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Anglais Juridique I

Plaquette de Travaux Dirigés

Institut de Droit des Affaires Internationales (IDAI)

2021-2022

Section 5: The sources of obligations

Duration: 1 hour 30 minutes

Presentation:

During this chapter, the student must understand the Sources of Obligations, the differences between these sources (in general), and the difference between the sources in different legal systems.

The below documents are complementarians to the lectures added to the students in order to be able to prepare for the lecture, review his/her notes, deepen his/her knowledge, and might also help for the preparation for the exam, however, the latter shall be mainly based on the lectures.

Exercise: A parliament voting on the required modification on article 1100.

- The student shall conduct legal research with regards to the above proposed subject.
- The student shall prepare his thoughts, arguments, and questions in order to be part of a fruitful discussion during the lectures.

Mr. Abdelrahman MAHDY

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Ces notions d'actes et de faits juridiques sont bien connues en doctrine et en jurisprudence, et sont très usitées par les praticiens du droit, même s'il peut exister des controverses quant à leurs définitions et contours exacts, pour qualifier un comportement et lui appliquer le régime juridique adéquat. L'instauration des ces articles préliminaires consacre ainsi des notions fondamentales en droit des obligations, et permet d'annoncer de façon pédagogique la structure du titre III. ❑

Art. 1100 Les obligations naissent d'actes juridiques, de faits juridiques ou de l'autorité seule de la loi.

Elles peuvent naître de l'exécution volontaire ou de la promesse d'exécution d'un devoir de conscience envers autrui.

Art. 1100-1 Les actes juridiques sont des manifestations de volonté destinées à produire des effets de droit. Ils peuvent être conventionnels ou unilatéraux.

Ils obéissent, en tant que de raison, pour leur validité et leurs effets, aux règles qui gouvernent les contrats.

Art. 1100-2 Les faits juridiques sont des agissements ou des événements auxquels la loi attache des effets de droit.

Les obligations qui naissent d'un fait juridique sont régies, selon le cas, par le sous-titre relatif à la responsabilité extracontractuelle ou le sous-titre relatif aux autres sources d'obligations.

Rapport, JO 11 févr. 2016. L'article 1100 précise en son premier alinéa que les obligations naissent d'actes juridiques, de faits juridiques, ou de l'autorité de la seule loi. Son deuxième alinéa consacre quant à lui la jurisprudence de la Cour de cassation relative à la transformation de l'obligation naturelle (définie comme « un devoir de conscience envers autrui ») en obligation civile, lorsque le débiteur d'une obligation naturelle prend l'engagement d'exécuter ou commence à exécuter cette obligation.

L'article 1100-1 définit en son premier alinéa la notion d'acte juridique. Ce texte, en précisant que l'acte juridique peut être conventionnel ou unilatéral, inclut l'engagement unilatéral de volonté, catégorie d'acte unilatéral créant, par la seule volonté de son auteur, une obligation à la charge de celui-ci. En outre, le second alinéa rappelle que la validité et les effets des actes juridiques, unilatéraux comme conventionnels, relèvent, « en tant que de raison », des règles gouvernant les contrats (c'est-à-dire dans la mesure où ces règles ont du sens pour ces catégories d'actes).

L'article 1100-2 définit les faits juridiques et précise en son second alinéa que leurs régimes juridiques sont prévus par les sous-titres relatifs à la responsabilité extracontractuelle et aux autres sources d'obligations. ❑

COMMENTAIRE

A. Les constantes

A la diable, le codificateur a décidé d'entamer le nouveau titre III du livre III par trois textes liminaires qui forment comme une minithéorie des sources des obligations. Le projet d'ordonnance ne s'était pas embarqué dans une telle galère. C'était plus sage : une chose est la science des lois, une autre, celle du droit. Certes, le codificateur n'a pas voulu changer grand-chose. Les habitudes du juriste français n'en seront pas bousculées. Ainsi, l'article 1100, al. 1, reprend en substance l'ancien article 1370 du code civil. Quant à la distinction opposant actes et faits juridiques, elle a beau ne jamais avoir été posée comme telle par le code version 1804, il y a longtemps qu'elle structure la matière. Enfin, si l'article 1100, al. 2, semble étendre le champ d'application de feu l' « obligation naturelle » en prévoyant qu'outre « l'exécution volontaire », seule évoquée par l'ancien article 1235, al. 2, du code civil, la simple « promesse d'exécution d'un devoir de conscience envers autrui » est source d'obligation civile, il ne fait que consacrer une solution acquise de longue date en jurisprudence (V. par ex. Civ. 14 janv. 1952 : *D. 1952, 177, note Lenouan.* – V. aussi Civ. 1re, 4 janv. 2005, n° 02-18.904 : *Bull. civ. I, n° 4 ; D. 2005. 1393, note G. Loiseau ; JCP G 2005. II 10159, note M. Mekki ; ibid, I. 187, obs. R. Le Guidec ; RTD civ. 2005. 397, obs. J. Mestre et B. Fages*). En somme, le but de l'ordonnance était pédagogique, le rapport le souligne bien. Le résultat, cependant, s'avère catastrophique.

B. Les changements

Le premier changement à relever affecte le plan même du code civil. Furtif, il témoigne d'une certaine maladresse. Aux termes de l'article 1er de l'ordonnance, le nouveau titre III du livre III du code civil ne s'intitule plus : « Des contrats ou des obligations conventionnelles en général », mais, plus restrictivement : « Des sources d'obligations », comprenant les articles 1100 à 1303-4. Ce nouveau titre III du livre III du code civil n'est pourtant pas uniquement dédié aux « sources » des obligations. Il traite aussi de bon nombre de leurs effets. Mais laissons cela. Tout au plus certains en tireront un nouvel adage : dieu nous garde du pédagogisme du gouvernement…

En veut-on une autre preuve ? Il suffit de se reporter à la définition que l'article 1100-2 donne des faits juridiques, ces « agissements » ou « évènements auxquels la loi attache des effets de droit ». Qui ne voit le caractère extrêmement compréhensif de ce dernier article ? A le suivre, les faits juridiques englobent les actes juridiques ! Les effets de droit qui s'attachent aux premiers n'ont pas été voulus : tel est leur critère distinctif. A défaut de cette précision, l'ordonnance a tout bonnement supprimé la distinction qu'elle prétendait reprendre. Même remaniement, involontaire, de la notion d'obligation naturelle. Celle-ci n'apparaît plus en tant que telle. Probablement l'expression a-t-elle été jugée vieillotte. Encore que l'ordonnance l'ait conservée à l'article 1302 relatif à la répétition de l'indu (*infra*, art. 1302)… Il n'empêche : l'idée de l'article 1100, al. 2, est la même. Or cet article restreint la catégorie aux devoirs de conscience envers autrui. Actuellement, elle est cependant plus large, l'obligation naturelle désignant non seulement les devoirs moraux, mais aussi les obligations civiles dites dégénérées, celles qui, pour une raison ou une autre, se sont effacées de la scène juridique et qui peuvent l'investir derechef à la faveur d'une exécution volontaire ou d'une promesse d'exécution, telles les obligations prescrites.

En réalité, un seul changement délibéré mérite d'être salué : l'acte juridique unilatéral fait son entrée dans le code. Avec cette précision, tirée d'un raisonnement analogique qui ne surprendra personne mais ne perd rien à se trouver ainsi consacré : ces actes juridiques « obéissent, en tant que de raison, pour leur validité et leurs effets, aux règles qui gouvernent les contrats » (art. 1100-1, al. 2. – Rapp. CEC, art. 4). Certains auteurs ont d'ores et déjà souligné l'intérêt de cette disposition, considérant qu'elle « sera très utile en droit des libéralités (engagement d'un héritier à respecter les dernières volontés non écrites du défunt), mais également en droit de l'environnement (les entreprises qui, dans le cadre de la RSE, s'engagent à respecter des principes appartenant à la *soft law*) » (M. Mekki, *art. préc.*). Elle n'en soulève pas moins certaines questions.

C. Les questions

Le recours aux standards crée toujours une espèce de vide herméneutique. Qu'entendre au juste par « en tant que de raison » ? Jusqu'où les juges pousseront-ils l'analogie entre actes juridiques unilatéraux et conventionnels ? Difficile à dire.

La principale question posée par ces dispositions liminaires réside néanmoins dans leur utilité. A quoi bon valait de coiffer le titre III du livre III de cette série d'articles mal fagotés ? Inutiles et incertains, ces articles ? Disons à tout le moins qu'ils sont gros de changements aussi imprévus qu'imprévisibles. ❑

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2021-2022

Document 2
French Civil Code

Mr. Abdelrahman MAHDY

THE LAW OF CONTRACT, THE GENERAL REGIME OF OBLIGATIONS, AND PROOF OF OBLIGATIONS

The new provisions of the *Code civil* created by *Ordonnance* n° 2016-131 of 10 February 2016 translated into English

by

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The translation of the text is supplemented by notes written by the translators.

TITLE III
THE SOURCES OF OBLIGATIONS

Art. 1100. – Obligations arise from juridical acts, juridically significant facts[1] or from the sole authority of legislation.

They can arise from the voluntary performance or from the promise of performance of a moral duty towards another person.

Art. 1100-1. – Juridical acts are manifestations of will intended to produce legal effects. They may be based on agreement or unilateral.

As far as is appropriate, they are subject, both as to their validity and as to their effects, to the rules governing contracts.

[1] There is a difficulty in translating '*le fait'* as sometimes it refers to a person's action and sometimes more broadly to fact. We have therefore translated it differently according to context.

Art. 1100-2. – Juridically significant facts consist of behaviour or events to which legislation attaches legal consequences.

Obligations which arise from a juridically significant fact are governed, according to the circumstances, by the sub-title relating to extra-contractual liability or the sub-title relating to other sources of obligations.

SUB-TITLE I
CONTRACT

CHAPTER I
INTRODUCTORY PROVISIONS

Art. 1101. – A contract is a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations.

Art. 1102. – Everyone is free to contract or not to contract, to choose the person with whom to contract, and to determine the content and form of the contract, within the limits imposed by legislation.

Contractual freedom does not allow derogation from rules which are an expression of public policy.

Art 1103. – Contracts which are lawfully formed have the binding force of legislation for those who have made them.

Art. 1104. – Contracts must be negotiated, formed and performed in good faith.

This provision is a matter of public policy.

Art. 1105. – Whether or not they have their own denomination, contracts are subject to general rules, which are the subject of this sub-title.

Rules particular to certain contracts are laid down in the provisions special to each of these contracts.

The general rules are applied subject to these particular rules.

Art. 1106. – A contract is synallagmatic where the parties undertake reciprocal obligations in favour of each other.

It is unilateral where one or more persons undertake obligations in favour of one or more others without there being any reciprocal obligation on the part of the latter.

Art. 1107. – A contract is onerous where each of the parties receives a benefit from the other in return for what he[2] provides.

It is gratuitous where one of the parties provides a benefit to the other without expecting or receiving anything in return.

Art. 1108. – A contract is commutative where each of the parties undertakes to provide a benefit to the other which is regarded as the equivalent of what he receives.

It is aleatory where the parties agree that the effects of the contract— both as regards its resulting benefits and losses—shall depend on an uncertain event.

Art. 1109. – A contract is consensual where it is formed by the mere exchange of consents, in whatever way they may be expressed.

A contract is solemn[3] where its validity is subject to form prescribed by legislation.

A contract is real where its formation is subject to the delivery of a thing.

Art. 1110. – A bespoke contract[4] is one whose stipulations are freely negotiated by the parties.

A standard form contract[5] is one whose general conditions are determined in advance by one of the parties without negotiation.

Art. 1111. – A framework contract is an agreement by which the parties agree the general characteristics of their future contractual relations. Implementation contracts determine the modalities of performance under a framework contract.

Art. 1111-1. – A contract of instantaneous performance is one whose obligations can be performed as a single act of performance.[6]

A contract of successive performance is one of which the obligations of at least one of the parties are performed in a number of acts of performance over a period of time.

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[2] General note. The French uses "she" (*elle*) in this context because of the reference to *la partie*. Throughout the translation we follow the convention of English statutory drafting and use the masculine singular personal and possessive pronoun (which are to be read as referring equally to the feminine or neuter) rather than using "he/she", "his/her" etc., or some form of circumlocution.

[3] Here, 'solemn' refers to a particular class of contracts where formality is required, '*les contrats solennels'*: see below, arts 1172 – 1173.

[4] 'Bespoke contract' translates '*contrat de gré à gré'*, which has the sense of a contract in which the parties come together in an amicable agreement.

[5] 'Standard form contract' translates *contrat d'adhésion*, more literally 'a contract to which one adheres' and whose conclusion therefore involves no or little choice.

[6] 'Act of performance' translates *prestation* in all cases except in the composite phrase '*prestation de services*', which is translated as 'supply of services'. See also note 10 to art. 1127-1.

CHAPTER II
FORMATION OF CONTRACTS

SECTION I
Conclusion of Contracts

Sub-section 1
Negotiations

Art. 1112. – The commencement, continuation and breaking-off of precontractual negotiations are free from control. They must mandatorily satisfy the requirements of good faith.

In case of fault committed during the negotiations, the reparation of the resulting loss is not calculated so as to compensate the loss of benefits which were expected from the contract that was not concluded.

Art. 1112-1. –The party who knows information which is of decisive importance for the consent of the other, must inform him of it where the latter legitimately does not know the information or relies on the contracting party.

However, this duty to inform does not apply to an assessment of the value of the act of performance.

Information is of decisive importance if it has a direct and necessary relationship with the content of the contract or the status of the parties.

A person who claims that information was due to him has the burden of proving that the other party had the duty to provide it, and that other party has the burden of proving that he has provided it.

The parties may neither limit nor exclude this duty.

In addition to imposing liability on the party who had the duty to inform, his failure to fulfil the duty may lead to annulment of the contract under the conditions provided by articles 1130 and following.

Art. 1112-2. – A person who without permission makes use of or discloses confidential information obtained in the course of negotiations incurs liability under the conditions set out by the general law.[7]

Sub-section 2
Offer and Acceptance

Art. 1113. – A contract is formed by the meeting of an offer and an acceptance by which the parties demonstrate their will to be bound.

[7] The 'general law' (translating '*le droit commun*') refers here to the general law of extra-contractual liability for fault under arts 1240 – 1241, below, except where the parties made contractual arrangements during negotiations.

This may stem from a person's declaration or unequivocal conduct.

Art. 1114. – An offer, whether made to a particular person or to persons generally, contains the essential elements of the envisaged contract, and expresses the will of the offeror to be bound in case of acceptance. Failing this, there is only an invitation to enter into negotiations.

Art. 1115. – An offer may be withdrawn freely as long as it has not reached the person to whom it was addressed.

Art. 1116. – An offer may not be withdrawn before the expiry of any period fixed by the offeror or, if no such period has been fixed, the end of a reasonable period.

The withdrawal of an offer in contravention of this prohibition prevents the contract being concluded.

The person who thus withdraws an offer incurs extra-contractual liability under the conditions set out by the general law, and has no obligation to compensate the loss of profits which were expected from the contract.

Art. 1117. – An offer lapses on the expiry of the period fixed by the offeror or, if no period is fixed, at the end of a reasonable period.

It also lapses in the case of the incapacity or death of the offeror.

Art. 1118. – An acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer.

As long as the acceptance has not reached the offeror, it may be withdrawn freely provided that the withdrawal reaches the offeror before the acceptance.

An acceptance which does not conform to the offer has no effect, apart from constituting a new offer.

Art. 1119. – General conditions put forward by one party have no effect on the other party unless they have been brought to the latter's attention and that party has accepted them.

In case of inconsistency between general conditions relied on by each of the parties, incompatible clauses have no effect.

In case of inconsistency between general conditions and special conditions, the latter prevail over the former.

Art. 1120. – Silence does not count as acceptance except where so provided by legislation, usage, business dealings or other particular circumstances.

Art. 1121. – A contract is concluded as soon as the acceptance reaches the offeror. It is deemed to be concluded at the place where the acceptance has arrived.

Art. 1122. – Legislation or the contract may provide for a period for reflection, which is a period within which the offeree cannot give his acceptance, or a period for withdrawal, which is a period within which a party may withdraw his consent.

Sub-section 3
Pre-emption Agreements and Unilateral Promises

Art. 1123. – A pre-emption agreement is a contract by which a party undertakes that, in the event that he decides to enter into a contract, he will make the first proposal for that contract to the beneficiary of the pre-emption agreement.

Where a contract has been concluded with a third party in breach of a pre-emption agreement, the beneficiary of that agreement may obtain reparation of the loss that he has suffered. Where the third party knew of the existence of the pre-emption agreement and of the beneficiary's intention to take advantage of it, the beneficiary may also sue for nullity or may ask the court to substitute him for the third party in the contract that has been concluded.

The third party may give written notice to the beneficiary requiring him to confirm, within a period which the former fixes and which must be reasonable, the existence of a pre-emption agreement and whether he intends to take advantage of it.

Such a written notice must state that if he does not reply within that period, the beneficiary of the pre-emption agreement will no longer have the right to claim either to be substituted in any contract concluded with the third party, or nullity of the contract.

Art. 1124. – A unilateral promise is a contract by which one party, the promisor, grants another, the beneficiary, a right to have the option to conclude a contract whose essential elements are determined, and for the formation of which only the consent of the beneficiary is missing.

Revocation of the promise during the period allowed to the beneficiary to exercise the option does not prevent the formation of the contract which was promised.

A contract concluded in breach of a unilateral promise with a third party who knew of its existence, is a nullity.

Sub-section 4
Special Provisions Governing Contracts made by Electronic Means[8]

Art. 1125. – Electronic means may be used to make available contractual stipulations or information about property or services.

[8] Arts 1125 to 1127-6 implement Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') arts 9–11. Where the text of the *Ordonnance* follows the wording or the terminology of the French version of the Directive, we have used the counterpart in the English version of the Directive.

Art. 1126. – Information requested with the view to the conclusion of a contract or provided during its performance may be sent by electronic mail if the recipient has agreed that this means may be used.

Art. 1127. – Information intended for a business or professional[9] may be addressed to them by electronic mail as long as they have communicated their electronic address.

If the information must be placed on a form, the form must be made available electronically to the person who is required to complete it.

Art. 1127-1. – A person who, in a business or professional capacity, makes a proposal by electronic means for the supply of property or services,[10] must make available the applicable contractual stipulations in a way which permits their storage and reproduction.

A person issuing an offer remains bound by it as long as it is made accessible by him by electronic means.

An offer must set out in addition:

1. The different steps that must be followed to conclude the contract by electronic means;

2. The technical means by which the person to whom the offer is addressed, before the conclusion of the contract, may identify any errors in the data entry, and correct them;

3. The languages offered for the conclusion of the contract, which must include the French language;

4. Where appropriate, the ways in which the party issuing the offer is to file it, and the conditions for access to the filed contract;

5. The means of consulting electronically any business, professional or commercial rules to which the party issuing the offer intends (as the case may be) to be bound.

Art. 1127-2. – A contract is validly concluded only if the party to whom the offer is addressed had the possibility of verifying the detail of his order and its total price and of correcting any possible errors before confirming his order in order to express his definitive acceptance.

The party issuing the offer must without undue delay acknowledge by electronic means the receipt of such an order which has been addressed to him.

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[9] '*Professionnel*' (either as a noun or an adjective) refers to a business as well as a profession in the usual English sense.

[10] '*prestation de services*' is the one phrase where we do not translate '*prestation'* as 'act of performance', but as 'supply' of services. In a composite phrase like this ('*la fourniture de biens ou la prestation de services*') the reference to 'supply' covers both *fourniture* (of property) and *prestation* (of services).

The order, the confirmation of acceptance of the offer, and the acknowledgement of receipt are deemed to have been received when the parties to whom they are addressed are able to have access to them.

Art. 1127-3. – There is an exception to the obligations referred to in paragraphs 1 to 5 of article 1127-1 and to the first two paragraphs of article 1127-2 for contracts for the supply of property or services which are concluded exclusively by exchange of electronic mails.

In addition, the provisions of paragraphs 1 to 5 of article 1127-1 and article 1127-2 may be excluded or restricted in contracts concluded between businesses or professionals.

Art. 1127-4. – A simple letter relating to the conclusion or performance of a contract may be sent by electronic mail.

The date of sending may be attached as a result of an electronic process which, in the absence of proof to the contrary, is presumed to be reliable as long as it satisfies the requirements set by decree of the *Conseil d'État*.

Art. 1127-5. – A registered letter relating to the conclusion or performance of a contract may be sent by electronic mail as long as this electronic mail is routed through a third party following a process which allows the third party to be identified, the sender to be denoted and the identity of the addressee to be guaranteed, and as long as it can be established whether or not the letter has been delivered to the addressee.

The contents of such a letter may, at the option of the sender, be printed by the third party on paper for distribution to the recipient or may be addressed to him by electronic means. In the latter case, if the recipient is not a business or professional, he must have requested that it be sent in this form or must have accepted this by usage in the course of earlier exchanges.

Where the affixing of the date of dispatch or of receipt results from an electronic process, this is presumed, in the absence of contrary evidence, to be reliable if it satisfies the requirements set by decree of the *Conseil d'État*.

An acknowledgement of receipt may be addressed to the sender by electronic means or by any other means which allows him to preserve it.

The modalities of implementation of this article are to be fixed by decree of the *Conseil d'État*.

Art. 1127-6. In cases other than those set out in articles 1125 and 1126, the delivery of a document in electronic form takes effect when the recipient is able to become aware of it and has then acknowledged receipt.

If there is provision for a document to be read to its recipient, the delivery to the person concerned of an electronic document in compliance with the requirements set out in the first paragraph is the equivalent of reading.

SECTION 2
Validity of the Contract

Art. 1128. – The following are necessary for the validity of a contract:

1. the consent of the parties;
2. their capacity to contract;
3. content which is lawful and certain.

Sub-section 1
Consent

Paragraph 1 – Existence of Consent

Art. 1129. – In accordance with article 414-1, one must be of sound mind to give valid consent to a contract.

Paragraph 2 – Defects in Consent

Art. 1130. – Mistake, fraud and duress vitiate consent where they are of such a nature that, without them, one of the parties would not have contracted or would have contracted on substantially different terms.

Their decisive character is assessed in the light of the person and of the circumstances in which consent was given.

Art. 1131. – Defects in consent are a ground of relative nullity of the contract.

