within ninety days from recordation of the partition.

Said transfer, however, does not prejudice mortgages recorded against all the participants, nor the legal mortgage to which participants are entitled for proper distribution.

Mortgagees and assignees of a participant who has been assigned property different from the property mortgaged or assigned may also enforce their rights on the sums due such participant for equalization of his share, or, when a sum of money has been assigned to such participant instead of property in kind, they may enforce their rights on such sum, with preemptive rights determined by the date of recordation or entry of the respective documents, but always within the limits of the value of the property previously mortgaged or assigned.

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The persons who owe such sums are released, however, if they make payment thereof to the participant after thirty days from the date when notice of the partition was given to the mortgagees or assignees, no objection being raised by the latter.

ARTICLE 2826 - Indications concerning mortgaged immovables.

The mortgage deed must indicate specifically what such immovable consists of, the commune where it is located, the number of the cadastre or of the land-tax map if there is one, and the determination of at least three of its boundaries.

SECTION VOF RECORDATION AND RENEWAL OF MORTGAGESSUB-SECTION AOF RECORDATIONARTICLE 2827 - Place of recordation.

Mortgages are recorded in the office of the Registrar of Immovable Property of the place where the immovable is located.

ARTICLE 2828 - Immovables upon which judicial mortgages may be recorded.

Judicial mortgages may be recorded on any of the immovables owned by the debtor and on those which come to him after the judgment, concurrently with acquisition by him of such immovables.

ARTICLE 2829 - Recordation of mortgage on the property of a deceased.

Recordation of mortgages on the property of a deceased may be made by indicating the name of the deceased, observing, as to the rest, the ordinary rules. However, if acquisition of the property by the heirs is recorded, the recordation of the mortgage must be made against such heirs.

ARTICLE 2830 - Judicial mortgage on property inherited with benefit of inventory or of vacant inheritance.

In the case of inheritance with benefit of inventory or of vacant inheritance, judicial mortgages may not be recorded on the property of the inheritance, not even on the basis of judgments delivered prior to the death of the debtor.

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ARTICLE 2831 - Mortgages securing order and bearer obligations.

Obligations evidenced by order or bearer instruments may be secured by mortgage.

In the case of order instruments, the mortgage is recorded in favor of the present possessor and is transmitted to subsequent possessors; the latter are not bound to enter the notation required by Article 2843.

In the case of bearer instruments, the mortgage in favor of the bondholders is recorded indicating the issuer, the date of the document of issue, the serial, the number and the value of the bonds or debentures which have been issued.

The name of the trustee of bondholders must be noted in the margin of the recordation, as soon as said trustee is appointed.

Copy of the resolution or of the judicial decree appointing said trustee must be presented for the purpose of making such notation.

ARTICLE 2832 - Recordation of legal mortgage of the wife.

The husband and the Notary who has received the document establishing the dowry must attend to the recordation of the legal mortgage to which a wife is entitled.

If such mortgage is not restricted to specified property, the Notary must cause the husband to declare the location of the property owned by him, with the information required by Article 2826.

Recordation of the legal mortgage may be demanded not only by the wife but also by the person who has established the dowry.

ARTICLE 2833 - Liability for non-recordation.

The persons who are bound to attend to recordation of a legal mortgage, in accordance with the preceding Article, are liable for damages and a fine up to three thousand liras if they fail to comply with such duty within the prescribed time limit.

ARTICLE 2834 - Recordation of the legal mortgage of the seller and of co-participants.

The Registrar of Real Property, in recording a deed of alienation or partition, must enter, ex officio, under penalty of liability for damages, the legal mortgage to which the seller or the co-participant are entitled

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according to items 1 and 2 of Article 2817, unless a public act or a private writing with signature authenticated or judicially verified, is presented to said Registrar, witnessing the fact that the duties have been fulfilled or that there has been renunciation of the mortgage by the seller or the co-participant.

ARTICLE 2835 - Recordation on the basis of a private writing.

If the basis for the recordation of the mortgage is a private writing, the signature of the person who grants the mortgage must be authenticated or judicially verified.

The applicant must present the original writing or, if such writing is deposited in public archives or filed with a Notary, an authenticated copy thereof, with a certificate that the aforementioned requirements have been met.

The original or the copy remain deposited in the office of the Registrar of Real Property.

ARTICLE 2836 - Recordation on the basis of a public act or a judgment.

If the basis for the recordation of the mortgage is a public act or document received within the State, or else a judgment or other judicial decree of equal value, a copy of such document must be presented.

If the registration tax has not yet been paid, the provisions of Article 2669 are observed.

ARTICLE 2837 - Documents issued in a foreign country.

Documents issued in a foreign country which are presented for recordation must be certified.

ARTICLE 2838 - Amount for which recordation is made.

If the documents on the basis of which recordation is made, or subsequent documents, do not determine the amount of money for which the mortgage is recorded, such amount is determined by the creditor or mortgagee in his notation for recordation.

When there is a discrepancy between the amount mentioned in the document and the amount mentioned in the notation, the recordation is valid for the lesser of the two.

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ARTICLE 2839 - Formalities required for the recordation of mortgages.

The title deed upon which the mortgage is founded, together with a notation drawn up in duplicate and signed by the applicant, must be presented in order to proceed with the recordation of a mortgage. One of the duplicate notations may be drawn up at the foot of the title.

The notation must state:

1. The surname and given name, the father's name, the domicile or residence and the profession of both the creditor and the debtor.

The provisions of Article 2831 must be observed for order or bearer obligations. In the case of order obligations, the title deed thereof must also be presented to the Registrar for the purpose of noting therein the recordation of the mortgage. A copy of the document of issue and of the amortization plan must be presented for bearer obligations.

2. The selected domicile of the creditor in the jurisdiction of the Tribunal in which the office of the Registrar of Real Property is located.
3. The title, deed or instrument, its date, and the name of the public official who received or authenticated it.
4. The amount for which recordation is made.
5. The interest or annuities produced by the claim.
6. The period within which the claim may be collected.
7. The nature and the location of the property encumbered, with the information prescribed by Article 2826.

ARTICLE 2840 - Certificate of recordation.

After the recordation, the Registrar shall return to the applicant one of the duplicates of the notation, certifying at the foot thereof, the date and serial number of the recordation.

The documents delivered to the Registrar are kept according to the provisions of Article 2664.

ARTICLE 2841 - Omissions or inaccuracies in the documents or in the notations.

Omissions or inaccuracies of some of the information contained in the document on the basis of which recordation is made does not affect the

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validity of the recordation unless they involve uncertainties as to the identity of the creditor or of the debtor, or of the amount of the claim or of the identity of the owner of the encumbered property, when such identification is necessary, or uncertainty as to the particular items of property encumbered.

In case of other omissions or inaccuracies, rectification may be ordered upon request of the interested party and at the expense thereof.

ARTICLE 2842 - Change of selected domicile.

A creditor, his mandatary, his heir and those whose rights derive from the creditor may change the domicile selected by them in the recordation proceedings and substitute another within the same jurisdiction.

The Registrar must note the change on the margin or at the foot of the recordation.