Art. 1132. – Mistake of law or of fact, as long as it is not inexcusable, is a ground of nullity of the contract where it bears on the essential qualities of the act of performance owed or of the other contracting party.

Art. 1133. – The essential qualities of the act of performance are those which have been expressly or impliedly agreed and which the parties took into consideration on contracting.

Mistake is a ground of nullity whether it bears on the act of performance of one party or of the other.

Acceptance of a risk about a quality of the act of performance rules out mistake in relation to this quality.

Art. 1134. – Mistake about the essential qualities of the other contracting party is a ground of nullity only as regards contracts entered into on the basis of considerations personal to the party.

Art. 1135. – Mistake about mere motive, extraneous to the essential qualities of the act of performance owed or of the other contracting party is not a ground of nullity unless the parties have expressly made it a decisive element of their consent.

However, mistake about the motive for an act of generosity is a ground of nullity where, but for the mistake, the donor would not have made it.

Art. 1136. – A mistake as to value is not a ground of nullity where, in the absence of a mistake about the essential qualities of the act of performance, a contracting party makes only an inaccurate valuation of it.

Art. 1137. – Fraud is an act of a party in obtaining the consent of the other by scheming or lies.

The intentional concealment by one party of information, where he knows its decisive character for the other party, is also fraud.

Art. 1138. – Fraud is equally established where it originates from the other party's representative, a person who manages his affairs, his employee[11] or one standing surety for him.

It is also established where it originates from a third party in collusion.

Art. 1139. – A mistake induced by fraud is always excusable. It is a ground of nullity even if it bears on the value of the act of performance or on a party's mere motive.

Art. 1140. – There is duress where one party contracts under the influence of a constraint which makes him fear that his person or his wealth, or those of his near relatives, might be exposed to considerable harm.

Art. 1141. – A threat of legal action does not constitute duress, except where the legal process is deflected from its proper purpose or where it is invoked or exercised in order to obtain a manifestly excessive advantage.

Art. 1142. – Duress is a ground of nullity regardless of whether it has been applied by the other party or by a third party.

Art. 1143. – There is also duress where one contracting party exploits the other's state of dependence and obtains an undertaking to which the latter would not have agreed in the absence of such constraint, and gains from it a manifestly excessive advantage.

Art. 1144. – In the case of mistake or fraud the period for bringing an action for nullity runs only from the day when they were discovered, and in the case of duress the period runs only from the day when it ceased.

[11] 'Employee' here (and in art. 1242) translates '*préposé.*' While this includes a person who works for another under a contract of employment (*'contrat de travail'*), it is wider and extends to other situations where there is a 'relationship of subordination'. The other party to such a relationship is termed *le commettant*, which we translate as 'employer': see art. 1242. We reserve the English 'agent' to translate '*mandataire'*: see art. 1301, below.

Sub-section 2
Capacity and Representation

Paragraph 1 – Capacity

Art. 1145. – Every natural person is able to conclude a contract, except in the case of lack of capacity provided for by legislation.

The capacity of legal persons is limited to acts useful for realizing their purpose as defined by their statutes and acts which are incidental to them, in accordance with the rules applicable to each of those persons.

Art. 1146. – The following lack the capacity to conclude a contract, to the extent to which legislation provides:

1. minors who have not been emancipated;
2. protected adults within the meaning of article 425.

Art. 1147. – A lack of capacity to conclude a contract is a ground of relative nullity.

Art. 1148. – Every person who lacks the capacity to contract may nonetheless effect independently day-to-day acts authorised by legislation or by usage, provided that they are concluded on normal terms.

Art. 1149. – Day-to-day acts effected by a minor may be annulled on the ground of mere substantive inequality of bargain. However, nullity is not incurred where the substantive inequality results from an unforeseeable event.

The mere fact that a minor has made a declaration of majority does not constitute an obstacle to annulment.

A minor cannot escape from undertakings which he has entered into in the exercise of his business or profession.

Art. 1150. – Acts made by protected adults are governed by articles 435, 465 and 494-9 without prejudice to articles 1148, 1151 and 1352-4.

Art. 1151. – A contracting party who has capacity may defend an action for annulment brought against him by establishing that the act was useful to the protected person and was free from substantive inequality, or that he profited from it.

Such a contracting party may also set up against an action for annulment the fact that the other party to the contract affirmed the act after gaining or regaining his capacity.

Art. 1152. – Prescription of the action runs:

1. as regards acts made by minors, from the day of achieving majority or of emancipation;

2. as regards acts made by a protected adult, from the day when he becomes aware of them, provided that he was in a position to remake the acts validly;

3. as regards the heirs of a person subject to guardianship (whether as a minor or an adult) or of a person subject to an order empowering their family to act on their behalf,[12] from the day of the death, unless it has started to run before that time.

Paragraph 2 – Representation

Art. 1153. – A representative authorised by legislation, by a court or by a contract is justified in acting only within the limits of the authority conferred upon him.

Art. 1154. – Where a representative acts within his authority and in the name and on behalf of the person whom he represents, only the latter is bound to the undertaking so contracted.

Where a representative states that he is acting on behalf of another person but contracts in his own name, he alone is bound towards the other contracting party.

Art. 1155. – Where the authority of a representative is defined in general terms, it covers only acts of conservation or management.

Where his authority is specifically defined, a representative may conclude only those acts for which he is empowered and any accessory acts.

Art. 1156. – An act made by a representative without authority or beyond his authority cannot be set up against[13] the person whom he represents, unless the third party with whom he contracts legitimately believed that he had that person's authority, notably by reason of the latter's behaviour or statements.

Where a third party with whom a representative contracts was unaware that the act was concluded by the representative without authority or beyond his authority, the third party may invoke its nullity.

Neither an inability to set up an act against another person nor its nullity can be invoked once the person represented has ratified it.

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[12] '[A] person subject to an order empowering their family to act on their behalf' translates in an explanatory way '*la personne faisant l'objet d'une habilitation familiale*.' On this *habilitation familiale* see arts 494-4 et seq of the Civil Code as inserted by *Ordonnance* n° 2015-1288 of 15 October 2015 concerning the simplification and modernisation of family law.

[13] We have translated '*opposabilité'* and its cognate terms by 'set up against'. The sense of the French term is that a person may (or, as in art. 1156, may not) rely on a contract or other juridical act against another person. See further arts 1173, 1201, 1305-5, 1323, 1324, 1333, 1341-2, 1341-2, and 1346-5.

Art. 1157. – Where a representative abuses his authority to the detriment of the person whom he represents, the latter may invoke the nullity of any act concluded if the third party was aware of the abuse of authority or could not have been unaware of it.

Art. 1158. – A third party who, at the time of an act which he is about to conclude, doubts the extent of the authority of a representative appointed by contract may in writing request the person represented to confirm to him within a time which he may fix and which must be reasonable, that the representative is empowered to conclude the act in question.

The written request must set out that, in the absence of a timely reply, the representative is deemed to be empowered to conclude the act.

Art. 1159. – The establishing of representation by legislation or by a court deprives the person represented of the powers transferred to the representative for the period of the representation.

Representation established by contract leaves the person represented in possession of his ability to exercise his own rights.

Art. 1160. – The authority of a representative ceases if he becomes affected by a lack of capacity or is subject to a prohibition.

Art. 1161. – A representative cannot act on behalf of both parties to a contract nor can he contract on his own behalf with the person whom he represents.

Where he does so, any act which is concluded is a nullity unless legislation authorises it or the person represented has authorised or ratified it.

Sub-section 3
The content of a contract

Art. 1162. – A contract cannot derogate from public policy either by its stipulations or by its purpose, whether or not this was known by all the parties.

Art. 1163. – An obligation has as its subject-matter a present or future act of performance.

The latter must be possible and determined or capable of being determined.

An act of performance is capable of being determined where it can be deduced from the contract or by reference to usage or the previous dealings of the parties, without the need for further agreement.

Art. 1164. – In framework contracts it may be agreed that the price will be fixed unilaterally by one of the parties, subject to the requirement that the latter must provide the reason for the amount if it is challenged.

In the case of an abuse in the fixing of a price, a court may hear a claim for damages and, in an appropriate case, for the termination of the contract.[14]

Art. 1165. – In contracts for the supply of services, in the absence of an agreement by the parties in advance of their performance, the price may be fixed by the creditor,[15] subject to the latter's providing a reason for its amount if it is challenged. In the case of abuse in the fixing of the price, the court may hear a claim for damages.

Art. 1166. – Where the quality of the act of performance is not determined or capable of being determined under the contract, the debtor must offer an act of performance of a quality which conforms to the legitimate expectations of the parties taking into account its nature, usual practices and the amount of what is agreed in return.

Art. 1167. – Where the price or any other element of a contract is to be determined by reference to an index which does not exist or has ceased to exist or to be available, the index is replaced by the index which is most closely related to it.

Art. 1168. – In synallagmatic contracts, a lack of equivalence in the acts of performance of the parties is not a ground of nullity of the contract, unless legislation provides otherwise.

Art. 1169. – An onerous contract is a nullity where, at the moment of its formation, what is agreed in return for the benefit of the person undertaking an obligation is illusory or derisory.

Art. 1170. – Any contract term which deprives a debtor's essential obligation of its substance is deemed not written.

Art. 1171. – Any term of a standard form contract which creates a significant imbalance in the rights and obligations of the parties to the contract is deemed not written.

The assessment of significant imbalance must not concern either the main subject-matter of the contract nor the adequacy of the price in relation to the act of performance.

[14] *La résolution* is used in the *Code civil* as promulgated in 1804 to denote the retroactive termination of a contract, coupled with (in principle) restitution and counter-restitution: this follows from the significance of its definition and use of *la condition résolutoire*: see arts 1183–1184 C.civ. Under the new law, *la résolution* is said to put an end to the contract (art. 1229 al. 1), but the effect of this may be retroactive or may instead be prospective, where it is termed '*la résiliation*' (art. 1229 al. 3). We therefore use the neutral word 'termination' for *la résolution* and 'resiling from a contract' for *'la résiliation*'.

[15] We translate '*créancier*' generally as 'creditor' and '*débiteur*' generally as 'debtor', following the French usage of these terms to denote the party with (respectively) the right and the duty under an obligation, without limiting such references to *money* obligations, as in the common usage of these terms in English law.

SECTION 3
The Form of Contracts

Sub-section 1
General Provisions

Art. 1172. – On principle contracts require only the consent of the parties.

By way of exception, the validity of a solemn contract is subject to the fulfilment of formalities set by legislation, and their absence renders the contract a nullity except where it may be regularized.

Otherwise, legislation subjects the formation of certain contracts to the delivery of a thing.

Art. 1173. – Formal requirements imposed for the purposes of proof of a contract or setting up a contract against another person have no effect on the validity of the contract.

Sub-section 2
Special provisions governing contracts concluded by electronic means

Art. 1174. – Where writing is required for the validity of a contract, it may be created or stored in electronic form subject to the conditions provided by articles 1366 and 1367 and, where an authenticated instrument is required, by paragraph 2 of article 1369.

Where a person undertaking an obligation is required to add something in his own hand, he may do so in electronic form if the circumstances of this are such as to guarantee that it could have been done only by him.

Art. 1175. – The provisions of the preceding article do not apply to:

1° signed acts relating to family law or the law of succession;

2° signed acts relating to personal or real security, whether made under civil or commercial law, unless they are entered into by a person for the purposes of his business or profession.

Art. 1176. – Where a written document on paper is subject to special conditions of legibility or presentation, an electronic written document must conform to equivalent requirements.

A requirement of a detachable form is satisfied by an electronic process which allows for it to be accessed and returned by the same means.

Art. 1177. – A requirement of sending one or more copy is deemed to be satisfied by electronic means where the written document can be printed by the person to whom it is sent.

SECTION 4
Sanctions

Sub-section 1
Nullity

Art. 1178. – A contract which does not satisfy the conditions required for its validity is a nullity. Nullity must be declared by a court, unless the parties establish it by mutual agreement.

An annulled contract is deemed never to have existed.

Acts of performance which have been carried out give rise to restitution under the conditions provided by articles 1352 to 1352-9.

Irrespective of whether or not the contract is annulled, an injured party may claim reparation for any harm suffered under the conditions set out by the general law of extra-contractual liability.

Art. 1179. – Nullity is absolute where the rule that is violated has as its object the safeguard of the public interest.

It is relative where the rule that is violated has as its sole object the safeguard of a private interest.

Art. 1180. – Absolute nullity may be claimed by any person who can demonstrate an interest, as well as by the *ministère public*.[16]

It may not be remedied by affirmation of the contract.

Art. 1181. – Relative nullity may be claimed only by the party that the legislation intends to protect.

It may be remedied by affirmation.

Where more than one person has the right to bring an action for relative nullity, renunciation by one of them does not prevent the others from bringing proceedings.

Art. 1182. – Affirmation is an act by which a person who could rely on the nullity of the contract renounces the right to do so. This act must mention the subject-matter of the obligation and the defect affecting the contract.

Affirmation can take place only after the conclusion of the contract.

Voluntary performance of a contract in the knowledge of a ground of nullity is equivalent to affirmation. In the case of duress, affirmation can take place only after the duress has ceased.

[16] The *ministère public* is the magistrate who represents the public interest.

Affirmation entails renunciation of the grounds of claim or defences that might be set up, without prejudice, however, to the rights of third parties.

Art. 1183. – A party may claim in writing from a person who could rely on the nullity of the contract either to affirm it, or to proceed with an action for nullity within a period of six months, on pain of losing the right to do so. The ground of nullity must have ceased.

The written notice must set out expressly that unless the action for nullity is brought within a period of six months, the contract shall be deemed to have been affirmed.

Art. 1184. – Where a ground of nullity affects only one or more terms of the contract, it entails the nullity of the whole act only if this term or these terms constituted a decisive factor in the undertaking of the parties, or of one of them.

The contract is upheld where legislation deems a contract term not written, or where the purposes of the rule not followed requires it to be upheld.

Art. 1185. – The defence of nullity is not subject to prescription if it relates to a contract which has not received any performance.

Sub-section 2
Lapse

Art. 1186. – A contract which has been validly formed lapses if one of its necessary elements disappears.

Where the performance of several contracts is necessary for the putting into effect of one and the same operation and one of them disappears, those contracts whose performance is rendered impossible by this disappearance lapse, as do those for which the performance of the contract which has disappeared was a decisive condition of the consent of one of its parties.

Art. 1187. – Lapse puts an end to the contract.

It may give rise to restitution under the conditions provided by articles 1352 to 1352-9.

CHAPTER III
CONTRACTUAL INTERPRETATION

Art. 1188. – A contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms.

Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it.

Art. 1189. – All the terms of a contract are to be interpreted in relation to each other, giving to each the meaning which respects the consistency of the contract as a whole.

Where, according to the common intention of the parties, several contracts contribute to one and the same operation, they are to be interpreted by reference to this operation.

Art. 1190. – In case of ambiguity, a bespoke contract is interpreted against the creditor and in favour of the debtor, and a standard-form contract is interpreted against the person who put it forward.

Art. 1191. – Where a contract term is capable of bearing two meanings, the one which gives it some effect is to be preferred to the one which makes it produce no effect.

Art. 1192. – Clear and unambiguous terms are not subject to interpretation as doing so risks their distortion.

CHAPTER IV
THE EFFECTS OF CONTRACTS

SECTION 1
The Effects of Contracts between the Parties

Sub-section 1
Binding Effect

Art. 1193. Contracts can be modified or revoked only by the parties' mutual consent or on grounds which legislation authorises.

Art. 1194. – Contracts create obligations not merely in relation to what they expressly provide, but also to all the consequences which are given to them by equity, usage or legislation.

Art. 1195. – If a change of circumstances that was unforeseeable at the time of the conclusion of the contract renders performance excessively onerous for a party who had not accepted the risk of such a change, that party may ask the other contracting party to renegotiate the contract. The first party must continue to perform his obligations during renegotiation.

In the case of refusal or the failure of renegotiations, the parties may agree to terminate the contract from the date and on the conditions which they determine, or by a common agreement ask the court to set about its adaptation. In the absence of an agreement within a reasonable time, the court may, on the request of a party, revise the contract or put an end to it, from a date and subject to such conditions as it shall determine.

Sub-section 2
Proprietary Effect[17]

Art. 1196. – As regards contracts whose object is to alienate property or the assignment of some other right, transfer takes place at the time of the conclusion of the contract.

This transfer may be deferred by the will of the parties, by the nature of the things in question or by the effect of legislation.

The transfer of property entails the transfer of risk in the thing. Nevertheless, the debtor of an obligation to deliver regains the risk in it from the time of being put on notice to perform, in conformity with article 1344-2 and subject to the rules provided by article 1351-1.

Art. 1197. – An obligation to deliver a thing entails an obligation to look after it until delivery, taking all the care of a reasonable person in doing so.

Art. 1198. – Where two persons successively acquire the same physical movable thing and hold their right from the same person, the person who has taken possession of this movable thing first is to be preferred, even if his right is later, provided that he is in good faith.

Where two persons acquire rights over one and the same immovable property in turn and hold their right from the same person, the person who first published his title of acquisition made in an authenticated instrument on the land register[18] is preferred, even if his right is later, provided that he is in good faith.

SECTION 2
The Effects of Contracts as regards Third Parties

Sub-section 1
General Provisions

Art. 1199. – A contract creates obligations only as between the parties.

Third parties may neither claim performance of the contract nor be constrained to perform it, subject to the provisions of this section and those in Chapter III of Title IV

Art. 1200. – Third parties must respect the legal situation created by a contract.

They may rely on it notably in order to provide proof of a fact.

Art. 1201. – Where the parties have concluded an apparent contract which conceals a secret contract, the latter (also called a 'counter-letter') takes effect between the parties. It cannot be set up against third parties, though the latter may rely on it.

[17] This translates '*Effet translatif*', which refers to a contract's effect of transferring property in a thing and this is the sense in which 'proprietary effect' should be understood.
[18] This translates '*fichier immobilier'*.

Art. 1202. – Any counter-letter whose object is an increase in the price agreed for the assignment of an office held by a professional who thereby enjoys public service powers[19] is a nullity

A contract is also a nullity where its purpose is to conceal part of the price where it concerns a sale of immovable property, a transfer of business assets or clientele, an assignment of a right under a lease, or the benefit of a promise of a lease relating to all or part of immovable property and all or part of the difference in value payable in a contract of exchange or in a division of immovable property, business assets or clientele.

Sub-section 2
Standing Surety and Stipulations for Third Parties

Art. 1203. – A person is not able to undertake engagements in his own name except for himself.

Art. 1204. – A person may stand surety[20] by promising that a third party will do something.

If the third party performs the action which was promised, the promisor is released from any obligation. Where this is not the case, he may be ordered to pay damages.

Where the standing surety has as its subject-matter the ratification of an undertaking, the latter is retroactively validated from the date at which the standing surety was executed.

Art. 1205. – A person may make a stipulation for another person.

One of the parties to a contract (the 'stipulator') may require a promise from the other party (the 'promisor') to accomplish an act of performance for the benefit of a third party (the 'beneficiary').[21] The third party may be a future person but must be exactly identified or must be able to be determined at the time of the performance of the promise.

Art. 1206. – The beneficiary is invested with a direct right to the act of performance against the promisor from the time of the stipulation.

Nevertheless, the stipulator may freely revoke the stipulation as long as the beneficiary has not accepted it.

The stipulation becomes irrevocable at the moment when the acceptance reaches the stipulator or the promisor.

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[19] Here 'an office held by a professional who thereby enjoys public service powers' translates in an explanatory way '*un office ministériel'*.
[20] We translate '*se porter fort*' as 'to stand surety', there being no exact equivalent in the common law; we translate '*le cautionnement*' as 'a guarantee' and *'la caution'* as 'a guarantor': see, e.g., arts 1335, 1350-2 and 1347-6.
[21] Here, we have followed closely the language in the French, which itself evokes its own Romanist background. In English discussions, the 'stipulator' would often be termed the 'promisee'.

Art. 1207. – Revocation may be effected only by the stipulator, or, after his death, by his heirs. The latter may do so only after a period of three months has elapsed from the date when they put the third party on notice to accept the benefit of the promise.

If it is not accompanied with the designation of a new beneficiary, the revocation benefits the stipulator or his heirs, as the case may be.

Revocation is effective as soon as the third party beneficiary or the promisor becomes aware of it.

Where it is made by testament, it takes effect from the moment of the testator's death.

The third party who was initially designated is deemed never to have benefited from the stipulation made for his benefit.

Art. 1208. – Acceptance may come from the beneficiary or, after his death, his heirs. It may be express or implied. It may take place even after the death of the promisee or the promisor.

Art. 1209. – The stipulator may himself require the promisor to perform his undertaking towards the beneficiary.

SECTION 3
The Duration of Contracts

Art. 1210. – Perpetual undertakings are prohibited.

Either contracting party may put an end to such an undertaking under the conditions provided for contracts of indefinite duration.

Art. 1211. – Where a contract is concluded for an indefinite duration, each party may put an end to it at any time, subject to respecting any period of notice provided by the contract or, in its absence, a reasonable notice.

Art. 1212. – Where a contract is concluded for a definite duration, each party must perform it until the date of its due ending.

No-one may require the renewal of the contract.

Art. 1213. – A contract may be extended if the contracting parties manifest an intention to do so before its expiry. Such an extension may not prejudice the rights of third parties.

Art. 1214. – A contract of definite duration may be renewed as a result of legislative provision to this effect or by the agreement of the parties.

Renewal gives birth to a new contract whose content is identical to its predecessor but whose duration is indefinite.

Art. 1215. – Where, on the expiry of the term of a contract concluded for a definite duration, the contracting parties continue to perform their obligations, there is an implied continuation of the contract. The latter produces the same effects as a renewal of such a contract.

SECTION 4
Assignment of Contract

Art. 1216. – A contracting party, the assignor, may assign his status as party to the contract to a third party, the assignee, with the agreement of his own contractual partner, the person subject to assignment.

This agreement may be given in advance, notably in a contract concluded between the future assignor and person subject to assignment, in which case assignment takes effect as regards the person subject to assignment when the contract concluded between the assignor and the assignee is notified to him or when he acknowledges it.

An assignment must be established in writing, on pain of nullity.

Art. 1216-1. – If the person subject to assignment has expressly consented to it, assignment of contract discharges the assignor for the future.

In its absence, and subject to any term to the contrary, the assignor is liable jointly and severally to the performance of the contract.

Art. 1216-2. – The assignee may set up against the person subject to assignment the defences inherent in the debt itself, such as nullity, the defence of non-performance, termination or the right to set off related debts. He cannot set up against him defences personal to the assignor.

The person subject to assignment may set up against the assignee all the defences which he could have been able to set up against the assignor.

Art. 1216-3. – If the assignor is not discharged by the person subject to assignment, any securities which may have been agreed remain in place. Where the assignor is discharged, securities agreed by third parties remain in place only with the latter's agreement.

If the assignor is discharged, any joint and several co-debtors remain liable to the extent which remains after deduction of the share of the debtor who has been discharged.

SECTION 5
Contractual Non-performance

Art. 1217. – A party towards whom an undertaking has not been performed or has been performed imperfectly, may:

- refuse to perform or suspend performance of his own obligations;
- seek enforced performance in kind of the undertaking;
- request a reduction in price;
- provoke the termination[22] of the contract;
- claim reparation of the consequences of non-performance.

Sanctions which are not incompatible may be combined; damages may always be added to any of the others.

Art. 1218. – In contractual matters, there is force majeure where an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the contract and whose effects could not be avoided by appropriate measures, prevents performance of his obligation by the debtor.

If the prevention is temporary, performance of the obligation is suspended unless the delay which results justifies termination of the contract. If the prevention is permanent, the contract is terminated by operation of law and the parties are discharged from their obligations under the conditions provided by articles 1351 and 1351-1.

Sub-section 1
Defence of Non-performance

Art. 1219. – A party may refuse to perform his obligation, even where it is enforceable, if the other party does not perform his own and if this non-performance is sufficiently serious.

Art. 1220. – A party may suspend the performance of his obligation as soon as it becomes evident that his contracting partner will not perform his obligation when it becomes due and that the consequences of this non-performance are sufficiently serious for him. Notice of this suspension must be given as quickly as possible.

Sub-section 2
Enforced Performance in Kind

Art. 1221. – A creditor of an obligation may, having given notice to perform, seek performance in kind unless performance is impossible or if there is a manifest disproportion between its cost to the debtor and its interest for the creditor.

[22] See above, n. 14.

Art. 1222. – Having given notice to perform, a creditor may also himself, within a reasonable time and at a reasonable cost, have an obligation performed or, with the prior authorisation of the court, may have something which has been done in breach of an obligation destroyed. He may claim reimbursement of sums of money employed for this purpose from the debtor.

He may also bring proceedings in order to require the debtor to advance a sum necessary for this performance or destruction.

Sub-section 3
Price Reduction

Art. 1223. – Having given notice to perform, a creditor may accept an imperfect contractual performance and reduce the price proportionally.

If he has not yet paid, the creditor must give notice of his decision to reduce the price as quickly as possible.

Sub-section 4
Termination

Art. 1224. – Termination results either from the application of a termination clause, or, where the non-performance is sufficiently serious, from notice by the creditor to the debtor or from a judicial decision.

Art. 1225. – A termination clause must specify the undertakings whose non-performance will lead to the termination of the contract.

Termination may take place only after service of a notice to perform which has not been complied with, unless it was agreed that termination may arise from the mere act of non-performance. The notice to perform takes effect only if it refers expressly to the termination clause.

Art. 1226. – A creditor may, at his own risk, terminate the contract by notice. Unless there is urgency, he must previously have put the debtor in default on notice to perform his undertaking within a reasonable time.

The notice to perform must state expressly that if the debtor fails to fulfil his obligation, the creditor will have a right to terminate the contract.

Where the non-performance persists, the creditor notifies the debtor of the termination of the contract and the reasons on which it is based.

The debtor may at any time bring proceedings to challenge such a termination. The creditor must then establish the seriousness of the non-performance.

Art. 1227. – Termination may in any event be claimed in court proceedings.

Art. 1228. – A court may, according to the circumstances, recognise or declare the termination of the contract or order its performance with the possibility of allowing the debtor further time to do so, or award only damages.

Art. 1229. – Termination puts an end to the contract.

Termination takes effect, according to the situation, on the conditions provided by any termination clause, at the date of receipt by the debtor of a notice given by the creditor, or on the date set by the court or, in its absence, the day on which proceedings were brought.

Where the acts of performance exchanged were useful only on the full performance of the contract which has been terminated, the parties must restore the whole of what they have obtained from each other. Where the acts of performance which were exchanged were useful to both parties from time to time during the reciprocal performance of the contract, there is no place for restitution in respect of the period before the last act of performance which was not reflected in something received in return; in this case, termination is termed resiling from the contract.[23]

Restitution takes place under the conditions provided by articles 1352 to 1352-9.

Art. 1230. – Termination does not affect contract terms relating to dispute-resolution, nor those intended to take effect even in the case of termination, such as confidentiality or non-competition clauses.

Sub-section 5
Reparation of loss resulting from non-performance of the contract

Art. 1231. – Unless non-performance is permanent, damages are due only if the debtor has previously been put on notice to perform his obligation within a reasonable time.

Art. 1231-1. – A debtor is condemned, where appropriate, to the payment of damages either on the ground of the non-performance or a delay in performance of an obligation, unless he justifies this on the ground that performance was prevented by force majeure.

Art. 1231-2. – In general, damages due to the creditor are for the loss that he has incurred or the gain of which he has been deprived, with the following exceptions and qualifications.

Art. 1231-3. – A debtor is bound only to damages which were either foreseen or which could have been foreseen at the time of conclusion of the contract, except where non-performance was due to a gross or dishonest fault.[24]

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[23] We translate '*la résiliation*' as 'resiling from a/the contract' so as to distinguish it from '*la résolution*' ('termination'): see above, n. 14.

[24] 'Gross or dishonest fault' translates '*une faute lourde ou dolosive'*. While we have translated '*faute dolosive'* as 'dishonest fault', dishonesty for this purpose must be understood in a broad way so as to include situations treated as bad faith in the debtor, notably, where the non-performance is deliberate.

Art. 1231-4. – In the situation where non-performance of a contract does indeed result from gross or dishonest fault, damages include only that which is the immediate and direct result of non-performance.

Art. 1231-5. – Where a contract stipulates that the person who fails to perform shall pay a certain sum of money by way of damages, the other party may be awarded neither a higher nor a lower sum.

Nevertheless, a court may, even of its own initiative, moderate or increase the penalty so agreed if it is manifestly excessive or derisory.

Where an undertaking has been performed in part, the agreed penalty may be reduced by a court, even of its own initiative, in proportion to the advantage which partial performance has procured for the creditor, without prejudice to the application of the preceding paragraph.

Any stipulation contrary to the preceding two paragraphs is deemed not written.

Except where non-performance is permanent, a penalty is not incurred unless the debtor was put on notice to perform.

Art. 1231-6. – Damages due on the ground of delay in satisfaction of a monetary obligation consist of interest at the rate set by legislation, starting from the time of notice to perform.

These damages are due without the creditor having to establish any loss.

Where a debtor who is late in performing has by his bad faith caused his creditor a loss independent of this delay, the latter may obtain damages distinct from interest arising from the delay.

Art. 1231-7. – In all matters, an award of compensation attracts interest at the rate set by legislation, even in the absence of any claim by a party or specific order of the court. Subject to any legislative provision to the contrary, this interest runs from the giving of judgment unless the court decides otherwise.

In the case of a pure and simple affirmation by a court of appeal of a decision awarding compensation as reparation of harm, the latter bears interest by operation of law at the rate set by legislation from the giving of judgment at first instance. In other situations, compensation awarded on appeal bears interest from the appellate decision. A court of appeal may nonetheless derogate from the provisions of this paragraph.

SUB-TITLE II
EXTRA-CONTRACTUAL LIABILITY

CHAPTER I
EXTRA-CONTRACTUAL LIABILITY IN GENERAL

Art. 1240. – Any human action whatsoever which causes harm to another creates an obligation in the person by whose fault it occurred to make reparation for it.

Art. 1241. – Everyone is liable for harm which he has caused not only by his action, but also by his failure to act or his lack of care.

Art. 1242. – One is liable not only for the harm which one causes by one's own action, but also for that which is caused by the action of persons for whom one is responsible, or of things which one has in one's keeping.

However, a person who holds on whatever legal basis all or part of immovable or movable property in which a fire has arisen shall not be liable as regards third parties for harm caused by that fire unless it is established that it must be attributed to his fault or the fault of persons for whom he is responsible.

This provision does not apply to the relations between owners and tenants, which remain governed by articles 1733 and 1734 of the Civil Code.

To the extent to which they exercise parental authority, a father and mother are jointly and severally liable for harm caused by their minor children who live with them.

Masters and employers, for harm caused by their servants and employees[25] within the functions for which they employed them.

Teachers and artisans, for harm caused by their pupils and apprentices during the time which they are under their supervision.

The above liability arises unless the father and mother and the artisans cannot prove that they could not have prevented the action which gave rise to this liability.

As regards teachers, fault, lack of care or a failure to act invoked against those as having caused the harmful action, must be proved by the claimant at first instance following the general rule.

Art. 1243. – The owner of an animal, or a person who uses an animal while he uses it, is liable for the harm which the animal has caused, whether the animal was in his keeping or whether it had gone astray or escaped.

Art. 1244. – The owner of a building is liable for the harm caused by its ruin, where the latter occurred as a result of a lack of maintenance or defect in construction.

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[25] Here 'employers' translates '*les commettants'* and 'employees' translates '[*les*] *préposés'* on which see above, n. 11.

CHAPTER II
LIABILITY FOR DEFECTIVE PRODUCTS

Art. 1245. – A producer is liable for harm caused by a defect in his product, whether or not he is bound by a contract with the victim.

Art. 1245-1. – The provisions of this Chapter apply to the reparation of harm which results from personal injury.

They also apply to the reparation of harm above an amount determined by decree, which results from damage to property other than the defective product itself.

Art. 1245-2. – A product is any movable property, even if it is incorporated into immovable property, including products of the soil, of stock-farming, hunting or fisheries. Electricity is considered to be a product.

Art. 1245-3. – A product is defective within the meaning of this Chapter where it does not provide the safety which one can legitimately expect.

In the assessment of the safety which one can legitimately expect*,* account must be taken of all the circumstances and in particular the presentation of the product, the use which it may reasonably be expected to be put and the time of its being put into circulation.

A product cannot be considered as defective by the sole fact that another, more advanced product has subsequently been put into circulation.

Art. 1245-4. – A product is put into circulation when the producer voluntarily relinquishes it.

A product is the object of only a single putting into circulation.

Art. 1245-5. – A producer is a manufacturer of a finished product, the producer of raw materials, and the manufacturer of a component part if they act in the course of a business or profession.

Where acting in the course of a business or profession,[26] the following persons are assimilated to a producer for the purposes of this Chapter:

1. A person who presents himself as producer by attaching to the product his name, trademark or other distinguishing feature;

2. A person who imports a product into the European Community with the view to sale, hire (with or without an agreement to sell), or any other form of distribution.

Persons whose liability may be sought on the basis of articles 1792 to 1792-6 and 1646-1 are not considered to be producers within the meaning of this Chapter.

[26] This translates '*agissant à titre professionnel'*: cf. above, n. 9.

Art. 1245-6. – If the producer cannot be identified, the seller, the hirer (with the exception of a finance lessor or a hirer comparable to a finance lessor) or any other supplier in the course of business or a profession is liable for a defect of safety in the product on the same conditions as the producer, unless he indicates his own supplier or the producer within a period of three months starting from the date on which the claim of the victim was notified to him.

Recourse by the supplier against the producer is governed by the same rules as the claim coming from the direct victim of the defect. However, he must sue within a year of the date of proceedings being brought against him.

Art. 1245-7. – In the case of harm caused by a defect in a product incorporated into another product, the producer of the component part and the person who effected its incorporation are jointly and severally liable.

Art. 1245-8. – The claimant must prove the harm, the defect and the causal relationship between the defect and the harm.

Art. 1245-9. – The producer may be liable for a defect even if the product has been manufactured in accordance with the rules of the trade or existing standards or if it was the object of administrative authorization.

Art. 1245-10. – The producer is liable by operation of law[27] unless he proves:

1. that he had not put the product into circulation;

2. that, having regard to the circumstances, there is good reason to think that the defect causing the harm did not exist at the time when the product was put into circulation by him or that the defect arose afterwards;

3. that the product was not intended for sale or any other form of distribution;

4. that the state of scientific and technical knowledge at the time when he put the product into circulation did not allow discovery of the existence of the defect;

5. or that the defect is due to compliance of the product with mandatory legislative or administrative rules.

Moreover, the producer of a component part is not liable if he establishes that the defect is attributable to the design of the product in which the part was incorporated or to instructions given by the producer of that product.

Art. 1245-11. – The producer cannot rely on the defence provided by paragraph 4 of article 1245-10 where the harm was caused by an element of the human body or by products derived from it.

[27] This translates '*de plein droit*'. While in many discussions, this is to be understood to refer to 'strict liability' (as opposed to liability for fault) and the producer *is* liable strictly under these provisions, translating the first paragraph of art. 1245-10 as 'The producer is liable strictly unless he proves' one of the defences then set out would suggest that the defence changes the basis of liability (which is, of course, not the case).

Art. 1245-12. – The producer's liability may be reduced or excluded, having regard to all the circumstances, where the harm is caused jointly by a defect in the product and by the fault of the victim or of a person for whom the victim is responsible.

Art. 1245-13. – The producer's liability to the victim is not reduced by the action of a third party who contributed to the occurrence of the harm.

Art. 1245-14. – Contract terms which seek to exclude or limit liability for defective products are forbidden and deemed not written.

However, as regards harm caused to property which is not used by the victim mainly for his own private use or consumption, contract terms agreed between persons acting in the course of a business or profession are valid.

Art. 1245-15. – In the absence of fault in the producer, the latter's liability based on the provisions of this Chapter is extinguished ten years after the actual product which caused the harm was put into circulation unless the victim brought proceedings during this period.

Art. 1245-16. – A claim for reparation based on the provisions of this Chapter is subject to prescription after a period of three years starting from the date on which the claimant knew or ought to have known of the harm, the defect and the identity of the producer.

Art. 1245-17. – The provisions of this Chapter are without prejudice to any rights which the victim of the harm may enjoy under the law of contractual or extra-contractual liability or under a special regime of liability.

The producer remains liable for the consequences of his own fault or of the fault of persons for whom he is responsible.

SUB-TITLE III
OTHER SOURCES OF OBLIGATIONS

Art. 1300. – Quasi-contracts are purely voluntary actions which result in a duty in a person who benefits from them without having a right to do so, and sometimes a duty in the person performing them towards another person.

The quasi-contracts governed by this sub-title are management of another's affairs, payment of a debt which is not due, and unjustified enrichment.

CHAPTER I
MANAGEMENT OF ANOTHER'S AFFAIRS

Art. 1301. – A person who, without being bound to do so, knowingly and usefully manages another's affairs without the knowledge or opposition of the latter (the principal), is subject in accomplishing any juridical acts or physical action which this entails to all the obligations which he would have owed as an agent.

Art. 1301-1. – He is bound to take all the care of a reasonable person in the management of the other's affairs; he must carry on with their management until the principal or his successor is in a position to do so himself.

A court may, depending on the circumstances, moderate the compensation due to the principal on the ground of any fault or failure to act in the person intervening.

Art. 1301-2. – A person whose affairs have been managed usefully must fulfil any undertakings which the person intervening contracted in his interest.

He must reimburse the person intervening for expenses incurred in his interest and compensate him for harm which he has suffered as a result of the management.

Sums advanced by the person intervening carry interest from the day of payment.

Art. 1301-3. – Ratification of the management by the principal is equivalent to conferring the authority of an agent.

Art. 1301-4. – A personal interest in the intervener in taking on the affairs of another person does not exclude the application of the rules governing management of another's affairs.

In this situation, the burden of undertakings, expenses and harm caused is shared in proportion to the interest of each person in the common affair.

Art. 1301-5. – If the action of the person intervening does not satisfy the conditions for the application of management of another's affairs but nevertheless benefits the principal, the latter must compensate the person intervening under the rules of unjustified enrichment.

CHAPTER II
UNDUE PAYMENT

Art. 1302. – Every payment presupposes a debt; something which is received without being due is subject to restitution.

Restitution is not allowed as regards natural obligations which have been voluntarily discharged.

Art. 1302-1. – A person who receives by mistake or knowingly something which is not owed to him must restore it to the person from whom he unduly received it.

Art. 1302-2. – A person who by mistake or under constraint has discharged another person's debt can sue the creditor for restitution. However, this right ceases in the situation where the creditor, as a result of payment, has cancelled his instrument of title or has released any security guaranteeing the right arising from the obligation.

Restitution may also be claimed from a person whose debt has been discharged by mistake.

Art. 1302-3. – Restitution is subject to the rules set by articles 1352 to 1352-9.

It may be reduced if the payment made stems from fault.

CHAPTER III
UNJUSTIFIED ENRICHMENT

Art. 1303. – Apart from the situation of management of another's affairs and undue payment, a person who benefits from an unjustified enrichment to the detriment of another person must indemnify the person who is thereby made the poorer to an amount equal to the lesser of the two values of the enrichment and the impoverishment.

Art. 1303-1. – An enrichment is unjustified where it stems neither from the fulfilment of an obligation by the person impoverished nor from his intention to confer a gratuitous benefit.

Art. 1303-2. – Compensation is excluded where the impoverishment stems from an act effected by the impoverished person with a view to personal profit.

Compensation may be reduced by the court if the impoverishment stems from the fault of the person impoverished.

Art. 1303-3. – The impoverished person has no action on this basis where another action is open to him or is legally barred, as in the case of prescription.

Art. 1303-4. – Impoverishment established from the day of its expenditure, and enrichment such as it still exists at the day of the claim, are evaluated as of the day of judgment of the court. In the case of bad faith in the person enriched, the compensation due is equal to the higher of the two values.

TITLE IV
THE GENERAL REGIME OF OBLIGATIONS

CHAPTER I
MODALITIES OF OBLIGATIONS

SECTION I
Conditional Obligations

Art. 1304. – An obligation is conditional where it depends on a future, uncertain event.

A condition is suspensive where its fulfilment renders the obligation unconditional.

It is resolutory where its fulfilment results in the destruction of the obligation.

Art. 1304-1. – A condition must be lawful. If it is not, the obligation is a nullity.

Art. 1304-2. – An obligation undertaken subject to a condition whose satisfaction depends on the will of the debtor alone is a nullity. Nullity on this ground cannot be invoked where the obligation has been performed while aware of the position.

Art. 1304-3. – A suspensive condition is deemed to have been fulfilled if the party who is interested in its failing has obstructed its fulfilment.

A resolutory condition is deemed to have failed if its fulfilment has been caused by the party who had an interest in this occurring.

Art. 1304-4. – A party is free to renounce a condition which has been stipulated for his exclusive benefit, as long as the condition has not been fulfilled.

Art. 1304-5. – Until a suspensive condition has been fulfilled, the debtor must refrain from any act which would obstruct the proper performance of the obligation; and the creditor may take all measures necessary to preserve his rights and challenge any acts effected by the debtor in fraud of his rights.

Whatever has been paid may be recovered as long as the suspensive condition has not been fulfilled.

Art. 1304-6. – An obligation becomes unconditional from the moment when the suspensive condition is fulfilled.

However, the parties may provide that the fulfilment of the condition will have retroactive effect from the date of the contract. The thing which is the subject-matter of the obligation remains still at the risk of the debtor, who retains its management and has the right to its fruits until the condition is fulfilled.

If a suspensive condition fails, the obligation is deemed never to have existed.

Art. 1304-7. – The fulfilment of a resolutory condition extinguishes the obligation retroactively, but does not challenge any acts of preservation or of management which might have been carried out.

The effect is not retroactive if the parties so agree or if the acts of performance that have been exchanged have fulfilled their aims in the course of the reciprocal performance of the contract.

SECTION 2
Time-Delayed Obligations

Art. 1305. – An obligation is time-delayed where its enforceability is deferred until the occurrence of a future, certain event, even if its date is uncertain.

Art. 1305-1. – The time for the delay may be express or implied.

In the absence of agreement, the court may fix it taking into consideration the nature of the obligation and the situation of the parties.

Art. 1305-2. – Whatever is due only after a delay may not be demanded until the time so fixed has passed; but whatever has been paid in advance may not be recovered.

Art. 1305-3. – A time-delay is for the benefit of the debtor, unless legislation, the will of the parties or circumstances entail that it has been set in favour of the creditor or of both parties.

A party for whose exclusive benefit a time delay has been fixed may renounce it without the consent of the other.

Art. 1305-4. – A debtor may not claim the benefit of a time delay if he does not provide the securities he promised to the creditor or if he reduces the value of those which guarantee the obligation.

Art. 1305-5. – The loss of the benefit of a time delay by a debtor may not be set up against his co-debtors, even if they are joint and several.

SECTION 3
Plural Obligations

Sub-section 1
Plurality of Subject-matters

Paragraph 1 – Cumulative Obligations

Art. 1306. – An obligation is cumulative where it has as its subject-matter more than one act of performance and the debtor is discharged only by performance of the totality of these acts.

Paragraph 2 – Alternative Obligations

Art. 1307. – An obligation is alternative where it has as its subject-matter more than one act of performance and the debtor is discharged by the performance of one of these acts.

Art. 1307-1. –The debtor may choose between the acts of performance.

If the choice has not been made within the agreed time or within a reasonable period, the other party may, after giving notice, make the choice or terminate the contract.

Once made, the choice is final and the obligation loses its alternative character.

Art. 1307-2. – Impossibility to perform the chosen act of performance discharges the debtor if it results from an event of force majeure.

Art. 1307-3. – If one of the acts of performance becomes impossible, the debtor who has not made known his choice must perform one of the others.

Art. 1307-4. – If one of the acts of performance becomes impossible to perform by reason of an event of force majeure, the creditor who has not made known his choice must accept performance of one of the others.

Art. 1307-5. – Where the acts of performance become impossible, the debtor is discharged only if the impossibility of performance of each act results from an event of force majeure.

Paragraph 3 – Optional Obligations

Art. 1308. – An obligation is optional where it has as its subject-matter a particular act of performance but the debtor has the ability to discharge himself by performing another.

An optional obligation is extinguished if the performance of the act agreed at the outset becomes impossible by reason of force majeure.

Sub-section 2
Plurality of Parties

Art. 1309. – An obligation binding multiple creditors or debtors is divided by operation of law as between them. A division takes place also as between their successors, even if the obligation is joint and several. In default of specific regulation by legislation or by the contract, the division takes place in equal parts.