The declaration relative to the change of domicile must be evidenced by a document received or authenticated by a Notary, and must be kept in deposit in the office of the Registrar.

ARTICLE 2843 - Notation of assignment, subrogation or other acts disposing of the mortgage claim.

The transfer or encumbrance of the mortgage by reason of assignment, subrogation, pledge, changes in the priority of the lien, or establishing in dowry of the mortgage claim, or by reason of sequestration, distraint or assignment of the claim, must be noted on the margin of the recordation of the mortgage.

The transfer or encumbrance is not effective until the notation has been made. After the entry of such notation, the recordation of the mortgage may not be cancelled without the consent of the persons entitled to the rights indicated in the notation, and the summonses or notifications which become necessary as a result of such recordation must be served in the domicile which was selected.

A copy of the deed must be presented to the Registrar for the purpose of entering the notation and when it is a private writing or a document drawn up in a foreign country, the provisions of Articles 2835 and 2837 are applicable.

ARTICLE 2844 - Actions and notifications.

Actions resulting from recordation which may arise against creditors are brought before the competent judicial authority by means of personal service or service in the last domicile selected by such creditors.

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The same provision is applicable to any other notification connected with such recordations.

If there was no selection of domicile, if the person concerned dies, or if the office in the place where the domicile was selected has ceased to exist, the summonses and notifications may be served at the office where the recordation was made.

In the case of a suit instituted by a debtor against his creditor for abatement of the mortgage or for total or partial cancellation of the recordation, service must be made on the creditor with the ordinary formalities established by the Code of Civil Procedure.

ARTICLE 2845 - Notification relative to recordation of order or bearer obligations.

If recordation is made for obligations evidenced by order instruments, the summons and notification mentioned in the preceding Article must be made on the person who made such recordation according to Articles 2831 and 2839, unless a notation in favor of a subsequent possessor of the claim appears from the register.

In the case of bearer obligations, the summons and notification must be made to the trustee of bondholders whose name is mentioned in the margin of the recordation. The summons and notification must be recorded in the register of undertakings, and an extract thereof must be published in a daily newspaper selected by the judicial authorities.

If a trustee of bondholders is lacking, for any reason, or if his name was not noted in the margin of the recordation of the mortgage, the summons and notification must be served on an interim-receiver to be appointed by the judicial authorities. The decree appointing said interim-receiver must be published with the formalities prescribed in the preceding paragraph.

ARTICLE 2846 - Expenses for recordation.

The recordation expenses of a mortgage are chargeable to the debtor, but must be advanced by the applicant, unless there is an agreement to the contrary.

SUB-SECTION B

OF RENEWAL

ARTICLE 2847 - Period of validity of recordation.

Recordation is effective for the period of twenty years from its date. Recordation ceases to be effective unless it is renewed before the expiration of such time limit.

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ARTICLE 2848 - New recordation of mortgage.

Notwithstanding the expiration of the time limit indicated by the preceding Article, a creditor may make a new recordation; in this case, the mortgage takes a degree of priority dating from such new recordation.

The new recordation is not effective against third party purchasers of the mortgaged immovable who have recorded their title.

ARTICLE 2849 - Duration of the legal mortgage of a wife.

Recordation of the legal mortgage of a wife continues to be effective, without renewal, during the marriage and for one year following the dissolution of the marriage.

ARTICLE 2850 - Formalities for renewal.

Two originals of a notation, similar to that of the first recordation, with a declaration of intention to renew the original recordation, must be presented to the Registrar in order to obtain renewal.

The previous notation may be presented instead of the title deed.

The Registrar must observe the provisions of Article 2840.

ARTICLE 2851 - Renewal as it affects property transferred to the heirs or persons succeeding to the rights thereof.

If, at the time of renewal, the mortgaged immovables appear from the recordation register as having descended to the heirs of the debtor or persons whose rights derive from such heirs, renewal must be made also with respect to such heirs or other persons, and the notation must contain the information set forth by Article 2839, if it appears in said register.

SECTION VIOF THE PRIORITY OF MORTGAGESARTICLE 2852 - Priority of mortgage.

A mortgage takes priority from the date of its recordation, even if such mortgage is recorded for a conditional claim. The same rule is applicable to claims which may arise as a result of a relationship already in existence.

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ARTICLE 2853 - Simultaneous requests for recordation.

The serial number of the recordations determines the priority thereof. However, if several persons present, simultaneously, a notation to obtain recordation against the same person or on the same immovables, the recordations are made under the same number and this fact is mentioned in the receipt sent by the Registrar to each of the applicants.

ARTICLE 2854 - Mortgages recorded with the same priority.

The claims bearing recordation with the same priority on the same property stand in relation to each other in proportion to their respective amounts.

ARTICLE 2855 - Extent of the effects of recordation.

Recordation of the claim places in the same degree of priority the expenses attached to the establishment of the mortgage, recordation and renewal expenses, and ordinary expenses necessary for intervention in the suit for levy of execution.

The parties may expressly stipulate that claims for additional judicial expenses be included in the mortgage, provided a corresponding recordation thereof is made.

Regardless of the kind of mortgage concerned, the recordation of an interest-bearing principal causes the interest thereof to be placed in the same degree of priority, provided the amount or rate of such interest is mentioned in the recordation.

The lien of the interest is limited to the current year and the two years prior to the date of the distraint, even if a lien for a greater number of years was agreed upon; special recordations made for other arrears are effective from the date thereof.

Recordation of the principal also causes the interest matured after expiration of the year current at the date of the distraint to be placed in the same degree of priority, but only within the limits of legal interest and until the date of the sale.

ARTICLE 2856 - Subrogation of creditors who sustained losses.

If a creditor with a mortgage upon one or more immovables incurs a loss because another creditor with a prior claim, whose mortgage applied to other properties of the same debtor, has satisfied all or part of his claim from the sale price of such immovable or immovables, he may subrogate himself in the mortgage recorded in favor of the satisfied creditor for the

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purpose of exercising his right of foreclosure on such other properties, with preferential rights over other creditors whose recordation has a later degree of priority. Creditors who sustain losses by reason of said subrogation have a similar right.

This provision is also applicable to creditors who sustain losses by reason of privileges on immovables.

ARTICLE 2857 - Limitations upon subrogation.

Subrogation may not be exercised on property mortgaged by third parties, nor on property sold by the debtor when such sale is recorded before the recordation of the creditor who sustained the losses.

In the case of property acquired by the debtor after such recordation, a creditor who has sustained losses may exercise his right of subrogation also on such property, if the satisfied creditor had included said property in his judicial mortgage.

A pertinent notation must be made on the margin of the recordation of the mortgage of the satisfied creditor in order to enforce the right of subrogation; a copy of the degree of priority from which the loss to the creditor resulted must be presented to the Registrar for the purpose of notation.

SECTION VIIOF THE EFFECTS OF MORTGAGES WITH RESPECT TO THIRD PARTY PURCHASERSARTICLE 2858 - Powers of third party purchaser.