Each creditor is entitled to only his share of the joint right; each debtor is liable for only his share of the joint debt.

This is varied, as between the creditors and the debtors, only if the obligation is joint and several, or if the act of performance owed is indivisible.

Paragraph 1 – Joint and Several Obligations

Art. 1310. – The joint and several nature of an obligation arises as a result of legislation or agreement: it cannot be presumed.

Art 1311. – Where the obligation is joint and several amongst creditors each of them may require and receive satisfaction of the right in full. Satisfaction made in favour of one, who must account to the others, discharges the debtor as regards them all.

The debtor may satisfy any of the joint and several creditors as long as he has not been sued by one of them.

Art. 1312. – Any act which interrupts or suspends the running of time for the purposes of prescription with regard to one of the joint and several creditors operates for the benefit of the other creditors.

Art. 1313. – The joint and several nature of an obligation amongst debtors imposes on each of them an obligation for the whole of the debt. Satisfaction by one of them discharges them all as regards the creditor.

The creditor may require satisfaction from any joint and several debtor he may choose. An action brought against one of the joint and several debtors does not prevent the creditor from bringing similar actions against the others.

Art. 1314. – A claim for interest made against a single joint and several debtor causes interest to run against all.

Art. 1315. – A joint and several debtor who is sued by the creditor may set up defences which are common to all the co-debtors, such as nullity or termination, and those which are available to him personally. He may not set up defences which are personal to the other debtors, such as the grant of a deferral. However, where a defence which is personal to another debtor, such as set-off or release of the debt, extinguishes a separate part of the debt owed by that debtor, he may take advantage of it to reduce the total of the debt.

Art. 1316. – A creditor who receives satisfaction from one of two or more joint and several debtors and consents to his release, retains his right arising from the obligation against the others, but after deduction of the share of the debtor whom he has discharged.

Art. 1317. – As between themselves, the contribution of each joint and several debtor is limited to his own share.

A debtor who has satisfied the obligation beyond his own share has a right of recourse against the others in proportion to their own shares.

If one of the debtors is insolvent, his share is divided amongst the other solvent debtors, including the one who has satisfied the obligation and the one who has benefited from a release of his joint and several obligation.

Art. 1318. – If the debt arises from a matter which concerns only one of the joint and several debtors, he alone is liable for this debt as regards the others. If he has satisfied it, he has no recourse against the other debtors. If they have satisfied it, they have a right of recourse against him.

Art. 1319. – Joint and several debtors are jointly and severally liable for non-performance of the obligation. In the final account the burden lies on those who are responsible for the non-performance.

Paragraph 2 – Obligations whose Acts of Performance are Indivisible

Art. 1320. – Where an act of performance is indivisible, either by its nature or by the terms of the contract, each creditor of the obligation may require and receive satisfaction in full, subject to a duty to account to the others. However, he may not on his own dispose of the right arising from the obligation, nor accept its value in place of the thing.

Each of the debtors of such an obligation is bound to the whole, but he has his rights of recourse against the others for their contribution.

It is the same for each successor of these creditors and debtors.

CHAPTER II
TRANSACTIONS RELATING TO OBLIGATIONS

SECTION 1
Assignment of Rights arising from Obligations

Art. 1321. – Assignment of rights is a contract by which the creditor (the assignor) transfers, whether or not for value, the whole or part of his rights against the assignment debtor to a third party (the assignee).

It may concern one or more rights, present or future, ascertained or ascertainable.

It extends to the ancillary rights of the right that is assigned.

The consent of the debtor is not required unless the right was stipulated to be non-assignable.

Art. 1322. – An assignment of rights must be effected in writing, on pain of nullity.

Art. 1323. – As between the parties the transfer of the right takes effect at the date of the act.

It can be set up against third parties from that moment. In the event of challenge, the burden of proof of the date of the assignment rests on the assignee, who may establish it by any means of proof.

However, the transfer of a future right takes effect only on the day when it comes into existence, as between the parties as well as against third parties.

Art. 1324. – Unless the debtor has already agreed to it, the assignment may be set up against him only if it has been notified to him or he has acknowledged it.

The debtor may set up against the assignee defences inherent in the debt itself, such as nullity, the defence of non-performance, termination or the right to set off related debts. He may also set up defences which arose from the relations with the assignor before the assignment became enforceable against him, such as the grant of a deferral, the release of a debt, or the set-off of debts which are not related.

The assignor and the assignee are jointly and severally liable for any additional costs arising from the assignment which the debtor did not have to advance. Subject to any contractual term to the contrary, the burden of these costs lies on the assignee.

Art. 1325. – In the case of successive assignments of rights, competition between the assignees is resolved in favour of the first in time, who has a right of recourse against the one in whose favour the debtor would have tendered satisfaction.

Art. 1326. – A person who assigns a right for value guarantees the existence of the right and of its ancillary rights unless the assignee took it at his own risk or knew of the uncertain character of the right.

He is not answerable for the solvency of the debtor unless he has undertaken to be so, and then only up to the value of the sum he was able to obtain for the assignment.

Where the assignor has guaranteed the solvency of the debtor, the guarantee extends only to his current solvency; it may be extended to his solvency when the right falls due, but only if the assignor has expressly so specified.

SECTION 2
Assignment of Debts

Art. 1327. – A debtor may assign his debt to another person with the agreement of the creditor.

Art. 1327-1. – If the creditor gave his agreement to the assignment in advance, or if he has not taken part in the assignment, he may find it set up against him, or may take advantage of it himself, only from the day when he was notified of it, or once he has acknowledged it.

Art. 1327-2. – If the creditor expressly so agrees, the original debtor is discharged for the future. Otherwise, and subject to any contractual term to the contrary, he is bound jointly and severally to pay the debt.

Art. 1328. – The substituted debtor, and the original debtor if he remains liable, may set up against the creditor defences inherent in the debt, such as nullity, the defence of non-performance, termination or the right to set off related debts. Each may also set up defences which are personal to him.

Art. 1328-1. – Where the original debtor is not discharged by the creditor, any securities remain in place. Where the original debtor is discharged, securities given by third parties remain binding only if they agree.

If the original debtor[28] is discharged, any joint and several co-debtors remain liable to the extent which remains after deduction of the share of the original debtor who has been discharged.

[28] We have translated '*cédant*' as 'original debtor' as the context appears to so demand.

SECTION 3
Novation

Art. 1329. – Novation is a contract which has as its subject-matter the substitution of one obligation (which it extinguishes) with a new obligation (which it creates).

It may take place by substitution of obligations between the same parties, by change of debtor or by change of creditor.

Art. 1330. – Novation cannot be presumed. The will to effect it must be shown clearly in the instrument.

Art. 1331. – Novation takes place only if the old and the new obligations are both valid, unless it has as its declared subject-matter the substitution of a valid undertaking for an undertaking which is tainted by a defect.

Art. 1332. – Novation by change of debtor may take place without the concurrence of the first debtor.

Art. 1333. – Novation by change of creditor requires the consent of the debtor, who may agree in advance that the new creditor is to be appointed by the old.

Novation can be set up against third parties at the date of the instrument. In the event of challenge, the burden of proof of the date rests on the new creditor, who may establish it by any means of proof.

Art. 1334. – Extinction of the old obligation extends to all its ancillary rights and obligations.

By way of exception, any initial security may be preserved to guarantee the new obligation if the third party guarantors so agree.

Art. 1335. – A novation agreed between the creditor and one of two or more joint and several debtors discharges the others.

A novation agreed between the creditor and a guarantor does not discharge the principal debtor. It discharges the other guarantors to the extent that their contribution is based on the novated obligation.

SECTION 4
Delegation

Art. 1336. – Delegation is a transaction by which one person (the delegator) obtains from another (the delegate) an obligation in favour of a third party (the beneficiary of the delegation), who accepts him as debtor.

Unless otherwise provided, the delegate may not set up against the beneficiary of the delegation any defence arising from his relations with the delegator, or from the relations between the latter and the beneficiary of the delegation.

Art. 1337. – Where the delegator is debtor of the beneficiary of the delegation and the instrument demonstrates expressly the will of the beneficiary of the delegation to discharge the delegator, the delegation takes effect as a novation.

However, the delegator remains bound if he had expressly undertaken to guarantee the future solvency of the delegate, or if the delegate is subject to a procedure for cancellation of his debts at the time of the delegation.

Art. 1338. – Where the delegator is debtor of the beneficiary of the delegation but the latter has not discharged his debt, the delegation provides the beneficiary with another debtor.

Satisfaction rendered by one of the two debtors discharges the other to the extent of the satisfaction so rendered.

Art. 1339. – Where the delegator is creditor of the delegate, his rights are extinguished only by the performance of the delegate's obligation in favour of the beneficiary of the delegation, and only to the extent of that performance.

Until then, the delegator may require or accept satisfaction only in relation to the share beyond that which the delegate has undertaken. He may enforce his rights only if he performs his own obligation in favour of the beneficiary of the delegation.

An assignment or distraint of the rights of the delegator can take effect only subject to these same limitations.

However, if the beneficiary of the delegation has discharged the delegator, the delegate is also discharged as against the delegator, to the extent of the value of his undertaking in favour of the beneficiary of the delegation.

Art. 1340. – A simple indication by the debtor of a person designated to perform in his place does not constitute either novation or delegation. The same is true of a simple indication by the creditor of a person designated to receive satisfaction on his behalf.

CHAPTER III
ACTIONS AVAILABLE TO CREDITORS

Art. 1341. – A creditor has the right to performance of the obligation; he may compel the debtor to perform under the conditions provided by legislation.

Art. 1341-1. – Where a debtor's failure in the exercise of his patrimonial rights and actions[29] compromises the rights of his creditor, the latter may exercise them on behalf of the debtor, with the exception of those which belong exclusively to the debtor personally.

[29] 'His patrimonial rights and actions' translates '*ses droits et actions à caractère patrimonial*'. *Le patrimoine* consists of the totality of a person's property, rights and obligations. It is used by the *Code civil*, *inter alia*, in the context of a minor's property (e.g. art. 387-1) and in the context of matrimonial property regimes (e.g. art. 1569).

Art. 1341-2. – A creditor may also sue in his own name to obtain a declaration that acts made by the debtor in fraud of his rights may not be set up against him. In the case of non-gratuitous acts, he can do so only if he establishes that the third party contracting with the debtor knew of the fraud.

Art. 1341-3. – In cases determined by legislation, a creditor may sue directly to obtain satisfaction from a debtor of his own debtor.

CHAPTER IV
EXTINCTION OF OBLIGATIONS

SECTION 1
Satisfaction

Sub-section 1
General Provisions

Art. 1342. – Satisfaction is the voluntary performance of the act of performance which is due.

Satisfaction must be rendered as soon as the debt becomes enforceable.

It discharges the debtor as against the creditor and extinguishes the debt, except where legislation or the contract make provision for subrogation to the rights of the creditor.

Art. 1342-1. – Satisfaction may even be rendered by a person who is not bound to do so, except where the creditor legitimately refuses it.

Art. 1342-2. – Satisfaction must be rendered to the creditor or to a person designated to receive it.

Satisfaction rendered to a person who was not authorised to receive it is nonetheless valid if the creditor ratifies it or has received a benefit from it.

Satisfaction rendered to a creditor who lacks capacity to contract is not valid unless he has received a benefit from it.

Art. 1342-3. – Satisfaction rendered in good faith to an apparent creditor is valid.

Art. 1342-4. – A creditor may refuse to accept partial satisfaction, even if the act of performance is divisible.

He may agree to receive in satisfaction some other thing than that which is owed to him.

Art. 1342-5. – A debtor who has the obligation to deliver specific property is discharged by the delivery to the creditor of the thing in its present state unless, where it has deteriorated, it is proved that the deterioration was not a consequence of his action or the action of persons for whom he is responsible.

Art. 1342-6. – Unless legislation, the contract or the court otherwise provide, satisfaction must be rendered at the place of domicile of the debtor.

Art. 1342-7. – The costs of satisfaction must be borne by the debtor.

Art. 1342-8. – Satisfaction may be established by any means of proof.

Art. 1342-9. – A voluntary delivery by the creditor to the debtor of the original signed instrument, or of the court order establishing his right, raises a simple presumption[30] that the debtor has been discharged.

A delivery of that same kind to one of the joint and several debtors has that same effect in relation to them all.

Art. 1342-10. – A debtor who owes more than one debt may indicate when he renders satisfaction which debt he intends to discharge.

Failing indication by the debtor allocation is as follows: first, to overdue debts, and amongst these the debts which the debtor has the greatest interest in discharging. If the interest in their discharge is equal, satisfaction is allocated to the oldest; and things being equal, the allocation is pro rata.

Sub-section 2
Particular Provisions Relating to Monetary Obligations

Art. 1343. – A debtor of a monetary obligation is discharged by payment of its nominal value.

The value of a sum due may vary as a result of indexation.

A person who owes a debt whose value is to be assessed is discharged by the payment of the sum of money which is identified by its assessment.

Art. 1343-1. – Where a monetary obligation carries interest, the debtor is discharged by the payment of the principal and interest. Part-payment is allocated in the first instance to interest.

Interest is either granted by legislation or stipulated by the contract. An agreed rate of interest must be fixed in writing. In the absence of contrary provision, the interest is deemed to be annual.

Art. 1343-2. – Overdue interest which has been due for at least a full year generates interest where the contract so provided or a court order so specifies.

Art. 1343-3. – Payment in France of a monetary obligation must be made in Euros. However, payment may be made in another currency if the obligation providing for it arises under an international contract or a foreign judgment.

[30] As art.1354, below makes clear a 'simple' presumption is one which may be rebutted by proof to the contrary.

Art. 1343-4. – Unless legislation, the contract or the court otherwise provide, the place of satisfaction of a monetary obligation is the domicile of the creditor.

Art. 1343-5. – Taking into account the situation of the debtor and the needs of the creditor, a court may defer payment of sums that are due, or allow it to be made in instalments, for a period no greater than two years.

By a special, reasoned decision, a court may order that sums corresponding to deferred instalments shall bear interest at a reduced rate (not lower than the legal rate of interest) or that any payments made will first be allocated to repayment of capital.

The court may make these measures subject to the debtor effecting acts appropriate to facilitate or to secure payment of the debt.

A court order suspends any enforcement procedures which might have been initiated by the creditor. Any interest payable or penalties provided for in case of delay are not incurred during the period fixed by the court.

Any contractual provision to the contrary is deemed not written.

The provisions of this article do not apply to debts in relation to maintenance payments.

Sub-section 3
Notice to Perform

Paragraph 1 – Notice to the Debtor

Art. 1344. – A debtor is put on notice to perform by formal demand, by an act which gives sufficient warning, or, where this is provided for by the contract, by the mere fact that the obligation is enforceable.

Art. 1344-1. – A notice to perform a monetary obligation causes interest for delay in payment to run at the rate set by legislation, without the creditor being required to demonstrate any loss.

Art. 1344-2. – A notice to deliver a thing passes the risk to the debtor, if the risk has not already passed.

Paragraph 2 – Notice to the Creditor

Art. 1345. – Where performance is due, and without legitimate reason the creditor refuses to accept performance, or obstructs it by his own actions, the debtor may put him on notice to accept or permit performance.

Notice to the creditor stops interest running against the debtor and passes the risk of the thing to the creditor, if the risk has not already passed, except in case of gross negligence or fraud on the part of the debtor.

It does not interrupt the running of time for the purposes of prescription.

Art. 1345-1. – Where the obstruction has not come to an end within two months of the notice, the debtor may, if the obligation concerns a sum of money, deposit the sum with the *Caisse des dépôts et consignations*[31] or, where the obligation concerns the delivery of a thing, sequester it in the custody of a person authorised to hold it.

If sequestration of a thing is impossible or too onerous, the court may authorise its sale by private agreement or by public auction. After deduction of the costs of the sale, the price is deposited with the *Caisse des dépôts et consignations*.

Deposit or sequestration discharges the debtor from the moment when the creditor is notified of them.

Art. 1345-2. – Where the obligation concerns some other subject-matter, the debtor is discharged if the obstruction has not come to an end within two months of the notice.

Art. 1345-3. – The costs of the notice and of the deposit or sequestration must be borne by the creditor.

Sub-section 4
Satisfaction with Subrogation

Art. 1346. – Subrogation takes place by the sole operation of law in favour of a person with a legitimate interest in it who satisfies a debt provided that his satisfaction discharges as against the creditor another person who is subject to the final burden in respect of all or part of a debt.

Art. 1346-1. – Subrogation by contract takes effect on the initiative of the creditor where, on receiving satisfaction from a third party, the creditor substitutes the third party for himself as against the debtor.

This type of subrogation must be express.

It must be agreed upon at the same time as the satisfaction, unless, in an earlier act, the party who subrogates has indicated his will that the other contracting party should be subrogated to him at the time of satisfaction. The concomitance of the subrogation and the satisfaction may be established by any means of proof.

Art. 1346-2. – Subrogation also takes place where a debtor, borrowing a sum of money in order to satisfy his debt, subrogates the lender to the creditor's rights with the latter's concurrence. In this situation, subrogation must be express, and the receipt given by the creditor must indicate the source of the funds.

[31] 'The Caisse des Dépôts et Consignations is a special institution charged with the administration of deposits and consignments, the provision of services relating to the funds whose management has been entrusted to it, and the exercise of other functions of the same nature which are lawfully delegated to it': art. L. 518-2 of the French Monetary and Financial Code (extract)). See further www.caissedesdepots.fr/.

Subrogation may be agreed without the concurrence of the creditor, but only where the debt has fallen due or the period for payment was set for the debtor's benefit. In such case the instrument of loan and the receipt must be entered into before a notary, it must be declared in the instrument of loan that the sum has been borrowed in order to have the debt satisfied, and in the receipt it must be declared that the satisfaction has been effected from sums paid for this purpose by the new creditor.

Art. 1346-3. – Subrogation cannot prejudice the creditor where he has received satisfaction only in part; in this situation, he may exercise his rights, as regards what still remains owed to him, in priority to the person from whom he has received only partial satisfaction.

Art. 1346-4. – Subrogation transfers to its beneficiary, up to the limit of the satisfaction which he has rendered, the right arising from the obligation and its ancillary rights, apart from rights which belong exclusively to the creditor personally.

However, the subrogated person is entitled only to interest at the rate set by legislation from the moment of a notice to perform, unless he has agreed a new rate of interest with the debtor. The interest on either basis is guaranteed by any security attached to the creditor's right, but where the security was created by third parties, this is limited to their initial undertaking unless they consent to extend their obligation.

Art. 1346-5. – The debtor may invoke the subrogation from the time he becomes aware of it, but it can be set up against him only if it has been notified to him or if he has acknowledged it.

Subrogation may be set up against third parties from the time of the satisfaction.

As against a subrogated creditor, the debtor may set up the defences inherent in the debt itself, such as nullity, the defence of non-performance, termination or the right to set off related debts. He may also set up defences which arose from the relations with the subrogating party before the subrogation became enforceable against him, such as the grant of a deferral, the release of a debt, or the set-off of debts which are not related.

SECTION 2
Set-Off

Sub-section 1
General Rules

Art. 1347. – Set-off is the simultaneous extinguishment of reciprocal obligations between two persons.

If it is invoked, it operates up to the value of the lower of the two obligations at the date when all the conditions for set-off are met.

Art. 1347-1. – Subject to the provisions of the following sub-section, set-off takes place only in the case of two fungible obligations which are certain, liquidated and enforceable.

Obligations are fungible if they are of a sum of money, even in different currencies, provided that they can be converted; or if they have as their subject-matter a quantity of things of the same generic kind.

Art. 1347-2. – Unless the creditor consents, there can be no set-off of rights that cannot be attached, or of the obligation to return a deposit, a thing loaned for use, or a thing of which the owner has been unjustly deprived.

Art. 1347-3. – A period of grace for payment is no obstacle to set-off.

Art. 1347-4. – If there is more than one debt liable for set-off, the rules for the allocation of payments are applicable.

Art. 1347-5. – Where the debtor has acknowledged without reservation the assignment of the creditor's right, he may not set up against the assignee a set-off which he could have set up against the assignor.

Art. 1347-6. – A guarantor may set up against the creditor a set-off which arises between the creditor and the principal debtor.

A joint and several debtor may take advantage of a set-off which arises between the creditor and one of his co-debtors in order to deduct from the total debt the separate part of the debt owed by that debtor.

Art. 1347-7. – Set-off does not prejudice vested rights of third parties.

Sub-Section 2
Particular Rules

Art. 1348. – Set-off may be ordered by a court even if one of the obligations, although certain, is not yet liquidated or enforceable. Unless otherwise decided, in these circumstances set-off is effective at the date of the decision.

Art. 1348-1. – The court may not refuse to set off related debts for the sole reason that one of the obligations would not be liquidated or enforceable.

In that situation, set-off is deemed to be effected on the day when the first of the obligations becomes enforceable.

In that same situation, the acquisition by a third party of rights in relation to one of the obligations does not prevent the debtor from raising set-off.

Art. 1348-2. – The parties are free to agree to extinguish all reciprocal obligations, present or future, by set-off. Such a set-off takes effect on the date of their agreement or, if it concerns future obligations, when they co-exist.

SECTION 3
Merger

Art. 1349. – There is merger where the same person becomes both creditor and debtor of the same obligation. It extinguishes the debt and any ancillary rights and obligations, apart from any rights acquired by or against third parties.

Art. 1349-1. – Where merger affects only one joint and several debtor, or only one joint and several creditor, the extinction takes place as regard the others only for that party's share.

Where merger affects an obligation which has been guaranteed, the guarantor is discharged even if he is a joint and several guarantor. Where merger affects one of a number of guarantors, the principal debtor is not discharged. The other joint and several guarantors are discharged to the extent of that guarantor's share.

SECTION 4
Release of Debts

Art. 1350. – Release of a debt is a contract by which the creditor discharges the debtor from his obligation.

Art. 1350-1. – Release granted to one of two or more joint and several debtors discharges all the others to the extent of that debtor's share.

Release of a debt agreed by only one of two or more joint and several creditors discharges the debtor only as regards that creditor's share.

Art. 1350-2. – Release of a debt granted to a principal debtor discharges any guarantors, even if they are joint and several guarantors.

Release agreed for one of two or more joint and several guarantors does not discharge the principal debtor, but discharges the others to the extent of that guarantor's share.

Anything received by a creditor from a guarantor in return for the discharge of his guarantee must be set against the debt and to this extent discharges the principal debtor. The other guarantors remain bound only to the extent which remains after deduction of the share of the guarantor who has been discharged, or of the value he has provided if that exceeds his share.

SECTION 5
Impossibility of Performance

Art. 1351. – Impossibility of performing the act of performance discharges the debtor to the extent of that impossibility where it results from an event of force majeure and is definitive unless he had agreed to bear the risk of the event or had previously been given notice to perform.

Art. 1351-1. – Where the impossibility of performance is a result of the loss of the thing that is owed, the debtor who has been given notice to perform is still discharged if he proves that the loss would equally have occurred if his obligation had been performed.

He must, however, assign to the creditor his rights and claims attached to the thing.

CHAPTER V
RESTITUTION

Art. 1352. – Restitution of a thing other than a sum of money takes place in kind or, where this is impossible, by value assessed at the date of the restitution.

Art. 1352-1. – A person who makes restitution of a thing is responsible for any degradations or deteriorations which have reduced its value unless he was in good faith and these were not due to his fault.

Art. 1352-2. – A person who sells a thing which he received in good faith must make restitution only of the sale price.

If he received it in bad faith, he must pay the value at the date on which he makes restitution where that is higher than the price.

Art. 1352-3. – Restitution includes its fruits and the value of the enjoyment to which the thing has given rise.

The value of the enjoyment is to be assessed by the court as at the date of its decision.

Unless otherwise stipulated by the contracting parties, if the fruits no longer exist in kind, their restitution takes place, according to a value assessed at the date of reimbursement, on the basis of the condition of the thing at the date of satisfaction of the obligation.

Art. 1352-4. – Restitution owed to an unemancipated minor or to a protected adult is reduced in proportion to the profit which he has drawn from the act that has been annulled.

Art. 1352-5. – The amount of restitution is fixed taking into account for the party who owes restitution any necessary expenses incurred in the maintenance of the thing, and expenses which have increased its value, limited to the increase in value assessed at the date of restitution.

Art. 1352-6. – Restitution of a sum of money includes interest at the rate set by legislation and any taxes paid to the person who received it.

Art. 1352-7. – A party in receipt in bad faith owes interest, the fruits he has taken and the value of enjoyment from the moment of receipt of satisfaction. A party in receipt in good faith owes these only from the date when they are claimed.

Art. 1352-8. – Restitution in respect of a supply of a service takes place by value, assessed at the date at which the service was supplied.

Art. 1352-9. – Securities created for the satisfaction of an obligation are transferred by operation of law to the obligation to make restitution, although the guarantor does not lose the benefit of any time delay.

TITLE IVB
PROOF OF OBLIGATIONS

CHAPTER I
GENERAL PROVISIONS

Art. 1353. – A person who claims performance of an obligation must prove it.

Conversely, a person who claims to have been discharged must establish satisfaction or circumstances which have resulted in the extinction of the obligation.

Art. 1354. – A presumption which legislation attaches to certain acts or to certain facts and thereby considers them to be certain, dispenses the person in whose favour it exists from their proof.

A presumption is termed ‘simple’ where legislation allows proof to the contrary and where it can be overturned by any means of proof; it is termed ‘mixed’ where legislation limits the means by which it may be overturned or the grounds on which it may be overturned; it is termed ‘irrebuttable' where it may not be overturned.

Art. 1355. – The authority of *res judicata* applies only with respect to the subject-matter of the judgment. The subject-matter of the claim must be the same; the claim must have the same ground; the claim must be between the same parties, and brought by and against them in the same capacity.

Art. 1356. – Contracts relating to proof are valid where they concern rights of which the parties have free disposal.

However, they cannot contradict irrebuttable presumptions established by legislation, nor modify the probative force attached to admissions in court or to oaths. Moreover, they cannot establish an irrebuttable presumption for the benefit of one of the parties.

Art. 1357. – The judicial administration of the proof of any matter, and disputes relating to it, are governed by the Code of Civil Procedure.

CHAPTER II
ADMISSIBILITY OF KINDS OF PROOF

Art. 1358. – Apart from cases for which legislation provides otherwise, proof may be established by any means.

Art. 1359. – A juridical act relating to a sum of money or value in excess of an amount fixed by decree must be proved by evidence in writing, whether privately signed or authenticated.[32]

No proof may be brought beyond or contrary to evidence in writing establishing a juridical act, even if the sum of money or value does not exceed this amount, except by other written evidence which is signed or contained in an authenticated instrument.

A person whose contractual right exceeds the threshold mentioned in the previous paragraph may not be dispensed from proving it by evidence in writing by reducing his claim.

The same rule applies to a person whose claim, even if lower than this amount, concerns the balance of a sum or a part of a right higher than this amount.

Art. 1360. – The rules provided by the preceding article find an exception in the case of physical or moral impossibility of the written evidence being obtained, if it is customary not to establish written evidence, or where the written evidence has been lost as a result of force majeure.

Art. 1361. – Evidence in writing may be supplemented by an admission in court, by a decisive oath, or by a beginning of proof by writing which is corroborated by another means of proof.

Art. 1362. – Any written evidence constitutes a beginning of proof by writing where it originates from the person who is challenging the act or a person whom he represents and renders what is alleged likely to be true.

A court may consider as equivalent to a beginning of proof by writing any statements made by a party in responding orally to the court's questions, his refusal to reply to the court's questions, or his failure to appear to respond to the court's questions.[33]

A reference to an authenticated writing or to a signed writing on a public register is equivalent to a beginning of proof by writing.

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[32]We have translated '*sous signature privée*' here as 'privately signed', but more generally we translate as 'signed writing', the significance being that something is *merely signed* as opposed to having been authenticated. Cf. arts 1369–1371 (on authenticated instruments) and 1372–1377 (on signed instruments).

[33] This provision concerns various aspects of *la comparution personnelle*, which is a procedural mechanism for the collection of evidence available to a court and consists of the court putting questions orally to a party: see arts 184–194 *Code de la procédure civile*.

CHAPTER III
THE DIFFERENT KINDS OF PROOF

SECTION 1
Proof by Written Evidence

Sub-section 1
General Provisions

Art. 1363. – No-one can set up their own title by themselves.

Art. 1364. – Proof of a juridical act may be constituted in advance by its being created in a publicly authenticated written form or by signature.

Art. 1365. – Writing consists of a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, whatever their medium.

Art. 1366. – Electronic writing has the same probative force as writing on paper, provided that it is possible properly to identify the person from whom it originates and that it is created and stored in such conditions as will guarantee its integrity.

Art. 1367. – A signature which is required in order to perfect a juridical act identifies its own author. It demonstrates his consent to the obligations which stem from that act. Where it is placed on the act by a public official, it confers authenticity on it.

Where it is in electronic form, it must use a reliable process of identification which guarantees its relationship with the act to which it is attached. The reliability of the process is presumed in the absence of proof to the contrary where an electronic signature is created, the identity of the signatory is ensured and the integrity of the act is guaranteed on the conditions fixed by decree of the *Conseil d'État*.

Art. 1368. – In the absence of legal provision or agreement to the contrary, a court resolves conflicts of written evidence by deciding which title is the more likely to be true by reference to any means of proof.

Sub-section 2
Authenticated Instruments

Art. 1369. – An authenticated instrument is one which has been received, with the requisite formalities, by a public official having the power and the function to draw it up.

It may be drawn up in an electronic medium if it is created and stored on the conditions fixed by decree of the *Conseil d'État*.

Where it is received by a notary, it does not require any statement in his own hand otherwise required by legislation.

Art. 1370. – An instrument which is not authenticated as a result of the lack of authority or incapacity of the official, or of a defect in its form, takes effect as a signed document provided that it was signed by the parties.

Art. 1371. – An authenticated instrument constitutes proof of the act it contains unless an allegation of forgery against the relevant public officer as regards things which he has personally accomplished or has given formal recognition is made.

Where the instrument is forged, the court may suspend its performance.

Sub-section 3
Signed Instruments

Art. 1372. – A signed instrument, acknowledged by the party against whom it is set up or deemed by law to have been so acknowledged, constitutes proof as between its signatories and as regards their heirs or successors.

Art. 1373. – A party against whom the instrument is set up may disavow his writing or signature. The heirs or successors of a party may similarly disavow the writing or signature of its claimed author, or declare that they do not recognise it. In these situations, the veracity of the writing is to be assessed.

Art. 1374. – A signed instrument countersigned by the legal counsel of each of the parties or by the legal counsel of all the parties provides proof both of the writing and of the signature of the parties, equally as regards themselves and as regards their heirs or successors.

The rules on alleging the forgery of the instrument provided by the Code of Civil Procedure may apply to it.

Such an instrument does not require any statement in its author's own hand otherwise required by legislation.

Art. 1375. – A signed instrument which records a synallagmatic contract constitutes proof of it only if it was made in as many originals as there are parties having a distinct interest, unless the parties agreed to deposit with a third party a unique executed copy of it.

Each original must state the number of the originals which have been executed.

A person who has performed a contract even in part cannot set up a failure in the proper number of the originals or in stating their number.

The requirement of more than one original is deemed to have been satisfied for contracts in an electronic form where the act is created and stored in accordance with articles 1366 and 1367 and the process allows each party to be in possession of or have access to a copy of it in a durable medium.

Art. 1376. – A signed instrument by which a single party undertakes an obligation towards another to pay him a sum of money or deliver to him fungible property does not constitute proof of it unless it bears the signature of the one who undertook the obligation, as well as a statement, written by the signatory himself, of the sum or of the quantity in both words and numbers. In case of a discrepancy between the two, the signed instrument is equivalent to proof of the sum written in words.

Art. 1377. – As against third parties, a signed instrument acquires a date of its execution which is certain only from the day when it was registered, the day of the signatory's death, or from the day when its substance is formally declared in an authenticated instrument.

Sub-section 4
Other writings

Art. 1378. – Registers and documents which persons in business or a profession must hold or create have the same probative force as signed writing against the person who makes them; but a person who relies on them cannot pick and choose between the statements which they contain so as to retain only those which are favourable to him.

Art. 1378-1. – Household registers and papers do not constitute proof for the benefit the person who wrote them.

They constitute proof against him:

1. wherever they formally acknowledge receipt of payment;

2. where they contain express mention that the writing has been made in order to remedy the defect in documentary evidence for whose benefit they refer to an obligation.

Art. 1378-2. – A reference to the satisfaction or other ground of discharge by a creditor borne on the original instrument of title which still remains in his possession is equivalent to a simple presumption of discharge of the debtor.

The same is true of a reference borne by a duplicate of an instrument of title or of a receipt, provided that the duplicate is in the hands of the debtor.

Sub-section 5
Copies

Art. 1379. – A reliable copy has the same probative force as the original. Reliability is left to the assessment of the court. Nevertheless, a copy certified for enforcement or an authenticated copy of authenticated writing is deemed to be reliable.

Any copy resulting in a reproduction which is identical in form and content to the act, and whose integrity is guaranteed in time by means which follow the conditions fixed by decree of the *Conseil d'Etat,* is presumed to be reliable subject to proof to the contrary.

If an original document still exists, its production may always be required.

Sub-section 6
Acts of acknowledgement

Art. 1380. – An act of acknowledgment does not dispense with the requirement to produce the original document of title unless its content is specifically set out in the acknowledgment.

Anything contained in the acknowledgement which goes beyond the original document, or which is different from it, is of no effect.

SECTION 2
Proof by testimonial evidence

Art. 1381. – The probative value of declarations made by third parties under the conditions set by the Code of Civil Procedure is left to the assessment of the court.

SECTION 3
Proof by judicial presumption

Art. 1382. – Presumptions which are not established by legislation are left to the assessment of the court, which must allow only presumptions which are weighty, definite and corroborative, and only in the situations where legislation permits proof by any means.

SECTION 4
Admissions

Art. 1383. – An admission is a declaration by which a person recognises as true a fact which is of a kind to produce legal consequences to his prejudice.

It may be judicial or extra-judicial.

Art. 1383-1. – A purely oral extra-judicial admission is not recognised except in the situations where legislation permits proof by any means.

Its probative value is left to the assessment of the court.

Art. 1383-2. An admission in court is a declaration made in the course of proceedings by a party or by his specially authorised representative.

It constitutes proof against the person who makes it.

It may not be divided against its author.

It is irrevocable, except in the case of mistake of fact.

SECTION 5
Oaths

Art. 1384. – A decisive oath may be required by a party of another in order to make the outcome of the case thereby depend upon it. It may also be required of one of the parties by the court of its own initiative of one of the parties.

Sub-section 1
Decisive oaths

Art. 1385. – A decisive oath may be required on any matter in dispute and at any stage in the proceedings.

Art. 1385-1. – It may be required only as to a personal action of the party of which it is required.

It may be referred back by the latter, at least if the action which is its subject-matter is not purely personal to him.

Art. 1385-2. – A person of whom an oath is required, and who refuses to take it or does not wish to refer it back to the other party, or the person to whom it has been referred back and who refuses to take it, fails in his allegation.

Art. 1385-3. – A party who has required or referred back an oath cannot retract his decision to do so where the other party has declared that he is ready to take an oath on it.

Where an oath which has been required or referred back has been taken, the other party is not permitted to prove that it is false.

Art. 1385-4. – An oath constitutes proof only in favour of, or against, the person who required it and his heirs and successors.

An oath required by one of two or more joint and several creditors of the debtor releases the debtor only in relation to that creditor's share.

An oath required of a principal debtor also releases his guarantors.

One required of one of two or more joint and several debtors benefits his co-debtors.

And one required of a guarantor benefits the principal debtor.

In the last two situations, an oath by a joint and several debtor or by a guarantor benefits the other co-debtors or the principal debtor only where it has been required in relation to the debt, and not in relation to the fact of the joint and several nature of the liability, or the fact of the guarantee.

Sub-section 2
Oath required by a Court of its own Initiative

Art. 1386. – A court may require an oath of one of the parties of its own initiative.

Such an oath may not be referred to the other party.

Its probative value is left to the assessment of the court.

Art. 1386-1. – A court may require an oath of its own initiative only in support of a claim, or of any defence which is set up against it, if the claim or defence is neither conclusively justified nor completely lacking in means of proof.

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Institut de Droit des Affaires Internationales (IDAI)

2021-2022

Document 3
Egyptian Civil Code

Mr. Abdelrahman MAHDY

Law No. 131 of the Year 1948

Promulgating the Civil Code[1]

Article 1 - The civil code applicable before national courts issued on 28 October 1883 and the civil code applicable before mixed courts issued on 28 June 1875 are cancelled and replaced by the Civil Code attached to this Law.

Article 2 - The Minister of Justice shall enforce this Law and effectuate it as of 15 October 1949.

It is commanded that this law be affixed with the State Seal, be published in the Official Gazette and enforced as a State Law.

Issued at Kasr El Qobba on 9 Ramadan 1367 (16 July 1948)

[1] Egyptian Gazette – Issue 108bis (A) issued on 29 July 1948

Partition One
Personal Obligations and Duties
Book One
Obligations in General
Section One
Sources of Obligations
Chapter One
The Contract
1- Contract Elements

Consent:

Article 89 – A contract is concluded once the parties exchange identical wills, with due regard to certain forms stipulated by the law to conclude a contract.

Article 90 – (1) Expressing the will shall be verbal and in writing and in common signals and shall also be by actions that do not implicate any doubts concerning the intended will.

(2) Expression of the will may be implicit, if the law does not stipulate otherwise or the parties agree that it shall be expressive.

Article 91– Expressing the will results at the time it reaches the awareness of the intended, and is considered evidence to knowledge, unless otherwise evidenced.

Article 92 – In the event the person by whom the expression of will was made dies or loses its capacity prior to the results of the expression of such will, this does not prevent the consequences of such expression at the time it reaches the intended, unless the contrary appears by expression of nature of dealing.

Article 93 – (1) If a date is fixed for acceptance, the promisor must keep its promise until the lapse of such date.

(2) The date may be concluded by circumstances or the nature of the dealing.

Article 94 – (1) In the event the promise is issued in the contract session without fixing a date for consent, the promisor is acquitted from his/her promise if the consent is not immediately issued. The same applies if the promise is issued from a person to another by way of telephone or the like.

(2) However, the contract is concluded, even if the consent is not immediately issued, in the event nothing proves that the promisor withdrew his/her promise within the period between the promise and the consent and the consent is issued before the contract session is adjourned.

Article 95 – In the event both parties agree to all the essential matters of the contract and kept detailed matters to be agreed upon later on and did not condition that the contract is pending the agreement to such matters, then the contract is deemed concluded. Should there be a dispute concerning the non-agreed upon matters, the court shall then decide thereon according to the nature of the dealing and the provisions of the law, custom and equity.

Article 96 – In the event the consent is associated with excess, amendment or restriction to the promise, it is them deemed a rejection including a new promise.

Article 97 – (1) A contract between absentees is deemed concluded at the time and place at which the acceptance reaches the promisor, unless an agreement or a legal provisions otherwise stipulates.

(2) It is presumed that the acceptance reached the awareness of the promisor at the time and place such acceptance has reached.

Article 98 – (1) In the event the nature of the transaction or the commercial custom or other circumstances evidence that the promisor was not awaiting and expressive acceptance, then contract is then deemed concluded, unless the promise is declined on time.

(2) Silence is deemed as acceptance in the event there is a previous dealing between the parties and the promise was in connection with such dealing or was of the absolute interest to which it was directed.

Article 99 – A contract in auctions is not included except after the adjudication of the auction. The tender lapses with a higher tender even if it was null.

Article 100 – Acceptance in obedience contracts requires only the delivery by stipulated terms stated by the promisor which are not subject to discussion.

Article 101 – (1) An agreement by which one of or both parties promise to conclude a certain contract in the future does not conclude, unless all essential matters of the contract to be concluded are determined and the period within which it shall be concluded.

(2) In the event the law requires a certain form to complete the contract, such form shall be observed in the agreement including the promise to conclude such contract.

Article 102 – If a person promises to conclude a contract and then drew back and the other party claimed the fulfillment of the promise and the conditions necessary for the completion of the contract, especially concerning the form, are available, the judgment then replaces the contract.

Article 103 – (1) Payment of deposit at the time of concluding the contract means that both parties have the right to draw back unless the agreement otherwise stipulates.

(2) Should the party paying the deposit draw back after payment thereof, such deposit is then lost. If the party receiving the deposit draws back, such party shall then reimburse double the deposit, even if no damage results from such drawback.

Article 104 – (1) In the event the contract is concluded by proxy, then the agent, not the principal, is the person to be considered for defects of will or consequences of knowledge of special circumstances, otherwise such circumstances are considered definitely known.

(2) However, if the agent is an attorney and acting according to certain instructions issued thereto by the principal, the principal then may not invocate to the ignorance of the agent of circumstances known to the principal or of which the principal is supposed to be definitely aware thereof.

Article 105 – In the event the agent, within the limits of his/her empowerment, concludes a contract in the name of the principal, the rights and obligations resulting from such contract are then attributed to the principal.

Article 106 – If the party, at the time of concluding the contract, does not announce that he/she is acting in his/her capacity as an agent; the results of the contract are not attributed to the principal as debtor or creditor, unless the proxy is definitely known to the other party or if it is the like for the other party to deal with the agent or principal.

Article 107 – In the event the agent and the other party are both not aware at the time of contracting of the lapse of proxy, the consequences of the contract, whether rights or obligations, are attributed to the principal and his/her successors.

Article 108 – A person may not conclude a contract with himself in the name of his/her principal, whether in his/her or in another person's interest, without an authorization from the principal. However, the principal, in such event, has the right to validate the contract. This shall all be in observation to the allowed and prohibited by the law or rules of trade.

Article 109 – Every person is capacitated to conclude a contract as long as his/her legal capacity is not withdrawn or limited by the law.

Article 110 – The indistinctive minor is not entitled to act on his/her funds and all his/her disposals are deemed null and void.

Article 111 – (1) If a minor is distinctive, then his/her financial disposals are valid once they are of absolute benefit and null and void when they are of absolute harm.

(2) Financial disposals between benefit and harm are voidable in the interest of the minor. The right of voiding lapses if the minor validates the act after reaching the age of maturity or if such validation is issued by his/her guardian or the court, as the case may be, according to law.

Article 112 – If the distinctive person reaches eighteen years of age and is authorized to receive and manage his/her money, or received such money by a legal judgment; the management acts thereby are then valid within the limits stated by the law.

Article 113 – The insane, mentally deficient, inadvertent or prodigal are restrained and unrestrained by the court according to the rules and procedures stipulated by the law.

Article 114 – (1) The acts of the insane and mentally deficient are null and void if such act is committed after the registration of the restraining order.

(2) Should the act be committed before the registration of restraining, it is then not void except when the case of insanity or mental deficiency is existent at the time of the contract or the other party is aware thereof.

Article 115 – (1) In the event an act is committed by the inadvertent or the prodigal after the registration of restraining, such act shall be subject to the same provisions applicable to the acts of the distinctive minor.

(2) Acts committed before the registration of restraining are not void or voidable unless such acts are a result of exploitation or collusion.

Article 116 – (1) The acts of mortmain or testament by the restrained due to prodigality or inadvertence are valid as long as authorized by the court.

(2) Management acts by the restrained due to prodigality authorized to receive his/her money are valid within the limits stipulated by law.

Article 117 – (1) If a person is deaf and mute or blind and deaf or blind and mute and cannot therefore express his/her will, the court may appoint a judicial aid thereto to assist him/her in the acts which his/her interest require.

(2) All acts to which judicial assistance was ordered are voidable, as long as the person subject to such assistance acts without the assistance of the judicial aid, if such act is committed after the registration of the aid resolution.

Article 118 – Acts issued by guardian, wards and custodians are valid within the limits stipulated by law.

Article 119 – A person of incomplete legal capacity may request the nullification of a contract, with due regard to his/her obligation to compensation, in the event he/she used fraudulent means to conceal his/her incomplete capacity.

Article 120 – If a party to the contract falls into grave default, he/she may then request the nullification of the contract, if the other party was subject to the same default or aware thereof or had the option to easily discover it.

Article 121 – (1) A default is essential if it reaches the extent of graveness whereby the party refrains from concluding to the contract due to such default.

(2) A default is particularly considered essential:

(a) If it is in an characteristic of the object that is considered essential to the parties of the contract or should be considered as such due to the circumstances of the contract and the good faith required for the dealing.

(b) If it is a default in the party or one of his/her characteristics while such is the main purpose of the contract.