A third party purchaser of mortgaged property who has recorded his purchase title and is not personally indebted, unless he prefers to pay off the recorded creditors, may deliver said property to the mortgagee, or release it from mortgage pursuant to provisions contained in Section XII of this Chapter.

Otherwise, foreclosure may be effected against him in accordance with the formalities prescribed by the Code of Civil Procedure.

ARTICLE 2859 - Defenses which may be raised by third party purchasers.

If the petition to obtain a judgment against the debtor is subsequent to the recordation of the title by a third party purchaser, if the latter was not a party in the suit, he may set up against the suing creditor, all the defenses which could have been raised by the debtor and those which might have been raised by the debtor after the judgment against him.

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However, said defenses do not suspend the running of the time limits established for the release of the property from the mortgages.

ARTICLE 2860 - Capacity to deliver property.

The mortgaged property may be delivered to the mortgagee only by those who have the capacity to alienate the property.

ARTICLE 2861 - Time limits for delivery to mortgagee and execution thereof.

The delivery of mortgaged property to the mortgagee is made by a declaration to that effect in the Chancery of the Tribunal which has jurisdiction over the foreclosure. Said declaration must be made within ten days from the date of the distraint.

The certificate of the Chancery witnessing the declaration must be noted by the third party purchaser on the margin of the recordation of the instrument of distraint, and notice thereof must be given, within five days from the date of such declaration, to the suing creditor.

The Tribunal, upon request of the latter or of any other interested party, appoints an administrator against whom the process of foreclosure takes its course.

The third party is responsible for the custody of the immovable until it is delivered to the administrator.

ARTICLE 2862 - Mortgages and other rights in rem for and against third party purchasers.

Delivery of the property to the mortgagee does not prejudice the mortgages, servitudes and other rights in rem which have been made public against a third party purchaser before notation of such delivery.

Mortgages, servitudes and other rights in rem which already belonged to the third party before acquisition, become valid again after the delivery to the mortgagee or after the foreclosure sale made against the third party.

Servitudes which were in existence in favor of the mortgaged real property and against other real property of the third party become valid again also. They are included in the foreclosure sale of the mortgaged real property.

ARTICLE 2863 - Recovery of immovable delivered to mortgagee and waiving of levy of execution.

Until the sale has occurred, the third party may recover the delivered immovable by paying off the recorded claims and incidental expenses, as well as the costs.

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Mortgages, servitudes and other rights in rem which already belonged to the third party before acquisition, become valid again after the delivery to the mortgagee or after the foreclosure sale made against the third party.

Servitudes which were in existence in favor of the mortgaged real property and against other real property of the third party become valid again also. They are included in the foreclosure sale of the mortgaged real property.

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If the sale has been made and there is a balance left after paying the recorded creditors, the balance belongs to the third party purchaser.

Delivery of the immovable is not effective if the suit for foreclosure becomes extinguished by renunciation or by inactivity of the parties.

ARTICLE 2864 - Damages caused by third party and improvements.

The third party purchaser is bound to compensate for damages caused by his own gross negligence, to the immovable, in prejudice to the recorded creditors.

The third party may not retain the immovable on grounds of having made improvements; but he is entitled to deduct from the sale price the amount corresponding to the improvements made after the recordation of his title deed, but not more than the value of the improvements at the time when he sells the property.

If the price is less than the value of the immovable in the condition in which it was before the improvements and the value of the improvements, said price must be divided in proportion to such values.

ARTICLE 2865 - Income and profits due by third party.

The income and profits of the mortgaged immovable are due from the third party from the date of the distraint.

If the immovable is released from the mortgage, the income and profits are likewise due from the date of distraint or, in absence thereof, from the date of notification made in accordance with Article 2890.

ARTICLE 2866 - Rights of third party with respect to the debtor and other third party purchasers.

A third party who has paid off the recorded creditors or else has delivered the immovable property to the mortgagee, or has suffered foreclosure, has grounds for indemnity from the original seller even if the acquisition was without consideration.

Said third party is also entitled to succeed to the mortgage liens established on other properties of the debtor; by the creditor whose claim has been satisfied, if such properties have been acquired by third parties, he has no cause of action against those who have recorded their purchase on a date subsequent to the recordation of his title.

The third party must cause the pertinent notation to be entered in accordance with Article 2843 in order to exercise his right to succeed to such mortgage liens.

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The fact that the third party succeeds to the mortgage liens does not prejudice the exercise of the right of subrogation set forth by Article 2856 in favor of creditors whose recordation is prior to the recordation of the title by the third party purchaser.

ARTICLE 2867 - Third party debtor of a sum.

If a third party purchaser, who has recorded his title to the mortgaged property, owes an actually collectable sum as a result of the acquisition, and such sum is sufficient to satisfy the claims of all recorded creditors of the previous owner, each one of such creditors may require said third party to make payment.

If the debt owed is not actually collectable, is lower, or different from that which is due the creditors, the latter may likewise demand payment from the debtor for what he owes, with the formalities and within the limits of his obligation, up to the respective amounts due said creditors, provided they do so in agreement among themselves.

In both cases, the purchaser cannot avoid making payment by offering to deliver the immovable, but, when payment is made, the immovable is released from all mortgages including the mortgage to which the seller is entitled, and the third party has the right to obtain cancellation of the pertinent recordations.

SECTION VIIIOF THE EFFECTS OF MORTGAGES WITH RESPECT TO THIRD PARTY MORTGAGORSARTICLE 2868 - Right of benefit to levy execution on the debtor.

A person who has established a mortgage to secure the debt of another may not assert a right that execution be first levied on the property of the debtor, unless such benefit was agreed upon.

ARTICLE 2869 - Creditor causing extinguishment of the mortgage.

A mortgage established by a third party is extinguished if, for reasons attributable to the creditor, the subrogation of the third party to the rights, pledges, mortgages and privileges of the creditor cannot take effect.

ARTICLE 2870 - Defenses which may be raised by third party mortgagor.

A third party mortgagor who was not a party in the suit against the debtor, may raise against the creditor the defenses set forth by Article 2859.

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ARTICLE 2871 - Rights of third party mortgagor who made payment to the recorded creditors or suffered foreclosure.

A third party mortgagor who paid off the recorded creditors or suffered foreclosure has an action of recourse against the debtor.

If there are several debtors who are bound in solido, a third party who has established a mortgage to secure all such debtors has an action of recourse against each of such debtors for the entire amount.

A third party mortgagor has a right of recourse against the sureties of the debtor.

He also has the right of recourse against other third party mortgagors for their respective share and may exercise his right to succeed to the lien of such mortgages in accordance with the second paragraph of Article 2866 also with respect to third party purchasers.

SECTION IXOF ABATEMENT OF MORTGAGESARTICLE 2872 - Formalities for abatement.

Mortgages are abated by reducing the sum for which recordation was made or limiting the recordation to only one part of the property.

Such limitation may be made even if the mortgage is imposed on one piece of property, when the property has parts which are distinct or which may be conveniently distinguished.

ARTICLE 2873 - Preclusion of abatement.

No petition for abatement of the extent of the property or of the amount is permitted when such extent or amount has been determined by agreement or on the basis of a judgment.