Article 122 – The contract is voidable due to a default in law, if such default meets the conditions of default in fact according to the two foregoing paragraphs unless the law otherwise stipulates.

Article 123 – Error in calculations or typographical errors alone do not affect the validity of the contract, nevertheless the error must be corrected.

Article 124 – (1) A person in default may not invocate to such default in a manner contradicting with good faith.

(2) Such person remains particularly obliged to the contract he/she intended to conclude if the other party shows intention to execute such contract.

Article 125 – (1) The contract may be nullified due to deception if the fraud one of the parties or its agent used is grave to the extent that the other party would not nullify the contract if non-existent.

(2) Deliberate silence on a fact or incident is considered deception if it is evidenced that the party subject to such deception would not have concluded the contract if he/she was aware of such fact or incident.

Article 126 – If the deception is caused by a third party other than the parties to the contract, the deceived party may not request the nullification of the contract, as long as it is not evidenced that the other party was aware or must have definitely been aware of such deception.

Article 127 – (1) A contract may be nullified due to force if a person concludes a contract under force or fear unjustifiably caused by the other party and based on a true fact.

(2) Fear is based on a true fact if the circumstances portray to the party who claims to be under its influence that an impending grave danger is threatening his/her or others spiritually, physically, morally or financially.

(3) The gender, age, social and health status of the person subject to force and all other conditions that might affect the graveness of force must be observed when assessing the degree of such force.

Article 128 – If the force is committed by a party other than the parties to the contract, the forced party may not request the nullification of the contract, unless he/she proves that the other party was aware or must have definitely been aware of such force.

Article 129 – (1) If the obligations of one of the parties to the contract are absolutely not proportionate to his/her gain out of the contract or to the obligations of the other party, and it was clear that the aggrieved party concluded the contract only because the other party used his/her whim or indiscretion, the judge may then, upon the aggrieved party's request, nullify the contract or decrease the obligations of the aggrieved party.

(2) The claim must be instituted within one year from the date of the contract or it shall otherwise be unacceptable.

(3) It is permissible in compensative contracts that the other party preserve the nullification claim if he/she submits what the judge considers enough to eliminate the aggrieve.

Article 130 – In application of the foregoing article, it shall be observed not to violate the provisions concerning aggrieve in some contracts or in interest rate.

Subject:
Article 131 – (1) Subject of the obligation may be in the future.

(2) However, dealing on the estate of a living person is null, even by the consent of such person, except for the conditions stipulated by law.

Article 132 – If the subject of the obligation itself is impossible, the contracts is then null and void.

Article 133 – (1) If the subject of the obligation is not specifically determined, it must then be determined by its type and quantity or otherwise the contract is null and void.

(2) It is sufficient that the subject be determined by type only if the contract includes what can determine it. If the parties do not agree to the degree of the object as to its quality and it is not possible to conclude the same from custom or any other way, the debtor must then deliver an average quality of the object.

Article 134 – If subject of the obligation is money, the debtor is then obliged to its amount mentioned in the contract without the increase or decrease of its value at the time of payment having any effect thereto.

Article 135 – If the subject of the obligation is in contradiction with public order and manners, the contract is then null and void.

Cause:

Article 136 – If the obligation is of no cause or if its cause is in violation to the public order and manners, the contracts is then null and void.

Article 137 – (1) Every obligation to which no cause is mentioned in the contract is presumed to have a legitimate cause, unless otherwise evidenced.

(2) The cause mentioned in the contract is the real cause until otherwise evidenced. Should evidence prove that the cause is fictitious; the party claiming that the obligation is of another cause must prove such claim.

Nullity:

Article 138 – In the event the law grants one of the parties the right to nullify the contract, the other party may not invocate to such right.

Article 139 – (1) The right of contract nullification lapses by expressive or implicit validation.

(2) The validation is based on the date at which the contract was concluded without prejudice to rights of third parties.

Article 140 – (1) The right of contract nullification lapses if its holder does not invocate thereby within three years.

(2) The effectiveness of such period, in the event of incomplete capacity, commences on the day of lapse of such cause; and in the event of error or deception, then from the day it is discovered; in the event of force, then from the day of its cessation. In all events, a person may not invocate by the right of contract nullification for an error, deception or force after the lapse of fifteen years from the date of contract completion.

Article 141 – (1) In the event the contract is null, every party of interest may invocate right to nullification and the court may automatically render a judgment to such effect. Nullity does not lapse except by validation.

(2) Claim of nullity lapses by fifteen years from the time of the contract.

Article 142 – (1) in both events of contract nullity and nullification, both parties return to their pre-contract conditions, if such is impossible, it is then permissible to award an equivalent compensation.

(2) However, a person of incomplete capacity is not compelled, if the contract is nullified due to his/her incompletion of capacity, to reimburse what he/she owes as gain due to execution of the contract.

Article 143 – If the contract is null or voidable in one of its elements, only such element shall be nullified, unless it appears that the contract would not be completed without the null or voidable element, then the whole contract is null.

Article 144 – If the contract is null or voidable and contains the elements of another contract, it is then valid as the contract which elements are available in the event it appears that the intentions of the parties were towards such contract.

2- Consequences of the Contract

Article 145 – Consequences of the contract are associated with its parties and universal successors, without prejudice to rules of inheritance, as long as the contract or the nature of the dealing or a law provision indicates that such consequence is not attributed to universal successors.

Article 146 – In the event the contract constitutes personal rights and obligations in connection with an object that is later transferred to singular successors, such rights and obligations are transferred to such successors at the time the object is transferred if they are of its requisites and the singular successors are aware of it at the time of transfer of the object.

Article 147 – (1) The contract is the law of the parties and may not challenged or amended except by the agreement of the parties or the reasons stipulated by the law.

(2) However, if unforeseen general exceptional circumstances occur and result in the performance of the contractual obligation is not impossible but rather exhausting to the debtor whereby he/she is threatened by major loss, the judge may then, according to the circumstances and after weighing the interests of both parties, reasonably adjust the exhausting obligation. All agreements to the contrary are null and void.

Article 148 – (1) The contract must be executed according to its contents and in manner agreeable to its obligations and goodwill.

(2) The contract does not only compel the parties to its contents, but also to its requirements pursuant to the law, custom and equity according to the nature of the obligation.

Article 149 – In the event the contract is concluded by way of obedience and includes arbitrary terms, the judge may then amend such terms and exempt the obedient party thereof according to equity. Any agreement to the contrary is null and void.

Article 150 – (1) If the text of the contract is clear, deviation from such text by interpretation to recognize the intentions of the parties is not permissible.

(2) Nevertheless, if there is a reason to interpret the contract, the joint intention of the parties must be sought without the literal meaning of the terms and by guidance of the nature of the dealing and according to honesty and trust between the parties according to the common custom in dealings.

Article 151 – (1) Doubt is interpreted in favor of the debtor.

(2) However, the interpretation of ambiguous words in obedience contracts may not be harmful to the interest of the compulsory party.

Article 152 – A contract does not consequent in obligations on third parties but may grant rights to such third parties.

Article 153 – (1) If a person undertakes to commit a third party to an obligation, such person does not compel the third party by its undertaking. If the third party declines from committing, the undertaker must then compensate the other party to the contract and may however, avoid compensation by performing the obligation undertaken.

(2) In the event the third party accepts such undertaking, such acceptance does not leave consequences at the time of its occurrence, as long as it is not clear that he/she expressly or implicitly meant to use the consequence of such acceptance at the time the undertaking was issued.

Article 154 – (1) A person may conclude a contract in his/her name for obligations conditioned in favor of a third party if the person has a personal materialistic or moral benefit from the performance of such obligations.

(2) Such condition results in the acquisition of the third party of a direct right towards the undertaker to perform the condition which the third party can claim,

unless agreed upon otherwise. Such undertaker has the right to invocate by the pleas arising from the contract against the beneficiary.

(3) It is also permissible for the conditioning party to request the performance of the obligation conditioned in favor of the beneficiary, unless it appears from the contract that only the beneficiary is entitled to such request.

Article 155 – (1) Only the conditioning party, excluding his/her creditors or heirs, is entitled to revoke the fixed condition prior to the beneficiary's announcement to the undertaker or the conditioning party of his/her desire to benefit from such fixed condition, unless this is in violation to the requirements of the contract.

(2) The fixed condition does not result in clearing the undertaker's liability towards the conditioning party, unless they implicitly or explicitly agree to such. The conditioning party may substitute the beneficiary with another and may also exclusively take the benefit of the fixed condition.

Article 156 – It is permissible when fixing a condition in favor of a third party for the beneficiary to be in the future or futuristic, and it also permissible for the beneficiary to be a person or entity not determined at the time of the contract as long as their determination is possible at the time the contracts is effective according to the fixed condition.

3- Dissolution of Contract

Article 157 – (1) In bilateral contracts, if one of the parties does not perform its obligation, the other party may, after warning, may request the debtor to execute or rescind the contract in addition to compensation in both cases if justifiable.

(2) The judge may grant the debtor a grace period, when so needed, and may also decline rescinding in the event the debtor paid an insignificant amount in proportion to what he/she owes.

Article 158 – It is permissible to consider the contract automatically rescinded without need for a judicial order when the obligations arising from such contract are not performed. Such agreement does not cancel warning unless the parties to the contract explicitly agreed to such.

Article 159 – In bilateral contracts, if an obligation lapses due to the impossibility of its performance, the obligations corresponding thereto also lapse and the contract is then automatically rescinded.

Article 160 – In the event the contract is rescinded, the contracts return back to their conditions prior thereto, and if such is impossible, it is then permissible to render a compensation judgment.

Article 161 – In bilateral contract, if corresponding obligations are due, each of the parties may refrain from performing his/her obligations if the other party does not perform his/her obligations.

Chapter Two
Individual Will

Article 162 – (1) A person who promised the public with a prize/reward in return of a certain work, must give such prize/reward to the person who performed the work, even if such person performed the work without expecting such prize/rewards or was unaware thereof.

(2) If the promisor does not determine a date for the performance of work, the promisor may then draw back his/her promise through an announcement to the public, provided that this does not affect the right of the person who performed the work before the drawing back of the promise. The claim for the prize falls if not instituted within six months from the date the drawback was announced to the public.

Chapter Two
Illicit Act
1- Personal Acts Liability

Article 163 – Every error causing damage to third parties compels its committer to compensation.

Article 164 – (1) A person is liable for his/her illicit acts as long as such acts were committed thereby when he/she is distinctive.

(2) However, if damage is caused by an indistinctive person and no one was liable thereto, or it was difficult to collect compensation from the liable, the judge may then compel the person liable for the damage to compensation with due regard to the positions of the parties.

Article 165 – If a person proves that the damage was caused by a foreign reason beyond his/her control as an unforeseen incident or force majeure or default by others, such person is then obligated to compensation, unless there is a stipulation or agreement to otherwise.

Article 166 – A person who cause damage while in legitimate self defense for his/herself, money or someone else's self or money, is not liable, provided that such person does not exceed the necessary degree in his/her defense, or otherwise he/she is obligated to compensation with due regard to equity.

Article 167 – A public officer is not liable for his/her act that harmed third parties if such act was committed in implementation to the command issued thereto by his/her superior, when it is actually pr believed to be a must to obey such command and such person managed to prove that he/she was under the impression that such act is legitimate due to justifiable reasons or that he/she was precautious in doing such act.

Article 168 – A person causing harm to third parties to avoid a greater harm to him/her or others, is only obligated to the compensation which the judge deems reasonable.

Article 169 – In the event there are several persons liable for a harmful act, such persons are equally consolidated in their obligation to compensation for damage, unless the judge determines the share of each of them in compensation.

Article 170 – The judge assesses the extent of compensation for the damage occurring to the harmed according to the provisions of Articles 221 and 222 with due regard to the circumstances. In the event it is not available to finally determine the amount of compensation at the time of the judgment, the judge then has the right to preserve the right to the harmed to claim reassessment within a specific period.

Article 171 – (1) The judge determines the method for compensation according to the circumstances. The compensation may be on installments or fixed payments, and in both cases it is permissible to compel the debtor to submit a security.

(2) Compensation is assessed in cash; however, that judge may, according to the circumstances and upon the request of the harmed, order to return the case ab initio or order the performance of a specific act in connection with the illegitimate act as compensation.

Article 172 – (1) Compensation claim arising from illicit act lapses by three years from the date the harmed was aware of the occurrence of damage and the person liable thereto. In all events, such claim lapses after fifteen years from the date of the illicit act.

(2) However, if such claim is arising from a crime and the criminal claim has not lapsed after the dates mentioned in the above paragraph, the compensation claim does not lapse except by the lapse of the criminal claim.

2- Liability for the Acts of Others

Article 173 – (1) Every person legally or contractually responsible for the supervisory of a person, who needs supervision due to his /her minority or mental or physical state, is liable for compensation for the damage caused to third parties by such person with his/her illicit act. Such obligation is effective even if the person who caused the damage is indistinctive.

(2) The minor is considered in need of supervision if he/she did not reach the age of fifteen years or reached such age but is still under the protection of the person supporting him/her. Supervision over the minor is transferred to his/her teacher in school or supervisor in professions, as long as the minor is under the supervision of the teacher or supervisor. The supervision over the minor wife is transferred to her spouse or the supervisor over the husband.

(3) The person assigned to supervision may release him/herself from liability if he/she proves that he/she carried out the duty of supervision or proved that the damage was definitely going to happen despite the performance of such duty.

Article 174 – (1) The master/supervisor shall be responsible for the illicit act by his/her subordinate as long as it is committed while or due to performing his/her job.

(2) Subordination materializes even if the master/supervisor is not liberate to choose his/her subordinate as long as he/she has an actually authority supervising and instructing his/her subordinate.

Article 175 – A person liable for the acts of another has the right to have remedy over the other person within the limits such other person is not liable for compensation for damage.

3- Liability Arising from Objects

Article 176 – The animal guard, even if not its owner, is liable for the harm caused by the animal, even if lost or escaped, as long as the guard does not prove that the occurrence of the accident was due to a foreign reason beyond its control.

Article 177 – (1) Building guard, even if not its owner, is liable for the damage caused by the collapsing of the building, even if only partial collapse, as long as the guard does not prove that the accident was not caused by his/her negligence in maintenance or was due to ancientness of or defect in the building.

(2) Every person threatened with harm from the building, may request the owner to take the precautions necessary to indemnify such danger. In the event the owner does not do such, it is then permissible to obtain a permit from the court to take such necessary precautions at the expense of the owner.

Article 178 – Every person guarding objects which require special care or guarding mechanical equipment, is liable for the damage caused by such objects, unless he/she can prove that the damage was caused by a foreign reason beyond his/her control, without prejudice to any special provisions in this regard.

Chapter Four
Unjustified Enrichment

Article 179 – Every person, even if distinctive, that is enriched without a legitimate cause to the disadvantage of another person, is liable within the limits of such enrichment to compensate such person for the loss occurring thereto. Such obligation remains even if the enrichment ends.

Article 180 – The compensation claim for unjustified enrichment lapses after three years from the date the person to whom the loss occurs is aware of his/her right to compensation. And in all events, the claim lapses after fifteen years from the date such right is constituted.

1- Payment of the Undue

Article 181 – (1) Every person receiving what is not due to him/her as payment must return it.

(2) Reimbursement is not applicable if the person who made payment is not obliged therewith or of incomplete capacity or was forced to make such payment.

Article 182 – It is right to recover the undue in the event payment was made as performance of an obligation which reason was not effectuated or an obligation which reason has ended after its effectuation.

Article 183 – (1) Recovering the undue is also right if payment is made as performance of an obligation which due date has not come and the person making the payment is not aware of such due date.

(2) However, the creditor may confine him/herself to reimbursing what he/she gained from the excessive payment within the limits of the harm caused to the debtor. If the obligation that is still not due is money, the creditor shall reimburse the interest thereon to the debtor at its legal or consensual rate for the period remaining until the date of maturity.

Article 184 – There shall be no place for recovering undue payments if payment is made by other than the debtor resulting in the creditor of goodwill is stripped off the deed of debt or the deposit payment he/she has received, or to leave his/her claim against the actual debtor abate by limitation. The actual debtor shall in the event compensate the third party who has made the payment.

Article 185 – (1) If the person received payment of an undue debt in good faith, he/she shall only reimburse the received.

(2) If such person received the payment in bad faith, he/she shall also reimburse the interest and profits earned or the amounts he/she fell short to gain from the date of payment or the date he/she became mala fide.

(3) In all events, the person receiving undue payments shall reimburse the interest and proceeds as of the date of instituting the claim.

Article 186 – If the person receiving undue payments is not of contractual capacity, he/she shall only be obligated within the limits of the amount by which he/she was enriched.

Article 187 – A replevin action for the recovery of amounts unduly paid shall abate with the lapse of three years from the date the person who made the undue payment learns of his/her right to recover such payments. In all events, this action also abates with the lapse of fifteen years from the day the right is constituted.

2- Officious Performance

Article 188 – Officious performance is a person deliberately handling an urgent matter for the benefit of another person without being under any obligation to do so.

Article 189 – Officious performance is effectuated even if the officious person, while handling a matter for him/herself, is handling a matter of another person, due to the connection between both matters which does not enable him/her to do each separately.

Article 190 – The agency rules apply if the employer approves the acts of the officious person.

Article 191 – The officious person must continue the work he/she started until the employer can perform it him/herself. The officious person must also notify his/her employer of his/her interference as soon as possible.

Article 192 – (1) The officious person must exert the effort of the average man in regard of the work and be liable for his/her errors. However, it is not permissible that the judge decrease the compensation resulting from such error if circumstances so justify.

(2) If the officious person assign all or part of the work to a third party, he/she shall then be liable for the acts of his/her assign without prejudice to the right of the employer to have remedy over such assign.

(3) In the event of several officious persons performing one work, their liability shall be consolidated.

Article 193 – The officious person must adhere to whatever the assign adheres to in regards of reimbursement of whatever he/she laid hands on due to officious performance and submit a statement for what he/she has carried out.

Article 194 – (1) In the event the officious person dies, his/her heirs must abide by what the agent abides by according to the provisions of paragraph 2 of Article 717.

(2) In the event the employer dies, the officious person remains burdened with the same obligations towards the heirs of the employer as to their ancestor.

Article 195 – The officious person is considered an agent for the employer once he/she has exerted the efforts of the average man even if the desired results were not achieved. In this event the employer shall be obliged to execute the undertakings the officious person made in his/her account and shall also compensate the officious person for the undertakings he/she abode by and reimburse the necessary and useful costs which occurred due to the circumstances in addition to the interest thereto from the date of its payment. The employer shall also compensate the officious person for the damage he/she incurred due to his/her performance of the work. The officious person is not entitled for payments in consideration of his/work except when the works are within his profession.

Article 196 – (1) In the event the officious person does not have the contractual capacity, he/she shall then not be liable for the management except within the limits by which he was enriched, unless his/her liability arises from an illicit act.

(2) The employer's remains of full liability even if he/she is not of contractual capacity.

Article 197 – The claim arising from officious performance abates by the lapse of three years from the date each party is aware of his/her rights. In all events, the claim also abates by the lapse of fifteen years from the date the right is constituted.

Chapter Five
The Law

Article 198 – Obligations directly arising from the law alone are subject to the legal provisions constituting them.

Section Two
Obligations Consequences

Article 199 – (1) The obligation is executed by compulsion to the debtor.

(2) However, if the obligation is natural, there is then no compulsion in its execution.

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Institut de Droit des Affaires Internationales (IDAI)

2021-2022

Document 4
Swiss Obligation Code

Mr. Abdelrahman MAHDY

Federal Act on the Amendment of the Swiss Civil Code

(Part Five: The Code of Obligations)

of 30 March 1911 (Status as of 1 July 2021)

The Federal Assembly of the Swiss Confederation,

having considered the Dispatches of the Federal Council dated 3 March 1905 and 1 June 1909[1]

decrees:

Division One: General Provisions

Title One: Creation of Obligations

Section One: Obligations arising by Contract

Art. 1

A. Conclusion of the contract
I. Mutual expression of intent
1. In general

[1] The conclusion of a contract requires a mutual expression of intent by the parties.

[2] The expression of intent may be express or implied.

Art. 2

2. Secondary terms

[1] Where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms.

[2] In the event of failure to reach agreement on such secondary terms, the court must determine them with due regard to the nature of the transaction.

[3] The foregoing is subject to the provisions governing the form of contracts.

AS **27** 317 and BS **2** 199

1 BBl **1905** II 1, **1909** III 747, **1911** I 695

Art. 3

II. Offer and acceptance
1. Offer subject to time limit

1 A person who offers to enter into a contract with another person and sets a time limit for acceptance is bound by his offer until the time limit expires.

2 He is no longer bound if no acceptance has reached him on expiry of the time limit.

Art. 4

2. Offer without time limit
a. In the parties' presence

1 Where an offer is made in the offeree's presence and no time limit for acceptance is set, it is no longer binding on the offeror unless the offeree accepts it immediately.

2 Contracts concluded by telephone are deemed to have been concluded in the parties' presence where they or their agents communicated in person.

Art. 5

b. In the parties' absence

1 Where an offer is made in the offeree's absence and no time limit for acceptance is set, it remains binding on the offeror until such time as he might expect a reply sent duly and promptly to reach him.

2 He may assume that his offer has been promptly received.

3 Where an acceptance sent duly and promptly is late in reaching the offeror and he does not wish to be bound by his offer, he must immediately inform the offeree.

Art. 6

3. Implied acceptance

Where the particular nature of the transaction or the circumstances are such that express acceptance cannot reasonably be expected, the contract is deemed to have been concluded if the offer is not rejected within a reasonable time.

Art. 6*a*[2]

3*a*. Unsolicited goods

1 The sending of unsolicited goods does not constitute an offer.

2 The recipient is not obliged to return or keep such goods.

3 Where unsolicited goods have obviously been sent in error, the recipient must inform the sender.

2 Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS **1991** 846; BBl **1986** II 354).

Art. 7

4. Non-binding offer, announcement of prices, display

1 An offeror is not bound by his offer if he has made express declaration to that effect or such a reservation arises from the circumstances or from the particular nature of the transaction.

2 The sending of tariffs, price lists and the like does not constitute an offer.

3 By contrast, the display of merchandise with an indication of its price does generally constitute an offer.

Art. 8

5. Publicly promised remuneration

1 A person who publicly promises remuneration or a reward in exchange for the performance of an act must pay in accordance with his promise.

2 If he withdraws his promise before performance has been made, he must reimburse any person incurring expenditure in good faith on account of the promise up to the maximum amount promised unless he can prove that such person could not have provided the performance in question.

Art. 9

6. Withdrawal of offer and acceptance

1 An offer is deemed not to have been made if its withdrawal reaches the offeree before or at the same time as the offer itself or, where it arrives subsequently, if it is communicated to the offeree before he becomes aware of the offer.

2 The same applies to a withdrawal of an acceptance.

Art. 10

III. Entry into effect of a contract concluded in the parties' absence

1 A contract concluded in the parties' absence takes effect from the time acceptance is sent.

2 Where express acceptance is not required, the contract takes effect from the time the offer is received.

Art. 11

B. Form of contracts

I. Formal requirements and significance in general

1 The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law.

2 In the absence of any provision to the contrary on the significance and effect of formal requirements prescribed by law, the contract is valid only if such requirements are satisfied.

II. Written form
1. Form required by law
a. Scope

Art. 12

Where the law requires that a contract be done in writing, the requirement also applies to any amendment to the contract with the exception of supplementary collateral clauses that do not conflict with the original document.

Art. 13

b. Effect

[1] A contract required by law to be in writing must be signed by all persons on whom it imposes obligations.

[2] ...[3]

Art. 14

c. Signature

[1] Signatures must be appended by hand by the parties to the contract.

[2] A signature reproduced by mechanical means is recognised as sufficient only where such reproduction is customarily permitted, and in particular in the case of signatures on large numbers of issued securities.

[2bis] An authenticated electronic signature combined with an authenticated time stamp within the meaning of the Federal Act of 18 March 2016[4] on Electronic Signatures is deemed equivalent to a handwritten signature, subject to any statutory or contractual provision to the contrary.[5]

[3] The signature of a blind person is binding only if it has been duly certified or if it is proved that he was aware of the terms of the document at the time of signing.

Art. 15

d. Mark in lieu of signature

Subject to the provisions relating to bills of exchange, any person unable to sign may make a duly certified mark by hand or give a certified declaration in lieu of a signature.

Art. 16

2. Form stipulated by contract

[1] Where the parties agree to make a contract subject to formal requirements not prescribed by law, it is presumed that the parties do not wish to assume obligations until such time as those requirements are satisfied.

3 Repealed by Annex No 2 to the FA of 19 Dec. 2003 on Electronic Signatures, with effect from 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).
4 SR **943.03**
5 Inserted by Annex No 2 to the FA of 19 Dec. 2003 on Electronic Signatures (AS **2004** 5085; BBl **2001** 5679). Amended by Annex No II 4 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).

2 Where the parties stipulate a written form without elaborating further, the provisions governing the written form as required by law apply to satisfaction of that requirement.

Art. 17

C. Cause of obligation

An acknowledgment of debt is valid even if it does not state the cause of the obligation.

Art. 18

D. Interpretation of contracts, simulation

1 When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.

2 A debtor may not plead simulation as a defence against a third party who has become his creditor in reliance on a written acknowledgment of debt.

Art. 19

E. Terms of the contract
I. Definition of terms

1 The terms of a contract may be freely determined within the limits of the law.

2 Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy.

Art. 20

II. Nullity

1 A contract is void if its terms are impossible, unlawful or immoral.

2 However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.

Art. 21

III. Unfair advantage

1 Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party's exploitation of the other's straitened circumstances, inexperience or thoughtlessness, the person suffering damage may declare within one year that he will not honour the contract and demand restitution of any performance already made.

2 The one-year period commences on conclusion of the contract.

Art. 22

IV. Agreement to conclude a contract

[1] Parties may reach a binding agreement to enter into a contract at a later date.

[2] Where in the interests of the parties the law makes the validity of a contract conditional on observance of a particular form, the same applies to the agreement to conclude a contract.

Art. 23

F. Defect in consent
I. Error
1. Effect

A party labouring under a fundamental error when entering into a contract is not bound by that contract.

Art. 24

2. Cases of mistake

[1] An error is fundamental in the following cases in particular:

1. where the party acting in error intended to conclude a contract different from that to which he consented;
2. where the party acting in error has concluded a contract relating to a subject matter other than the subject matter he intended or, where the contract relates to a specific person, to a person other than the one he intended;
3. where the party acting in error has promised to make a significantly greater performance or has accepted a promise of a significantly lesser consideration than he actually intended;
4. where the error relates to specific facts which the party acting in error considered in good faith to be a necessary basis for the contract.

[2] However, where the error relates solely to the reason for concluding the contract, it is not fundamental.

[3] Calculation errors do not render a contract any less binding, but must be corrected.

Art. 25

3. Invoking error contrary to good faith

[1] A person may not invoke error in a manner contrary to good faith.

[2] In particular, the party acting in error remains bound by the contract he intended to conclude, provided the other party accepts that contract.

Art. 26

4. Error by negligence

[1] A party acting in error and invoking that error to repudiate a contract is liable for any damage arising from the nullity of the agreement where the error is attributable to his own negligence, unless the other party knew or should have known of the error.

2 In the interests of equity, the court may award further damages to the person suffering damage.

Art. 27

5. Incorrect intermediation

Where an offer to enter into a contract or the acceptance of that offer has been incorrectly communicated by a messenger or other intermediary, the provisions governing error apply *mutatis mutandis*.

Art. 28

II. Fraud

1 A party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental.

2 A party who is the victim of fraud by a third party remains bound by the contract unless the other party knew or should have known of the fraud at the time the contract was concluded.

Art. 29

III. Duress
1. Consent to contract

1 Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract.

2 Where the duress originates from a third party and the other party neither knew nor should have known of it, a party under duress who wishes to be released from the contract must pay compensation to the other party where equity so requires.

Art. 30

2. Definition of duress

1 A party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him.

2 The fear that another person might enforce a legitimate claim is taken into consideration only where the straitened circumstances of the party under duress have been exploited in order to extort excessive benefits from him.

Art. 31

IV. Defect of consent negated by ratification of the contract

1 Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified.

2 The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended.

3 The ratification of a contract made voidable by duress or fraud does not automatically exclude the right to claim damages.

G. Agency
I. With authorisation
1. In general
a. Effect of agency

Art. 32

1 The rights and obligations arising from a contract made by an agent in the name of another person accrue to the person represented, and not to the agent.

2 Where the agent did not make himself known as such when making the contract, the rights and obligations arising therefrom accrue directly to the person represented only if the other party must have inferred the agency relationship from the circumstances or did not care with whom the contract was made.

3 Where this is not the case, the claim must be assigned or the debt assumed in accordance with the principles governing such measures.

b. Scope of authority

Art. 33

1 Where authority to act on behalf of another stems from relationships established under public law, it is governed by the public law provisions of the Confederation or the cantons.

2 Where such authority is conferred by means of the transaction itself, its scope is determined by that transaction.

3 Where a principal grants such authority to a third party and informs the latter thereof, the scope of the authority conferred on the third party is determined according to wording of the communication made to him.

2. Authority arising from a transaction
a. Restriction and revocation

Art. 34

1 A principal authorising another to act on his behalf by means of a transaction may restrict or revoke such authority at any time without prejudice to any rights acquired by those involved under existing legal relationships, such as an individual contract of employment, a partnership agreement or an agency agreement.[6]

2 Any advance waiver of this right by the principal is void.

3 Where the represented party has expressly or de facto announced the authority he has conferred, he may not invoke its total or partial revocation against a third party acting in good faith unless he has likewise announced such revocation.

b. Effect of death, incapacity, etc.

Art. 35

1 The authority conferred by means of a transaction is extinguished on the loss of capacity to act, bankruptcy, death, or declaration of pre-

6 Amended by No II Art. 1 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS **1971** 1465; BBl **1967** II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

sumed death of the principal or the agent, unless the contrary has been agreed or is implied by the nature of the transaction.[7]

2 The same applies on the dissolution of a legal entity or a company or partnership entered in the commercial register.

3 The mutual personal rights of the parties are unaffected.

Art. 36

c. Return of the instrument conferring authority

1 Where an agent has been issued with an instrument setting out his authority, he must return it or deposit it with the court when that authority has ended.

2 Where the principal or his legal successors have omitted to insist on the return of such instrument, they are liable to bona fide third parties for any damage arising from that omission.

Art. 37

d. Time from which end of authority takes effect

1 Until such time as an agent becomes aware that his authority has ended, his actions continue to give rise to rights and obligations on the part of the principal or the latter's legal successors as if the agent's authority still existed.

2 This does not apply in cases in which the third party is aware that the agent's authority has ended.

Art. 38

II. Without authority
1. Ratification

1 Where a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract.

2 The other party has the right to request that the represented party ratify the contract within a reasonable time, failing which he is no longer bound by it.

Art. 39

2. Failure to ratify

1 Where ratification is expressly or implicitly refused, action may be brought against the person who acted as agent for compensation in respect of any damage caused by the extinction of the contract unless he can prove that the other party knew or should have known that he lacked the proper authority.

2 Where the agent is at fault, the court may order him to pay further damages on grounds of equity.

3 In all cases, claims for unjust enrichment are reserved.

7 Amended by Annex No 10 of the FA of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).

Art. 40

III. Reservation of special provisions

The special provisions governing the authority of agents and governing bodies of companies and partnerships and of registered and other authorised agents are unaffected.

Art. 40*a*[8]

H. Revocation in door-to-door sales and similar contracts

I. Scope of application

[1] The following provisions apply to contracts relating to goods and services intended for the customer's personal or family use where:

a. the supplier of the goods or services acted in a professional or commercial capacity; and

b. the consideration from the buyer exceeds 100 francs.

[2] These provisions do not apply to insurance policies and to legal transactions that are entered into by financial institutions and banks within the framework of existing financial services contracts in accordance with the Federal Act of 15 June 2018[9].[10]

[3] In the event of significant change to the purchasing power of the national currency, the Federal Council shall adjust the sum indicated in para. 1 let. b accordingly.

Art. 40*b*[11]

II. General principle

A customer may revoke his offer to enter into a contract or his acceptance of such an offer if the transaction was proposed:

a.[12] at his place of work, on residential premises or in their immediate vicinity;

b. on public transport or on a public thoroughfare;

c. during a promotional event held in connection with an excursion or similar event;

d.[13] by telephone or by a comparable means of simultaneous verbal communication.

8 Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS **1991** 846; BBl **1986** II 354).
9 SR **950.1**
10 Amended by Annex No 1 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).
11 Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS **1991** 846; BBl **1986** II 354).
12 Amended by No I of the FA of 18 June 1993, in force since 1 Jan. 1994 (AS **1993** 3120; BBl **1993** I 757).
13 Inserted by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).

Art. 40*c*[14]

III. Exceptions

The customer has no right of revocation:

a. if he expressly requested the contractual negotiations;

b. if he declared his offer or acceptance at a stand at a market or trade fair.

Art. 40*d*[15]

IV. Duty to inform

1 The supplier must inform the customer in writing or in another form that may be evidenced by text of the latter's right of revocation and of the form and time limit to be observed when exercising such right, and must provide his address.[16]

2 Such information must be dated and permit identification of the contract in question.

3 The information must be transmitted in such a manner that the customer is aware of it when he proposes or accepts the contract.[17]

Art. 40*e*[18]

V. Revocation
1. Form and time limit

1 Revocation need not be in any particular form. The onus is on the customer to prove that he has revoked the contract within the time limit.[19]

2 The prescriptive period for revocation is 14 days and commences as soon as the customer:[20]

a. has proposed or accepted the contract; and

b. has become aware of the information stipulated in Art. 40*d*.

3 The onus is on the supplier to prove when the customer received the information stipulated in Art. 40*d*.

14 Inserted by No I of the FA of 5 Oct. 1990 (AS **1991** 846; BBl **1986** II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan. 1994 (AS **1993** 3120; BBl **1993** I 757).

15 Inserted by No I of the FA of 5 Oct. 1990 (AS **1991** 846; BBl **1986** II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan. 1994 (AS **1993** 3120; BBl **1993** I 757).

16 Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).

17 Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).

18 Inserted by No I of the FA of 5 Oct. 1990 (AS **1991** 846; BBl **1986** II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan. 1994 (AS **1993** 3120; BBl **1993** I 757).

19 Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).

20 Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).

4 The time limit is observed if, on the last day of the prescriptive period, the customer informs the supplier of revocation or posts his written notice of revocation.[21]

Art. 40*f*[22]

2. Consequences

1 Where the customer has revoked the contract, the parties must provide restitution for any performance already made.

2 Where the customer has made use of the goods, he owes an appropriate rental payment to the supplier.

3 Where the supplier has rendered services to him, the customer must reimburse the supplier for outlays and expenses incurred in accordance with the provisions governing agency (Art. 402).

4 The customer does not owe the supplier any further compensation.

Art. 40*g*[23]

Section Two: Obligations in Tort

Art. 41

A. General principles
I. Conditions of liability

1 Any person who unlawfully causes damage to another, whether wilfully or negligently, is obliged to provide compensation.

2 A person who wilfully causes damage to another in an immoral manner is likewise obliged to provide compensation.

Art. 42

II. Determining the damage

1 A person claiming damages must prove that damage occurred.

2 Where the exact value of the damage cannot be quantified, the court shall estimate the value at its discretion in the light of the normal course of events and the steps taken by the person suffering damage.

3 The costs of treating animals kept as pets rather than for investment or commercial purposes may be claimed within appropriate limits as a loss even if they exceed the value of the animal.[24]

21 Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan. 2016 (AS **2015** 4107; BBl **2014** 921 2993).
22 Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS **1991** 846; BBl **1986** II 354).
23 Inserted by No I of the FA of 5 Oct. 1990 (AS **1991** 846; BBl **1986** II 354). Repealed by Annex No 5 to the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan. 2001 (AS **2000** 2355; BBl **1999** III 2829).
24 Inserted by No II of the FA of 4 Oct. 2002 (Animals), in force since 1 April 2003 (AS **2003** 463; BBl **2002** 3885 5418).

Art. 43

III. Determining compensation

1 The court determines the form and extent of the compensation provided for damage incurred, with due regard to the circumstances and the degree of culpability.

1bis Where an animal kept as a pet rather than for investment or commercial purposes has been injured or killed, the court may take appropriate account of its sentimental value to its owner or his dependants.[25]

2 Where damages are awarded in the form of periodic payments, the debtor must at the same time post security.

Art. 44

IV. Grounds for reducing compensation

1 Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely.

2 The court may also reduce the compensation award in cases in which the damage was caused neither wilfully nor by gross negligence and where payment of such compensation would leave the liable party in financial hardship.

Art. 45

V. Special cases
1. Homicide and personal injury
a. Damages for homicide

1 In the event of homicide, compensation must cover all expenses arising and in particular the funeral costs.

2 Where death did not occur immediately, the compensation must also include the costs of medical treatment and losses arising from inability to work.

3 Where others are deprived of their means of support as a result of homicide, they must also be compensated for that loss.

Art. 46

b. Damages for personal injury

1 In the event of personal injury, the victim is entitled to reimbursement of expenses incurred and to compensation for any total or partial inability to work and for any loss of future earnings.

2 Where the consequences of the personal injury cannot be assessed with sufficient certainty at the time the award is made, the court may reserve the right to amend the award within two years of the date on which it was made.

25 Inserted by No II of the FA of 4 Oct. 2002 (Animals), in force since 1 April 2003 (AS **2003** 463; BBl **2002** 3885 5418).

Art. 47

c. Satisfaction

In cases of homicide or personal injury, the court may award the victim of personal injury or the dependants of the deceased an appropriate sum by way of satisfaction.

Art. 48[26]

2. ...

Art. 49[27]

3. Injury to personality rights

[1] Any person whose personality rights are unlawfully infringed is entitled to a sum of money by way of satisfaction provided this is justified by the seriousness of the infringement and no other amends have been made.

[2] The court may order that satisfaction be provided in another manner instead of or in addition to monetary compensation.

Art. 50

VI. Multiple liable parties
1. In tort

[1] Where two or more persons have together caused damage, whether as instigator, perpetrator or accomplice, they are jointly and severally liable to the person suffering damage.

[2] The court determines at its discretion whether and to what extent they have right of recourse against each other.

[3] Abettors are liable in damages only to the extent that they received a share in the gains or caused damage due to their involvement.

Art. 51

2. On different legal grounds

[1] Where two or more persons are liable for the same damage on different legal grounds, whether under tort law, contract law or by statute, the provision governing recourse among persons who have jointly caused damage is applicable *mutatis mutandis*.

[2] As a rule, compensation is provided first by those who are liable in tort and last by those who are deemed liable by statutory provision without being at fault or in breach of contractual obligation.

26 Repealed by Art. 21 para. 1 of the FA of 30 Sept. 1943 on Unfair Competition, with effect from 1 March 1945 (BS **2** 951).
27 Amended by No II 1 of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS **1984** 778; BBl **1982** II 661).

Art. 52

VII. Self-defence, necessity, legitimate use of force

1 Where a person has acted in self-defence, he is not liable to pay compensation for damage caused to the person or property of the aggressor.

2 A person who damages the property of another in order to protect himself or another person against imminent damage or danger must pay damages at the court's discretion.

3 A person who uses force to protect his rights is not liable in damages if in the circumstances the assistance of the authorities could not have been obtained in good time and such use of force was the only means of preventing the loss of his rights or a significant impairment of his ability to exercise them.

Art. 53

VIII. Relationship with criminal law

1 When determining fault or lack of fault and capacity or incapacity to consent, the court is not bound by the provisions governing criminal capacity nor by any acquittal in the criminal court.

2 The civil court is likewise not bound by the verdict in the criminal court when determining fault and assessing compensation.

Art. 54

B. Liability of persons lacking capacity to consent

1 On grounds of equity, the court may also order a person who lacks capacity to consent to provide total or partial compensation for the damage he has caused.

2 A person who has temporarily lost his capacity to consent is liable for any damage caused when in that state unless he can prove that said state arose through no fault of his own.

Art. 55

C. Liability of employers

1 An employer is liable for the damage caused by his employees or ancillary staff in the performance of their work unless he proves that he took all due care to avoid a damage of this type or that the damage would have occurred even if all due care had been taken.[28]

2 The employer has a right of recourse against the person who caused the damage to the extent that such person is liable in damages.

28 Amended by No II Art. 1 No 2 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS **1971** 1465; BBl **1967** II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

Art. 56

D. Liability for animals
I. Damages

1 In the event of damage caused by an animal, its keeper is liable unless he proves that in keeping and supervising the animal he took all due care or that the damage would have occurred even if all due care had been taken.

2 He has a right of recourse if the animal was provoked either by another person or by an animal belonging to another person.

3 ...[29]

Art. 57

II. Seizure of animals

1 A person in possession of a plot of land is entitled to seize animals belonging to another which cause damage on that land and take them into his custody as security for his claim for compensation or even to kill them, where justified by the circumstances.

2 He nonetheless has an obligation to notify the owner of such animals without delay or, if the owner is not known to him, to take the necessary steps to trace the owner.

Art. 58

E. Liability of property owners
I. Damages

1 The owner of a building or any other structure is liable for any damage caused by defects in its construction or design or by inadequate maintenance.

2 He has a right of recourse against persons liable to him in this regard.

Art. 59

II. Safety measures

1 A person who is at risk of suffering damage due to a building or structure belonging to another may insist that the owner take the necessary steps to avert the danger.

2 Orders given by the police for the protection of persons and property are unaffected.

Art. 59*a*[30]

F. Liability in respect of cryptographic keys

1 The owner of a cryptographic key used to generate electronic signatures or seals is liable to third parties for any damage they have suffered as a result of relying on a valid certificate issued by a provider of

29 Repealed by Art. 27 No 3 of the FA of 20 June 1986 on Hunting, with effect from 1 April 1988 (AS **1988** 506; BBl **1983** II 1197).

30 Inserted by Annex No 2 to the FA of 19 Dec. 2003 on Electronic Signatures (AS **2004** 5085; BBl **2001** 5679). Amended by Annex No II 4 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan. 2017 (AS **2016** 4651; BBl **2014** 1001).

certification services within the meaning of the Federal Act of 18 March 2016[31] on Electronic Signatures.

2 The owner is absolved of liability if he can satisfy the court that he took all the security precautions that could reasonably be expected in the circumstances to prevent misuse of the cryptographic key.

3 The Federal Council defines the security precautions to be taken pursuant to paragraph 2.

Art. 60

G. Prescription[32]

1 The right to claim damages or satisfaction prescribes three years from the date on which the person suffering damage became aware of the loss, damage or injury and of the identity of the person liable for it but in any event ten years after the date on which the harmful conduct took place or ceased.[33]

1bis In cases death or injury, the right to claim damages or satisfaction prescribes three years from the date on which the person suffering damage became aware of the damage and of the identity of person liable for it, but in any event twenty years after the date on which the harmful conduct took place or ceased.[34]

2 If the person liable has committed a criminal offence through his or her harmful conduct, then notwithstanding the foregoing paragraphs the right to damages or satisfaction prescribes at the earliest when the right to prosecute the offence becomes time-barred. If the right to prosecute is no longer liable to become time-barred because a first instance criminal judgment has been issued, the right to claim damages or satisfaction prescribes at the earliest three years after notice of the judgment is given.[35]

3 Where the tort has given rise to a claim against the person suffering damage, he may refuse to satisfy the claim even if his own claim in tort is time-barred.

31 SR **943.03**
32 Amended by Annex No 2 to the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679**.03**).
33 Amended by No I of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).
34 Inserted by No I of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).
35 Amended by No I of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).

Art. 61

H. Liability of civil servants and public officials[36]

1 The Confederation and the cantons may by way of legislation enact provisions that deviate from those of this Section to govern the liability of civil servants and public officials to pay damages or satisfaction for any damage they cause in the exercise of their duties.

2 The provisions of this Section may not, however, be modified by cantonal legislation in the case of commercial duties performed by civil servants or public officials.

Section Three: Obligations deriving from Unjust Enrichment

Art. 62

A. Requirement
I. In general

1 A person who has enriched himself without just cause at the expense of another is obliged to make restitution.

2 In particular, restitution is owed for money benefits obtained for no valid reason whatsoever, for a reason that did not transpire or for a reason that subsequently ceased to exist.

Art. 63

II. Payment in satisfaction of a non-existent obligation

1 A person who has voluntarily satisfied a non-existent debt has a right to restitution of the sum paid only if he can prove that he paid it in the erroneous belief that the debt was owed.