However, if partial payments have been made sufficient to extinguish at least one-fifth of the original debt, a proportionate abatement of the amount may be requested.

In the case of mortgages recorded on a building, a mortgagor who has built superstructures after the recordation may demand an abatement of the mortgage, releasing wholly or in part said superstructures, observing the time set forth by Article 2876 for the amount of his bond.

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ARTICLE 2874 - Abatement of legal and judicial mortgage.

Legal mortgages, except those set forth by items 1 and 2 of Article 2817, and judicial mortgages must be abated upon petition of the interested parties, if the property included in the recordation has a value which is in excess of the precautionary bond to be given or if the amount specified by the creditor in the recordation is more than one-fifth higher than the amount declared due by the judicial authorities.

ARTICLE 2875 - Excess value of the property.

The value of the property is deemed to be in excess of the precautionary bond to be given if both at the time of recordation of the mortgage and after the recordation it exceeds by one-third the amount of the recorded claims, plus the accessories in accordance with Article 2855.

ARTICLE 2876 - Limits of abatement.

Abatement is made allowing an excess amount of one-fifth with respect to the amount of the claim and an excess amount of one-third with respect to the value of the precautionary bond.

ARTICLE 2877 - Expenses for abatement.

The necessary expenses for abatement, even if the creditor consents thereto, are always chargeable to the applicant, unless the abatement takes place by reason of an excessive designation of the claim by the creditor, in which case they are chargeable to the latter.

If the abatement was ordered by a judgment, the expenses for the suit are chargeable to the loser, unless compensation for such expenses is made between the parties.

SECTION XOF THE EXTINGUISHMENT OF MORTGAGESARTICLE 2878 - Causes for extinguishment.

Mortgages are extinguished:

1. By cancellation of the recordation.
2. By failure to renew the recordation within the time limit set forth by Article 2847.
3. By the extinguishment of the obligation.

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4. By the loss of the mortgaged property, except for the provisions of Article 2742.
5. By renunciation on the part of the creditor.
6. By the expiration of the time limit within which the mortgage was limited or by the fulfilling of resolute conditions.
7. By the issue of a decree transferring the right of foreclosure to the purchaser and ordering cancellation of the mortgages.

ARTICLE 2879 - Renunciation to the mortgage.

Renunciation by the creditor to the mortgage must be express and must be evidenced by a written document, under penalty of nullity.

Renunciation does not have effect with respect to third parties who, prior to the cancellation of the mortgage, have acquired rights in such mortgage and made pertinent notation thereof in accordance with Article 2843.

ARTICLE 2880 - Prescription with respect to property acquired by third parties.

Independently from the debt, a mortgage is extinguished by prescription, with respect to property acquired by third parties, when twenty years have elapsed from the date of recordation of the purchase title, except for suspension and interruption.

ARTICLE 2881 - New recordation of the mortgage.

Unless the law provides otherwise, if the cause which extinguishes the obligation is declared null, or is otherwise non-existent, or if the renunciation to the mortgage by the creditor is declared null, and the recordation has not been kept up, a new recordation may be made, which takes its degree of priority from the date thereof.

SECTION XI

OF CANCELLATION OF RECORDATION

ARTICLE 2882 - Formalities for cancellation.

Cancellation by consent of the interested parties must be made by the Registrar following presentation of the document witnessing the consent of the creditor.

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The formalities set forth by Articles 2821, 2835 and 2837 must be observed in connection with said document.

ARTICLE 2883 - Capacity to consent to cancellation.

A person who does not have the capacity to release the debtor may not give his consent to the cancellation of the recordation, unless he is assisted by the persons whose intervention is necessary for the release.

Legal representatives of incapacitated persons and all other administrators may not consent to the cancellation of the recordation when the claim is not satisfied, even if they are authorized to collect the claim and release the debtor.

ARTICLE 2884 - Judgment ordering cancellation.

Cancellation must be carried out by the Registrar when it is ordered by a judgment which can no longer be appealed or by other final decrees issued by competent authorities.

ARTICLE 2885 - Conditional cancellation.

If it was stipulated or ordered that cancellation should not be made except under condition of a new mortgage, of a mortgage on a different property, or under any other condition, cancellation may not be made unless fulfillment of the condition is submitted to the Registrar.

ARTICLE 2886 - Formalities for cancellation.

The applicant for total or partial cancellation must present to the Registrar the document upon which the application is made.

Cancellation or rectification of a recordation must be noted on the margin of the recordation concerned, with an indication of the title upon which it is based or ordered and of the date of cancellation, and must bear the signature of the Registrar.

ARTICLE 2887 - Cancellation of mortgages guaranteeing "to order" securities.

A document witnessing consent to the cancellation of mortgages established for the guarantee of obligations arising from securities made to order must be presented to the Registrar together with the security concerned, which is returned after notation of the cancellation is made thereon by the Registrar.

Cancellation of the mortgage involves the loss of the right of recourse against those who endorsed the security prior to said cancellation.

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ARTICLE 2888 - Refused cancellation.

If the Registrar refuses to cancel a recordation, the applicant may submit his claim to the judicial authorities.

SECTION XIIOF WAYS FOR RELEASING PROPERTY FROM MORTGAGESARTICLE 2889 - Power to release property from mortgages.

A third party purchaser of mortgaged property who has recorded his title and is not personally bound to pay the mortgage creditors, has the power to release the property from all mortgages recorded prior to the recordation of his title of acquisition.

The purchaser has the same power even after the distraint, provided he complies with the provisions of the following Article within thirty days.

ARTICLE 2890 - Notice.

The third party purchaser must serve a notice, through a court attendant, on the recorded creditors, in the place of domicile selected by them, and on any previous owner, setting forth the following information:

1. The title deed, the date thereof and the date of its recordation.
2. The quality and location of the property, with the number of the cadastre or other indication shown on the title deed.
3. The stipulated price or the value declared by the purchaser in the case of property acquired for a consideration or of which the price has not been determined.

In all cases the price or the declared value may not be lower than the value established as a basis for auctions by the Code of Civil Procedure in case of expropriation.

The notice must include a selection, by the third party purchaser, of domicile in the commune where the Tribunal with jurisdiction over the foreclosure is located, and he must offer to pay the stipulated price or the declared value.

A summary extract of the notice is published in the newspaper for legal announcements.

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ARTICLE 2891 - Right of creditors to cause the sale of the property.

Any creditor or surety thereof, within forty days from the notice indicated by the preceding Article, has the right to demand the foreclosure of the property by appealing to the President of the competent Tribunal according to the Code of Civil Procedure, provided he fulfills the following conditions:

1. That notice of the petition for foreclosure be given to the third party purchaser in the domicile selected by him, in accordance with the preceding Article, and to the previous owner.
2. That the petition include the declaration of the applicant to increase the stipulated price or the declared value by one-tenth.
3. That the petition include an offer to post bond in an amount equal to one-fifth of the price as increased pursuant to item 2.
4. That the original and the copies of the petition be signed by the applicant or by his attorney-at-law supplied with a special mandate.

The omission of any one of these conditions causes the petition to be null.

ARTICLE 2892 - Prohibition to extend time limits.

The time limits established by the second paragraph of Article 2889 and by the first paragraph of Article 2891 may not be extended.

ARTICLE 2893 - Failure to request auction sale.

If an auction sale is not applied for within the period and with the formalities prescribed by Article 2891, the value of the property is definitely established to correspond to the price which the buyer bid to the creditor in accordance with item 3 of Article 2890.

The release of the property from the mortgage occurs after the deposit of said price and after complying with the formalities indicated by the Code of Civil Procedure.

ARTICLE 2894 - Consequences of failure to deposit price.

If the third party purchaser fails to deposit the price within the time limit set by Article 792 of the Code of Civil Procedure, the request

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to release the property from the mortgage is without effect, except for the liability of the applicant to the recorded creditors for damages.

ARTICLE 2895 - Discontinuance by applicant creditor.

Discontinuance by the creditor who applied for the foreclosure sale cannot prevent foreclosure except with the express consent of the other recorded creditors.

ARTICLE 2896 - Adjudication in favor of third party purchaser.

If the adjudication is made in favor of the third party purchaser, the decree ordering the transfer of the property must be noted on the margin of the recordation of the purchase instrument.

ARTICLE 2897 - Recovery by the purchaser who has become buyer at the foreclosure sale.

The third party purchaser to whom the property is adjudicated has an action of recourse against the seller for reimbursement of the amount of the sale price which is in excess of the price stipulated in the sale contract.

ARTICLE 2898 - Property not mortgaged for the claim on which action is taken.

When the purchase title of the third party purchaser includes movables and immovables, or several immovables, some mortgaged and some unencumbered, or else not encumbered by the same recordation, located within the jurisdiction of the same Tribunal or in different jurisdictions, and such properties have been sold as a whole, or separately, the price of each immovable which is subject to separate and particular recordation must be mentioned in his notice, showing its relation to the total price indicated in the title.

A creditor who requests foreclosure may not, under any circumstance, be obliged to include in his request movables, or immovables, other than those which have been mortgaged to secure his claim, except for the right of redress of the third party purchaser from the seller for damages he may have to suffer by reason of the separation of the property included in the sale, and the cultivation thereof.

SECTION XIIIOF RENUNCIATION AND ABSTENTION OF THE CREDITOR IN COMPULSORY FORECLOSUREARTICLE 2899 - Prohibition to renounce a mortgage in prejudice to another creditor.RESTRICTED

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A creditor who has mortgages on several immovables may not renounce his mortgage on one of such immovables, or fail to participate in the suit for foreclosure, after the notice indicated by Article 2890 has been served on him, in the case of a suit for release from mortgages or after notice of the decree ordering the sale, in the case of foreclosure, if such renunciation or abstention favors one creditor in prejudice to another one who was previously recorded. If he renounces the mortgage or fails to participate in the suit, he is liable for damages, unless there are justifiable reasons.

The same provision is applicable if the renunciation or abstention favors a third party purchaser to the prejudice of a creditor with a prior mortgage or to the prejudices of another third party purchaser with a prior recorded title.

CHAPTER VOF MEASURES FOR THE CONSERVATION OF PROPERTY WHICH CONSTITUTES SECURITYSECTION IOF ACTIONS TO OBTAIN SUBROGATIONARTICLE 2900 - Conditions, formalities and effects.

A creditor, in order to ensure satisfaction or conservation of his rights, may exercise the rights and actions which would be available to his debtor against third parties and which said debtor fails to exercise, provided such rights and actions have property value and barring those rights and actions which, by their nature or by the provisions of law, may not be exercised except by the person entitled thereto.

When a creditor takes such judicial action he must also summon the debtor whom he intends to subrogate.

SECTION IIOF ACTION TO OBTAIN REVOCATIONARTICLE 2901 - Conditions.

Even if the claim is subject to time limits or conditions, a creditor may demand that acts by which a debtor disposes of his effects in prejudice to said creditor's rights be declared ineffective in this respect, when the following conditions are present:

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1. That the debtor was aware of the prejudice which the act would cause to the rights of the creditor, or, if such act was prior to the existence of the claim, that the act was fraudulently designed for the purpose of prejudicing the satisfaction of the claim.
2. That in the case of an act involving a consideration, the third party was aware of said prejudice and, if the act was prior to the claim, that he joined in the fraudulent design.

For the purposes of this provision, security transactions, even for other persons' claims, are considered to be acts for a consideration, when they are included in the document witnessing the secured claim.

Payment of an expired debt is not subject to revocation.

The ineffectiveness of the act does not prejudice the rights acquired for a consideration by third parties in good faith, except for the effects of the recordation of the petition for revocation.

ARTICLE 2902 - Effects.

A creditor, having secured a declaration of ineffectiveness of the act, may institute against third party purchasers actions for conservation or execution on the property included in the act which has been attacked.

A third party who has claims against the debtor arising from the exercise of the action for revocation, may not participate, in satisfaction of his claim, in the proceeds of the property included in the act which was declared ineffective, except after satisfaction of the claim of the creditor.

ARTICLE 2903 - Prescription of the action.

The action for revocation prescribes five years from the date of the act.

ARTICLE 2904 - Reference.

The provisions relative to the action for revocation in bankruptcy and penal proceedings are unaffected.

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SECTION III

OF SEQUESTRATION FOR CONSERVATION

ARTICLE 2905 - Sequestration with respect to the debtor and third parties.

A creditor may demand the sequestration of the property of the debtor for the purpose of conservation, in accordance with the rules set forth by the Code of Civil Procedure.

Sequestration may also be demanded from a third party purchaser of the property of the debtor when an action for a declaration of ineffectiveness of the alienation has been instituted.

ARTICLE 2906 - Effects.

Alienation and other acts concerning the disposition of the sequestered property have no effect in prejudice to a creditor who proceeds with the sequestration in accordance with the rules established for pledge or distraint.

Payments made by the debtor in prejudice of an objecting creditor are, likewise, without effect, when the objection is submitted in the cases and with the formalities prescribed by the law.

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1. That the debtor was aware of the prejudice which the act would cause to the rights of the creditor, or, if such act was prior to the existence of the claim, that the act was fraudulently designed for the purpose of prejudicing the satisfaction of the claim.
2. That in the case of an act involving a consideration, the third party was aware of said prejudice and, if the act was prior to the claim, that he joined in the fraudulent design.

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TITLE FOUR

OF JURISDICTIONAL SAFEGUARD OF RIGHTS

CHAPTER I

GENERAL PROVISIONS

ARTICLE 2907 - Determination of jurisdiction.

The judicial authorities attend to the safeguarding of jurisdictional rights upon petition of the parties, and, when the law so provides, also upon request of the public attorney or ex officio.

The jurisdictional safeguard of rights, in the interest of trade or professional categories, is exercised upon application of legally recognized associations, in the cases and with the formalities prescribed by law.

ARTICLE 2908 - Executive effects of judgments.

In the cases provided for by law, the judicial authorities may establish, modify or extinguish juridical relationships, with judgments bearing effects between the parties, their heirs or those whose rights derive from the parties.