2 Restitution is excluded where payment was made in satisfaction of a debt that has prescribe or of a moral obligation.

3 The provisions of federal debt collection and bankruptcy law governing the right to the restitution of payments made in satisfaction of non-existent claims are unaffected.

Art. 64

B. Scope of restitution
I. Obligations of the unjustly enriched party

There is no right of restitution where the recipient can show that he is no longer enriched at the time the claim for restitution is brought, unless he alienated the money benefits in bad faith or in the certain knowledge that he would be bound to return them.

Art. 65

II. Rights in respect of expenditures

1 The recipient is entitled to reimbursement of necessary and useful expenditures, although where the unjust enrichment was received in

36 Amended by Annex No 2 to the FA of 19 Dec. 2003 on Electronic Signatures, in force since 1 Jan. 2005 (AS **2004** 5085; BBl **2001** 5679).

bad faith, the reimbursement of useful expenditures must not exceed the amount of added value as at the time of restitution.

2 He is not entitled to any compensation for other expenditures, but where no such compensation is offered to him, he may, before returning the property, remove anything he has added to it provided this is possible without damaging it.

Art. 66

C. Exclusion of restitution

No right to restitution exists in respect of anything given with a view to producing an unlawful or immoral outcome.

Art. 67

D. Prescription

1 The right to claim restitution for unjust enrichment prescribes three years after the date on which the person suffering damage learned of his or her claim and in any event ten years after the date on which the claim first arose.[37]

2 Where the unjust enrichment consists of a claim against the person suffering damage, he or she may refuse to satisfy the claim even if his or her own claim for restitution has prescribed.

Title Two: Effect of Obligations

Section One: Performance of Obligations

Art. 68

A. General principles

I. Performance by the obligor in person

An obligor is not obliged to discharge his obligation in person unless so required by the obligee.

Art. 69

II. Object of performance

1. Part payment

1 A creditor may refuse partial payment where the total debt is established and due.

2 If the creditor wishes to accept part payment, the debtor may not refuse to settle the part of the debt that he acknowledges is due.

Art. 70

2. Indivisible performance

1 Where indivisible performance is due to several obligees, the obligor must make performance to all of them jointly, and each obligee may demand that performance be made to all of them jointly.

37 Amended by No I of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBl **2014** 235).

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Plaquette de Travaux Dirigés

Institut de Droit des Affaires Internationales (IDAI)

2021-2022

Document 5
Civil Code of Taiwan

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Article Content

Title: Civil Code CH
Amended Date: 2021-01-20
Category: Ministry of Justice (法務部)

rt I General Principles

Chapter I Application Rules

Article 1
If there is no applicable act for a civil case, the case shall be decided according to customs. If there is no such custom, the case shall be decided according to the jurisprudence.

Article 2
Only those customs which are not against public policy or morals shall be applied to a civil case.

Article 3
While a written document is required by the act, it is unnecessary written by the person himself, but it must be signed by him.
If the person uses a seal in stead of his signature, the affixing of such seal has the same effect as of his signature.
The effect of a finger-print, cross or other mark will be equivalent to the effect of a signature provided that it is certified with two witnesses' signatures.

Article 4
If a certain quantity is expressed both in characters and in figures, and if there is inconsistency between them, the expression in characters shall be governed when the court cannot ascertain the real intent of the parties.

Article 5
If a certain quantity is expressed in characters or in figures more than once, and if there is inconsistency in them, the fewest shall be governed when the court cannot ascertain the real intent of the parties.

Chapter II Persons

Section I Natural Persons

Article 6
The legal capacity of a person commences from the moment of live birth and terminates at death.

Article 7
An unborn child is considered as if it were already born with regard to its interests, except it was subsequently born dead.

Article 8
An absent person who has disappeared for more than seven years may be declared dead by the court upon the application of any interested person or the public prosecutor.
If the absent person was over eighty years of age and has disappeared for more than three years, he may be declared dead.
If the absent person was in a catastrophe, he may be declared dead when it has been over a year after the end of the catastrophe.

Article 9
A person who had been declared dead is presumed to be dead at the date fixed in the judgment.
In the absence of proof to the contrary, the time of death specified in the preceding paragraph shall be the date of expiration of the period specified in the preceding article.

Article 10
The property of an absent person, after his absence and up to the declaration of death, shall be administered according to the Family Act.

Article 11
When there have been two or more persons perished in a catastrophe and if the sequence of their death could not be proven, they are presumed to be dead simultaneously.

Article 12
Majority is attained upon reaching the eighteenth year of age.

arising from his action. But if anything is done in excess of what is required for necessary defense, he is still liable to make a reasonable compensation.

Article 150
A person acting to avoid an imminent danger menacing the life, body, liberty or property of himself or of another is not liable to compensate for any injury arising from his action, provided the action is necessary for avoiding the danger and does not exceed the limit of the injury which would have been caused by the said danger.
Under the circumstances specified in the preceding paragraph, if the person so acting is responsible for the occurrence of the danger, he is liable to compensate for any injury arising from his act.

Article 151
In order to protect his rights, a person who restrains, seizes, or destroys the liberty or the property of another is not liable to compensate for any injury arising therefrom, provided the assistance of the court or other relevant authorities could not be obtained in due time and there was a fact that if the person did not act immediately, the exercise of his rights would be rendered impossible or manifestly arduous.

Article 152
According to the provision of the preceding article, a person who restrains the liberty or seizes the property of another shall apply immediately to the court for assistance.
If the application mentioned in the preceding paragraph is dismissed or is not made in time, this person is liable to compensate for any injury arising from his action.

rt II Obligations

Chapter I General Provisions

Section 1 - Sources of Obligations

Sub-section 1 Contracts

Article 153
When the parties have reciprocally declared their concordant intent, either expressly or impliedly, a contract shall be constituted.
If the parties agree on all the essential elements of the contract but have expressed no intent as to the non-essential elements, the contract shall be presumed to be constituted. In the absence of an agreement on the above-mentioned non-essential elements, the court shall decide them according to the nature of the affair.

Article 154
A person who offers to make a contract shall be bound by his offer except at the time of offer he has excluded this obligation or except it may be presumed from the circumstances or from the nature of the affair that he did not intend to be bound.
Exposing goods for sale with their selling price shall be deemed to be an offer. However, the sending of pricelists is not deemed to be an offer.

Article 155
An offer ceases to be binding if it is refused.

Article 156
An offer made inter presentes ceases to be binding if it is not accepted at once.

Article 157
An offer made inter absentes ceases to be binding if it is not accepted by the other party within the time during which notice of acceptance may be expected to arrive under ordinary circumstances.

Article 158
If a period of time for the acceptance of the offer has been fixed, the offer ceases to be binding if it is not accepted within such period.

Article 159
If an acceptance arrives late though it should usually arrive within a reasonable time by its transmitting manner, and this might be known to the offerer, the offerer should immediately notify the acceptor of such delay.
If the offerer delays the notice specified in the preceding paragraph, the acceptance shall be deemed to have arrived without delay.

Article 160
An acceptance which arrives late, except under the circumstances in the preceding article, shall be deemed to be a new offer.
An acceptance with amplifications, limitations or other alterations shall be deemed to be a refusal of the original offer and the making of a new offer.

Article 161
In cases where according to customs or owing to the nature of the affair, a notice of acceptance is not necessary, the contract shall be constituted when, within a reasonable time, there is a fact, which may be considered as an acceptance of the offer.
The provision of the preceding paragraph shall be mutatis mutandis applied when at the time of offer the offerer has waived notice of acceptance.

Article 162
If a notice of withdrawing an offer arrives after the arrival of the offer itself, though it should usually arrive before or simultaneously with the arrival of the offer within a reasonable time by its transmitting manner, and this might be known to the other party, the other party so notified should notify the offerer immediately of such delay.
If such other party delays the notice specified in the preceding paragraph, the notice of withdrawing the offer shall be deemed to have arrived without delay.

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Article 163
The provisions of the preceding article shall apply mutatis mutandis to the withdrawal of acceptance.

Article 164
When a public notice promises to reward the person for his performance of a particular act, it is a rewarding public notice. The promisor is bound to deliver the reward to the person who has performed the act.
When the act specified in the preceding paragraph has been successively performed by several persons, it is the person who has performed first acquires the claim for reward; when the act has been performed jointly by several persons or performed simultaneously by several persons respectively, it is these persons who acquire the claim for reward jointly.
In the preceding paragraph, if the promisor has delivered the reward in good faith to the person who has first notified his performance, the obligation of the promisor to deliver the reward shall be extinguished.
The provisions of the preceding three paragraphs shall apply mutatis mutandis to the person who has performed such act specified in the public notice without knowing of this notice.

Article 164-1
If there is a specific right acquired because of the performance of an act in the preceding article, this right shall belong to the person who has performed the act, unless otherwise notified in the public notice.

Article 165
When a promise of reward made by a public notice is withdrawn before the act is performed, the promisor is bound to compensate the person performing the act in good faith for the injury arising therefrom, unless the promisor can prove that the person could have never performed the act. The compensation shall not exceed the amount of the promised reward.
When there is a period of time fixed for the performance in the public notice, the promisor is presumed to waive his withdrawing right.

Article 165-1
If a public notice promises to reward the person who has performed a particular act, notified within a certain period of time and has been evaluated as the best, it is a rewarding public notice for the best. The promisor is bound to deliver the reward in the completion of the evaluation.

Article 165-2
The evaluation in the preceding article shall be proceeded by the person appointed in the public notice. If there is no any appointment in the public notice, it shall be proceed with the manner decided by the promisor.
The evaluation according to the provision of the preceding paragraph shall be binding on the promisor and the promisee.

Article 165-3
If there are several persons evaluated as the best, unless otherwise notified in the public notice, these persons acquire the claim for reward jointly.

Article 165-4
The provision of Article 164-1 shall apply mutatis mutandis to the rewarding public notice for the best.

Article 166
If it is agreed between the parties that a contract shall be made in a certain definite form, the contract is presumed to be not constituted before the completion of such form.

Article 166-1
If a contract is made for the obligations of the transferring, creation, or altering of rights over the real property, it shall be made in the notarization made by the notary public.
A contract not notarized according to the provision of the preceding paragraph could still be valid if the parties have agreed on the transferring, creation, or altering of rights over the real property and have completed the recordation.

Sub-section 2 Conferring Of Authority Of Agency

Article 167
If authority of agency is conferred by a juridical act, it shall be made by an expression of intent to the agent or to the third party with whom the delegated act is transacted.

Article 168
If there are several agents, the delegated act shall be transacted by them jointly, unless otherwise provided by the act or the principal's expression of intent.

Article 169
A person, who by his own acts represents he has conferred the authority of agency to another person, or who knows that another person declares himself to be his agent and failed to express a contrary intent, shall be liable to the third party as a person who has conferred that authority, except the third party knew, or might know of the absence of authority.

Article 170
A juridical act made in the name of an agent by a person of no authority of agency shall not be effective to the principal except it is acknowledged by the principal.
In the case specified in the preceding paragraph, the other party to the juridical act may fix a reasonable period and request the principal to declare definitely whether he acknowledges it or not. If the principal does not give a definite answer within the specified period, the acknowledgement shall be deemed to have been refused.

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Article 171
[The expression of intend in]A juridical act made by a person of no authority of agency may be withdrawn by the other party to the act before the acknowledgement of the principal, except where such other party knew of the absence of authority at the time of the act.

Sub-section 3 Management Of Affairs Without Mandate

Article 172
A person, who manages an affair of another person without a mandate or obligation, shall manage the affair in conformity with the principal's expressed or presumptive wishes and in the manner beneficial to the principal.

Article 173
The manager shall notify the principal without delay at the beginning of the management in so far as the notice is possible. If there is no urgency, he shall wait for the instructions of the principal.
The provisions of Articles 540 to Article 542 concerning Mandate shall apply mutatis mutandis to Management of Affairs without Mandate.

Article 174
If the undertaking of the management of the affair is against the principal's expressed or presumptive wishes, the manager is bound to compensate the principal for any injury arising from his management, even if no negligence is in his act.
The provision of the preceding paragraph shall not apply if the undertaking of the management of the affair is in order to fulfill an obligation of public interests for the principal or to fulfill a statutory duty of the principal to furnish maintenance to others, or the principal's wishes are against the public policy or morals.

Article 175
If the undertaking of the management of the affair is in order to avert an imminent danger which threatens the life, body or property of the principal, the manager is not responsible for any injury derived from his management, except in case of bad faith or gross negligence.

Article 176
If the management of the affair is beneficial to the principal and is not against his expressed or presumptive wishes, and where the manager has, for the principal, made necessary or beneficial expenses, or assumed debt, or suffered injury, he is entitled to claim against the principal for the reimbursement of such expenses plus interest commencing from the date of outlay, or the payment of such debt, or compensation for the injury sustained.
In the cases provided by the second paragraph of Article 174, the manager may still have the claim in the preceding paragraph, even if the undertaking of the management of the affair is against the principal's wishes.

Article 177
If the management of the affair does not accord with the provisions of the preceding article, the principal may still be entitled to the interests derived from the management. But the obligation specified in the first paragraph of the preceding article of the principal towards the manager shall be only to the extent of the interests he acquired.
The provision of the preceding paragraph shall apply mutatis mutandis to the situation when the manager knew it was another person's affair but still managed for his own interests.

Article 178
If the management of the affair is acknowledged by the principal, unless otherwise expressed by the parties, from the beginning of the management, the provisions concerning Mandate shall be applied.

Sub-section 4 Unjust Enrichment

Article 179
A person who acquires interests without any legal ground and prejudice to the other shall be bound to return it. The same rule shall be applied if a legal ground existed originally but disappeared subsequently.

Article 180
In any of the following cases, the prestation shall not be claimed to return:
(1) If the prestation was for the performance of a moral obligation;
(2) If the prestation made by the debtor for the performance of an undue obligation;
(3) If the person who has made a prestation for the purpose of performing an obligation knew, at the time of performance, that he was not bound to perform;
(4) If the prestation was made for an unlawful cause. Except when the unlawful cause exists only with regard to the recipient.

Article 181
In addition to the interests received, a recipient unjustly enriched shall return whatever he acquired by virtue of such interests. If restitution is impossible by reason of the very nature of the interests or by reason of any other circumstance, he shall be bound to reimburse the value.

Article 182
The recipient, who did not know of the absence of the legal ground and the interests have no longer existed, is released from the obligation to return the interests or reimburse the value.
If the recipient knew of the absence of the legal ground at the time of the receipt, or if he was subsequently aware of it, he shall be bound to return the interests acquired at the time of the receipt or such interests still existing at the time when he was aware of the absence of the legal ground plus the interest and to make compensation for the injury, if any.

Article 183
When the recipient unjustly enriched transferred gratuitously whatever he has received to a third party, and therefore the recipient is released from his

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obligation to return the interests, such third party shall be bound to make restitution to the extent which the recipient is released from his obligation.

Sub-section 5 Torts

Article 184
A person who, intentionally or negligently, has wrongfully damaged the rights of another is bound to compensate him for any injury arising therefrom. The same rule shall be applied when the injury is done intentionally in a manner against the rules of morals.
A person, who violates a statutory provision enacted for the protection of others and therefore prejudice to others, is bound to compensate for the injury, except no negligence in his act can be proved.

Article 185
If several persons have wrongfully damaged the rights of another jointly, they are jointly liable for the injury arising therefrom. The same rule shall be applied even if which one has actually caused the injury cannot be sure.
Instigators and accomplices are deemed to be joint tortfeasors.

Article 186
An official, who has intentionally committed a breach of duty which he ought to exercise in favor of a third party and therefore prejudice to such third party, is liable for any injury arising therefrom. If the breach is the result of this official's negligence, he may be held liable to compensate only in so far as the injured person is unable to obtain compensation by other means.
In the case mentioned in the preceding paragraph, if the injured person who may obviate the injury by making use of a legal remedy has intentionally or negligently omitted to make use of it, the official shall not be liable to compensate for the injury.

Article 187
A person of no capacity or limited in capacity to make juridical acts, who has wrongfully damaged the rights of another, shall be jointly liable with his guardian for any injury arising therefrom if he is capable of discernment at the time of committing such an act. If he is incapable of discernment at the time of committing the act, his guardian alone shall be liable for such injury.
In the case of the preceding paragraph, the guardian is not liable if there is no negligence in his duty of supervision, or if the injury would have been occasioned notwithstanding the exercise of reasonable supervision.
If compensation cannot be obtained according to the provisions of the preceding two paragraphs, the court may, on the application of the injured person, take the financial conditions among the tortfeasors, the guardian and the injured person into consideration, and order the tortfeasors or his guardian to compensate for a part or the whole of the injury.
The provision of the preceding paragraph shall apply mutatis mutandis to cases where the injury has been caused to a third party by a person other than those specified in the first paragraph in a condition of unconsciousness or of mental disorder.

Article 188
The employer shall be jointly liable to make compensation for any injury which the employee has wrongfully caused to the rights of another in the performance of his duties. However, the employer is not liable for the injury if he has exercised reasonable care in the selection of the employee, and in the supervision of the performance of his duties, or if the injury would have been occasioned notwithstanding the exercise of such reasonable care.
If compensation cannot be obtained according to the provision of the preceding paragraph, the court may, on the application of the injured person, take the financial conditions of the employer and the injured person into consideration, and order the employer to compensate for a part or the whole of the injury.
The employer who has made compensation as specified in the preceding paragraph may claim for reimbursement against the employee committed the wrongful act.

Article 189
The proprietor is not liable for the injury wrongfully caused by an undertaker to the rights of another in the course of his work, unless the proprietor was negligent in regard to the work ordered or his instructions.

Article 190
If injury is caused by an animal, the possessor is bound to compensate the injured person for any injury arising therefrom, unless reasonable care in keeping according to the species and nature of the animal has been exercised, or unless the injury would have been occasioned notwithstanding the exercise of such reasonable care.
The possessor may claim for reimbursement against the third party, who has excited or provoked the animal, or against the possessor of another animal which has caused the excitement or provocation.

Article 191
The injury, which is caused by a building or other work on privately owned land, shall be compensated by the owner of such building or work, unless there is no defective construction or insufficient maintenance in such building or work, or the injury was not caused by the defectiveness or insufficiency, or the owner has exercised reasonable care to prevent such injury.
In the case of the preceding paragraph, if there is another person who shall be responsible for the injury, the owner making compensation may make a claim for reimbursement against such person.

Article 191-1
The manufacturer is liable for the injury to another arising from the common use or consumption of his merchandise, unless there is no defectiveness in the production, manufacture, process, or design of the merchandise, or the injury is not caused by the defectiveness, or the manufacturer has exercised reasonable care to prevent the injury.
The manufacturer mentioned in the preceding paragraph is the person who produces, manufactures, or processes the merchandise. Those, who attach the merchandise with the service mark, or other characters, signs to the extent enough to show it was produced, manufactured, or processed by them, shall be deemed to be the manufacturer.

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If the production, manufacture, process, or design of the merchandise is inconsistent with the contents of its manual or advertisement, it is deemed to be defective.
The importer shall be as liable for the injury as the manufacturer.

Article 191-2
If an automobile, motorcycle or other motor vehicles which need not to be driven on tracks in use has caused the injury to another, the driver shall be liable for the injury arising therefrom, unless he has exercised reasonable care to prevent the injury.

Article 191-3
The person, who runs a particular business or does other work or activity, shall be liable for the injury to another if the nature of the work or activity, or the implement or manner used might damage to another. Except the injury was not caused by the work or activity, or by the implement or manner used, or he has exercised reasonable care to prevent the injury.

Article 192
A person who has wrongfully caused the death of another shall also be bound to make compensation for the injury to any person incurring the medical expenses, increasing the need in living, or incurring the funeral expenses.
If the deceased was statutorily bound to furnish maintenance to a third party, the tortfeasor shall also make compensation to such third party for any injury arising therefrom.
The provision of the second paragraph of Article 193 shall apply to the compensation of the preceding paragraph.

Article 193
If a person has wrongfully damaged to the body or health of another, and caused the injured person to lose or decrease his laboring capacity, or to increase the need in living, the tortfeasors shall be bound to make compensation to the injured person for any injury arising therefrom.
The court may, on the application of the parties, order the compensation of the preceding paragraph to be made in periodical payments of money, but the court shall compel the tortfeasor to furnish security.

Article 194
In case of death caused by a wrongful act, the father, mother, sons, daughters and spouse of the deceased may claim for a reasonable compensation in money even if such injury is not a purely pecuniary loss.

Article 195
If a person has wrongfully damaged to the body, health, reputation, liberty, credit, privacy or chastity of another, or to another's personality in a severe way, the injured person may claim a reasonable compensation in money even if such injury is not a purely pecuniary loss. If it was reputation that has been damaged, the injured person may also claim the taking of proper measures for the rehabilitation of his reputation.
The claim of the preceding paragraph shall not be transferred or inherited, except a claim for compensation in money has been promised by contract or has been commenced.
The provisions of the preceding two paragraphs shall be mutatis mutandis applied when a person has wrongfully damaged to another's status based on the relationship to their father, mother, sons, daughters, or spouse in a severe way.

Article 196
If a person has wrongfully damaged to a thing which belongs to another, the injured person may claim to make compensation for the diminution of the value of the thing.

Article 197
The claim for the injury arising from a wrongful act shall be extinguished by prescription, if not exercised within two years from the date when the injury and the person bound to make compensation became known to the injured person. The same rule shall be applied if ten years have elapsed from the date when the wrongful act was committed.
A person bound to make compensation shall, even after the completion of prescription under the preceding paragraph, return to the injured person in accordance with the provisions concerning Unjust Enrichment whatever he has acquired through a wrongful act and therefore prejudiced to the injured person.

Article 198
If a person acquires a claim against the injured person by a wrongful act, the latter may still refuse to perform even if the claim for avoidance has been extinguished by prescription.

Section 2 - Object Of Obligations

Article 199
By virtue of an obligation, the creditor is entitled to claim a prestation from the debtor.
A prestation may consist in something which cannot be valued in money.
A prestation may consist in forbearance.

Article 200
When the object of the prestation is determined only in kind, if its quality cannot be determined by the nature of the juridical act or the intent of the parties, the debtor must deliver a thing of medium quality.
In the case of the preceding paragraph, if the debtor has done whatever is necessary for the delivery of such a thing, or if, with the consent of the creditor, he has designated a thing to be delivered, such thing is designated as the object of the prestation.

Article 201
When the object of the obligation is a prestation of a particular kind of currency in vogue and when at the time of prestation this currency is no longer in vogue,