ARTICLE 2909 - Res judicata.

Findings contained in judgments which may no longer be appealed are conclusive on the parties, their heirs and those whose rights derive from the parties.

CHAPTER II

OF EXECUTION ON THE PROPERTY

SECTION I

OF FORCED SALE (EXPROPRIATION)

SUB-SECTION A

GENERAL PROVISIONS

ARTICLE 2910 - What may be expropriated.

A creditor may cause the sale of the property of his debtor in accordance with the rules established by the Code of Civil Procedure in order to obtain that which is due him.

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The property of third parties may also be expropriated when such property secures the claim, or when such property is the subject matter of an act which has been revoked because its performance was in prejudice of the creditor.

ARTICLE 2911 - Property encumbered by pledge or mortgage.

A creditor who has a pledge on the property of his debtor may not distrain other properties of such debtor unless he also levies execution on the property encumbered by pledge.

Likewise, when a creditor has a mortgage, he may not distrain other immovables unless he distrains also the immovables encumbered by mortgage.

The same provision is applicable if the creditor has privileges on specified properties.

SUB-SECTION BOF THE EFFECTS OF DISTRRAINTARTICLE 2912 - Extent of distraint.

A distraint includes the accessories, appurtenances and the income and profits of the property distrained.

ARTICLE 2913 - Ineffectiveness of alienations of distrained property.

Acts of alienation of the property subject to distraint do not have effects in prejudice of creditors who exercise distraint and of creditors who participate in the levy of execution, except for the effects of bona fide possession of movable property not entered in public registers.

ARTICLE 2914 - Alienations prior to distraint.

The following, even if made prior to the distraint, do not have effects in prejudice of creditors who exercise distraint and creditors who participate in the levy of execution:

1. Alienations of movable or immovable property recorded in public registers, which have been entered in the register after the distraint.
2. Assignments of claims notice of which has been given to or which has been accepted by the ceded debtor, after the distraint.
3. Alienations, not bearing certain date, of an aggregation of movables.

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4. Alienations of movable property, possession of which has not been transferred before the distraint, unless the alienations are evidenced by a document bearing certain date.

ARTICLE 2915 - Acts which limit disposition of distrained property.

Acts involving restrictions on the disposition of the distrained property do not have effects in prejudice of a creditor who exercises distraint and of the creditors who participate in the levy of execution, unless such acts have been recorded before the distraint, when said acts concern movable or immovable property recorded in public registers and, in the other cases, unless they bear certain date prior to the distraint.

Likewise, the acts and petitions for which the law requires recordation as a condition for validity with respect to third party purchasers do not have effects in prejudice of a creditor who distrains, and of creditors who participate in the levy of execution, unless such acts and petitions are recorded after the distraint.

ARTICLE 2916 - Mortgages and privileges.

The following are not included in the partition of the sum received from the levy of execution:

1. Mortgages, even if judicial, recorded after the distraint.
2. Privileges for the validity of which recordation is necessary, even if made after the distraint.
3. Privileges for claims which have originated after the distraint.

ARTICLE 2917 - Extinguishment of distrained claim.

If the subject matter of the distraint is a claim, the extinguishment thereof for causes occurring at a date later than the distraint does not have effects in prejudice of creditors who exercise the distraint and creditors who participate in the levy of execution.

ARTICLE 2918 - Assignments and releases of rents and leases.

The assignments and releases of unexpired rent and leases for a period in excess of three years do not have effects in prejudice of creditors exercising distraint and of creditors who participate in the levy of execution, unless such rents and leases were recorded before the distraint. Non-recorded assignments and releases for a period less than three years and non-recorded releases of rents and leases in excess of three years, do not have effect, unless bearing certain date prior to the distraint, and in all cases, not beyond a period of one year from the date of distraint.

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SUB-SECTION CEFFECTS OF FORCED SALE OF COMPULSORY ASSIGNMENTARTICLE 2919 - Transfer of property as a result of forced sale.

A forced sale conveys to the purchaser the rights which the person who suffered expropriation had on the property, except for the effects of bona fide possession.

However, the rights acquired on the property by third parties may not be set up against the purchaser, if such rights are without effect in prejudice of the creditor who exercised the distraint or of creditors who participated in the levy of execution.

ARTICLE 2920 - Rights of third parties on the movable property sold.

If the forced sale concerned movable property, those who had the ownership thereof or other rights in rem in said property but failed to enforce such rights on the sum received from such sale may not enforce their rights with respect to a bona fide purchaser, and may not recover from the creditors the amount which was distributed. The liability of a prior creditor in bad faith, for damages and expenses, is unaffected.

ARTICLE 2921 - Eviction.

If the purchaser of property at a forced sale suffers eviction from such property, he may recover the undistributed proceeds of the property, minus the expenses, and, if distribution has already taken place, he may recover from each creditor the share received by him and the balance from the debtor, except for the liability of the creditors who proceeded with the eviction for expenses and damages.

If eviction is only partial, the purchaser has the right to recover only an amount proportionate thereto. Recovery takes place even if the party to whom the property is adjudicated has paid a sum of money to avoid eviction.

In all cases, the purchaser may not recover the price from privileged or mortgage creditors against whom eviction could not have been raised.

ARTICLE 2922 - Defects of the property. Injury.

A warranty against defects in the property is not operative in the event of a forced sale.

Such sale may not be attacked on grounds of injury.

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ARTICLE 2923 - Leases.

Leases consented to by the person who suffered the forced sale may be raised against the purchaser if bearing certain date prior to the distraint unless, in the case of lease of movable property, the purchaser acquired bona fide possession of the property.

Leases of immovables in excess of nine years, which have not been recorded prior to the distraint, may not be raised against the purchaser, except within nine years from the commencement of the lease.

In no case is the purchaser bound to honor the lease when the stipulated rent is one-third below the fair rental or the rental in previous leases.

If the lease does not bear certain date, but the occupancy of the tenant antedates the distraint of the leased property, the purchaser is not bound to honor the lease except for a period corresponding to the period of leases in cases of an undetermined period of duration.

If the contract of lease contained a stipulation that the lease terminates in the case of alienation, the purchaser may serve notice to quit on the tenant according to the provisions of Article 1603.

ARTICLE 2924 - Assignments and releases of leases.

Assignments and releases of unexpired leases may not be raised against the purchaser unless they are in excess of three years and recorded prior to the distraint or unless advances have been made in accordance with local custom.

ARTICLE 2925 - Rules applicable to compulsory assignments.

The rules relative to forced sales are also applicable to compulsory assignments, except for the provisions of the following acts.

ARTICLE 2926 - Rights of third parties in the property assigned.

If a compulsory assignment contemplates movable property, third parties who had possession thereof may make within the period of sixty days from such assignment, demand upon the assigned who received possession of the property in good faith, for recovery of the sum corresponding to the claim of the assignee which was satisfied with the allotment.

Third parties who had other rights in rem in the property have the same right, within the limits of the value of their rights.

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The assignee retains his rights with respect to the debtor, but the security provided by third parties becomes extinguished.

ARTICLE 2927 - Eviction from assigned property.

If an assignee suffers eviction from the property, he has the right to recover what he has paid to other creditors, except for the liability of the creditor who proceeds with the assignment for expenses and damages.

The assignee retains his rights with respect to the expropriated debtor but loses the security provided by third parties.

ARTICLE 2928 - Assignment of claims.

If the assignment consists of a claim, the right of the assignee with respect to the debtor who suffered expropriation does not become extinguished except by collecting the claim assigned.

ARTICLE 2929 - Nullity of proceedings for execution.

The nullity of the acts in the proceedings for the forced sale or assignment does not affect the purchaser or the assignee, except in the case of collusion with a creditor who procures the sale or the assignment. The other creditors are, in no case, bound to return what they received as a result thereof.

SECTION IIOF OTHER FORMS OF FORCED EXECUTIONARTICLE 2930 - Execution by delivery or release.

If the duty to deliver a specified property, movable or immovable, is not complied with, the person entitled thereto may obtain compulsory delivery or release of the property, in accordance with the provisions of the Code of Civil Procedure.

ARTICLE 2931 - Execution of obligations for personal performance.

If an obligation for personal performance is not fulfilled, the person entitled thereto may obtain performance at the expense of the party under obligation, with the formalities prescribed by the Code of Civil Procedure.

ARTICLE 2932 - Specific execution of obligation to enter a contract.

If a party who is bound to enter into a contract does not fulfil his obligation, the other party, when possible and unless he is barred by the subject of the contract, may obtain a judgment producing the same effects as the proposed contract.

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In the case of proposed contracts contemplating the transfer of ownership of specified property or the establishment or transfer of other rights, the petition may not be granted if the petitioning party does not carry out his performance or does not offer to do so with the formalities prescribed by law, unless such performance may not yet be demanded.

ARTICLE 2933 - Execution of obligations not to perform.

If an obligation not to perform is not fulfilled, the person entitled to such obligation may obtain the destruction of all that which was done in violation of said obligation.

If the destruction of the property is prejudicial to national economy, such destruction may not be ordered and the party entitled may only recover damages.

TITLE FIVEOF PRESCRIPTION AND FORFEITURECHAPTER IOF PRESCRIPTIONSECTION IGENERAL PROVISIONS

ARTICLE 2934 - Extinguishment of rights.

All rights become extinguished by prescription, when the party entitled thereto fails to exercise such rights within the period determined by law.

Rights which may not be disposed of and the other rights specified by law are not subject to prescription.

ARTICLE 2935 - Running of Prescription.

Prescription begins to run from the day on which the right may be enforced.

ARTICLE 2936 - Nullity of stipulations limiting prescription.

Stipulations for the purpose of modifying the legal processes of prescription are null.

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ARTICLE 2937 - Renunciation of prescription.

A party who may not validly dispose of a right may not renounce the prescription of said right.

Prescription may be renounced only when it has become due.

Renunciation may be evidenced by an act incompatible with the intention of making use of prescription.

ARTICLE 2938 - Prescription not assertible ex officio.

A Judge may not assert prescription ex officio when prescription is not set up by the party entitled to assert that right.

ARTICLE 2939 - Pleading prescription by third parties.

Prescription may be pleaded by third parties and any interested party, if the party entitled thereto fails to plead it, or if such party has renounced it.

ARTICLE 2940 - Payment of prescribed claim.

Voluntary payments in settlement of a claim which has been prescribed may not be recovered.

SECTION II

OF SUSPENSION OF PRESCRIPTION

ARTICLE 2941 - Suspension due to relationship between the parties.

Prescription is suspended:

1. Between the spouses.
2. Between the person who exercises paternal authority or powers connected therewith and the person subject to paternal authority.
3. Between the tutor and the minor or interdicted person subject to tutorship, until the final account of the tutor has been submitted and approved, except for the provisions of Article 387 concerning actions relative to the tutorship.
4. Between the Curator and the emancipated minor or other incapacitated person.

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5. Between the heir and persons exercising rights in connection with an inheritance accepted with benefit of inventory.
6. Between persons whose property is subject, by law or judicial decree, to the administration of others and the persons who exercise such administration, until the final account is submitted and definitely approved.
7. Between juristic persons and their administrators, for the period of their office, for actions of liability against them.
8. Between a debtor who has fraudulently concealed the existence of the debt and the creditor, until the fraud has been discovered.

ARTICLE 2942 - Suspension due to the condition of certain persons.

Prescription is suspended:

1. Against non-emancipated minors and persons interdicted for unsoundness of mind, for the period when they lack a legal representative and for six months following the appointment thereof or the cessation of the incapacity.
2. In war time, against the military and those connected with the armed forces of the State and against those who by reason of their office are attached to the armed forces, for the period indicated by the war time provisions.

SECTION III

OF INTERRUPTION OF PRESCRIPTION

ARTICLE 2943 - Interruption by person entitled thereto.

Prescription is interrupted by the serving of papers to commence a suit, whether for cognizance, conservation or for execution.

It is also interrupted by petitions therefor submitted in the course of a suit.

Interruption is operative even if the petitioned Judge is incompetent.

Prescription is also interrupted by any other act capable of placing the debtor in default.

ARTICLE 2944 - Interruption as the result of acknowledgment.

Prescription is interrupted by the acknowledgment of the right which is subject to prescription by the person against whom such right may be enforced.

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ARTICLE 2945 - Effects and duration of interruption.

A new prescription period commences as a result of interruption.

If the interruption has occurred by reason of one of the acts indicated by the first two paragraphs of Article 2943, prescription does not begin to run until the judgment which settles the suit can no longer be appealed.

If such suit is extinguished, the interruption is unaffected and the new period for prescription begins to run from the date of the document which caused the interruption.

SECTION IVOF TIME LIMITS FOR PRESCRIPTIONSUB-SECTION AOF ORDINARY PRESCRIPTIONARTICLE 2946 - Ordinary prescription.

Except in cases where the law provides otherwise, rights become extinguished by prescription after the lapse of ten years.

SUB-SECTION BOF BRIEF PERIODS FOR PRESCRIPTIONARTICLE 2947 - Prescription of rights to compensation for damages.

The right to be compensated for damages arising from wrongful acts prescribes in five years from the date on which the act occurred.

The right prescribes in two years in cases of compensation for damages arising from the circulation of vehicles of any kind.

In all cases, if the act which gives rise to compensation is considered as a crime by the law and a longer prescriptive period is established for the crime, such longer period applies also to the civil action.

However, if the crime can no longer be prosecuted for reasons other than prescription, or if an irrevocable judgment was pronounced in the criminal action, the right to be compensated for damages prescribes in the period indicated by the first two paragraphs, and is computed from the date when the crime could not be prosecuted or from the date when the judgment has become irrevocable.

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ARTICLE 2948 - Five-year prescription.

The following prescribe in five years:

1. Annuities of perpetual or life incomes.
2. Annuities for support.
3. House rentals, rentals on rural property and all other considerations for leases.
4. The interest, and, generally, all that which is payable periodically, in yearly instalments or instalments in shorter periods.
5. Indemnities due by reason of termination of employment.

ARTICLE 2549 - Prescription in relationships with companies.

The rights arising from relationships with companies prescribe in five years, if the company concerned is entered in the register of undertakings.

The action for liability which the company's creditors have against the administrators or managers in the cases set forth by the law prescribes within the same period.

ARTICLE 2950 - Prescription of broker's rights.

The right of a broker to the payment of his commission prescribes in one year.

ARTICLE 2951 - Prescription as applied to forwarding agency and transportation.

Rights arising from contracts of forwarding agency and transportation prescribe in one year.

Prescription is operative after eighteen months if the transportation commences or finishes outside of Europe.

The prescriptive period is computed from the arrival of the person at the place of destination or, in the case of accident, from the day of the accident or from the day on which delivery of the property at the place of destination was made or should have occurred.

The rights against operators of public transportation services, indicated by Article 1679, also prescribe in one year from the request for transportation.

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ARTICLE 2952 - Prescription as applied to insurance.

The right to payment of a premium instalment prescribes after one year from the time of maturity of each instalment.

The other rights arising from the contract of insurance prescribe in one year, and those arising from the contract of reinsurance in two years from the day on which the fact upon which the right is based has occurred.

In civil liability insurance, the time limit is computed from the day on which the third party requested compensation from the insured or instituted an action against him.

Notice to the insurer of the request of the third party injured or of the action instituted thereby suspends the course of prescription until the claim of the injured party has been liquidated and made collectible, or until the right of the injured party prescribes.

The provision of the preceding paragraph is applicable to the action of the reinsured against the reinsurer for payment of the indemnity.

ARTICLE 2953 - Effects of judgments no longer appealable upon brief prescription periods.

Rights for which the law provides a prescription period shorter than ten years prescribe after the lapse of ten years, when a sentence which may no longer be appealed has been passed on the subject of such rights.

SUB-SECTION COF PRESUMPTIVE PRESCRIPTIONSARTICLE 2954 - Prescriptive period of six months.

The rights of innkeepers and restaurant owners for the lodging and food they provide prescribes in six months, and the rights of all those who provide lodging with or without meals prescribes in the same period.

ARTICLE 2955 - Prescriptive period of one year.

The following rights prescribe in one year:

1. Rights of teachers to remuneration for lessons given by the month, day or hour.
2. Rights of workers to remuneration for periods not in excess of one month.

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3. Rights of those who run boarding schools or establishments for instruction and education, for the price of the board and of the instruction.
4. Rights of officials of the judiciary to compensation for acts performed in their official capacity.
5. Rights of merchants to the price of merchandise sold to persons who do not trade in such merchandise.
6. Rights of hypothecaries to the price of medicinals.

ARTICLE 2956 - Prescriptive period of three years.

The following rights prescribe in three years:

1. Rights of workers to remuneration for periods in excess of one month.
2. Rights of persons who exercise trades or professions for remuneration for the services rendered and the related expenses.
3. Rights of Notaries based on the acts performed within their capacity.
4. Rights of teachers to remuneration for lessons given for a period longer than one month.

ARTICLE 2957 - Computation of presumptive prescriptions.

The period for prescription is computed from the time when the periodical remuneration is due or from the performance of the service.

The period of computation, in the case of fees to lawyers, attorneys-at-law and legal defenders of causes in forma pauperis runs from the decision of the litigation, from the time of conciliation of the parties or from the revocation of the mandate; the prescriptive period is computed from the time of the last service rendered, in the case of unfinished business.

ARTICLE 2958 - Course of prescription.

Prescription runs its course even if there is a continuity of performances or services.

ARTICLE 2959 - Admission by the party who opposes prescription.

If a party who opposes prescription in the cases set forth by Articles 2954, 2955 and 2956 has in any way admitted, in the course of the

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suit, that the obligation has not become extinguished, his objection is overruled.

ARTICLE 2960 - Calling on plaintiff to swear.

In the cases set forth by Articles 2954, 2955 and 2956, the party against whom prescription is raised may call on the other party to give an oath to ascertain whether the debt has become extinguished.

The oath may be tendered to the surviving spouse and to the heirs, or their legal representatives, for a declaration on their part as to whether they have knowledge of the extinction of the debt.

ARTICLE 2961 - Return of documents.

Clerks of the court, arbitrators, lawyers, attorneys-at-law and defenders of causes in forma pauperis are released from the duty to account for the papers connected with litigation after three years from the time when such litigation has been settled or otherwise terminated.

Clerks of the court or bailiffs are relieved of such duty after two years from the performance of the acts entrusted to them.

An oath may be requested also from the persons mentioned in this Article for a declaration as to whether they have performed the acts in question or retain the papers concerned or whether they know the location thereof.

In this case, the provision of Article 2959 is applicable.

SUB-SECTION DOF THE COMPUTATION OF PRESCRIPTIVE PERIODSARTICLE 2962 - Completion of prescription.

In all the cases contemplated by this Code and by other laws, prescription becomes operative at the expiration of the last day of the prescriptive period.

ARTICLE 2963 - Computation of prescriptive period.

The periods for prescription contemplated by the present Code and by other laws are computed in accordance with the regular calendar.

The day on which the first accountable moment for the purpose of prescription falls is not counted, and prescription becomes operative

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at the expiration of the last moment of the last day of such period.

If the final day falls on a holiday, the last day is postponed to the following work day, by operation of law.

When prescription is accounted for in monthly periods, it falls due on the month of expiration thereof and on the day corresponding to the day of the month of commencement.

If the month of expiration does not have such day, prescription becomes operative on the last day of said month.

CHAPTER IIOF FORFEITUREARTICLE 2964 - Rules for prescription not applicable.

When a right must be exercised within a given period of time, under penalty of forfeiture, the rules relative to interruption of prescription are not applicable.

Rules relative to the suspension of prescription are, likewise, not applicable, except for agreements to the contrary.

ARTICLE 2965 - Forfeitures established by contract.

Stipulations establishing periods for forfeiture which make the exercise of rights excessively difficult for one of the parties, are null.

ARTICLE 2966 - Causes which bar forfeiture.

Forfeiture is not barred except by the performance of the act required by the law or by contract. However, in the case of a period for forfeiture provided for by the contract, or by a provision of the law relative to rights which may be disposed of, forfeiture may also be barred by the acknowledgment of the right by the person against whom the right subject to forfeiture must be enforced.

ARTICLE 2967 - Effects of debarment of forfeiture.

When forfeiture is barred, the right concerned remains subject to the provisions which regulate prescription.

ARTICLE 2968 - Rights which may not be disposed of.

The parties may not alter the legal course of a forfeiture, and may not renounce it, if it is provided for by law and is not subject to

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disposition by the parties.

ARTICLE 2969 - Forfeiture asserted ex officio.

Forfeiture may not be asserted ex officio by the Judge, except in cases where the subject matter is not left to the disposition of the parties, in which cases the Judge must bring notice that the action for forfeiture may not be instituted.

END OF BOOK SIX

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