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### Commercial and Civil Code of Thailand

#### **BOOK IV**

#### **PROPERTY**

#### **TITLE I**

#### **GENERAL PROVISIONS**

Section1298. Real rights may be created only by the virtue of this Code or other laws.

Section1299. Subject to a provision of this Code or other laws, no acquisition by juristic act of immovable or of real right appertaining thereto is complete unless the juristic act is made in writing an the acquisition is registered by the competent official.

Where immovable property or real right appertaining thereto is acquired otherwise than by juristic act, the acquirer's right cannot be dealt with through the register unless it has been registered, nor can it, without registration, be set against a third person who has, for value and in good faith, acquired it and registered his right.

Section1300. Where a transfer of immovable property or real right appertaining thereto has been registered to the prejudice of a person who was previously in a position to have his right registered, he may claim cancellation of such registration, provided that in no case cancellation be claimed against a transferee for value in good faith.

Section1301. The provisions of the two foregoing sections shall apply mutatis mutandis to modification, extinction and revival of real rights appertaining to immovable property.

Section1302. The provisions of the three foregoing sections shall apply mutatis mutandis to ships or vessels of six tons and over, to steam-launches or motor-boats of five tons and over, to floating houses and to beasts of burden.

Section1303. Where several persons claim to have acquired the same movable property under different titles, the person who is in possession of the property is preferred that he has acquired it for value and has obtained the possession in good faith.

This section does not apply to movable property specified in the foregoing section nor to lost property or property acquired through an offence.

Section1304. The domain public of State includes every kind of State property which is in use for public interest or reserved for the common benefit, such as:

- (1) waste land and land surrendered , abandoned or otherwise reverted to the State according to the land law;
- (2) property for the common use of the people e.g., foreshores, water-ways, highways, lakes;

(3) property for special use to the State e.g., a fortress or other military buildings, public offices, warships, arms and ammunition.

Section1305. Any property which forms part of the domain public of State is in-alienable except by virtue of a special law or Royal Decree.

Section1306. No prescription can be set up against the State with regard to any property which forms part of its domain public.

Section1307. No seizure of State property can be effected, whether such property forms part of its domain public or not.

## TITLE II

### OWNERSHIP

#### CHAPTER I

##### ACQUISITION OF OWNERSHIP

Section1308. Where land is formed by alluvion, it becomes the property of the riparian owner.

Section1309. Islands formed in a lake or water-way of in territorial waters, and beds of water-ways left dry, are the property of the Sate

Section1310. If a person has, in good faith, constructed a building upon another person's land, the owner of the land becomes the owner of the building, but he must pay the constructor for any increase of value accruing to the land by reason of the building.

However, if the owner of the land can show that there was negligence on his part, he may refuse to take the building and require that it be removed by the constructor and the land put in its former condition, unless this cannot be done at reasonable costs, in which case he may require the constructor to buy the whole or part of the land at the market price.

Section1311. If a person has, in bad faith, constructed a building upon another person's land, he must return the land after having put it in its former condition, unless the owner of the land chooses to have it returned in its present condition, in which case the owner of the land must pay at his option the price of the building or a sum representing the increased value of the land.

Section1312. If a person has, in good faith, constructed a building encroaching on another person's land, the constructor is the owner of the building, subject to his paying the owner of the land for the use of such land and having his rights on the encroached land registered as servitude. The owner of the land may demand cancellation of the registration if subsequently the building is totally destroyed.

If the constructor of the building is in bad faith, the owner of the land may require that it be removed by the constructor and the land put in its former condition, at the expense of the latter.

Section1313. If the conditional owner of a piece of land has constructed a building on it and the land becomes afterwards the property of another person by effect of the condition, the provisions of this Code concerning Undue Enrichment shall apply.

Section1314. The provisions of Sections 1310, 1311 and 1313 apply mutatis mutandis to any kind of work which is fixed to land, and to the planting of trees or crops.

However, in case of paddy or other crops harvested one or more times a year, the owner of the land must either allow the person in good faith or the conditional owner who has made the planting to remain in the possession of the land till after the harvest on payment of a sum of money based

on the rental value of the land, or take immediate possession of the land on payment of compensation to the other party.

Section1315. When a person has constructed buildings, or has made any other work which is fixed to land, or has planted trees or crops, on his land with materials belonging to another person, he becomes the owner of the materials, but he must pay for their value.

Section1316. If several movables belonging to different persons have been joined in such matter that they become component parts or indivisible, the different persons become co-owners of the composite thing, each person's share being proportionate to the value of his thing at the time of its being joined with the other things.

If one of the things could be regarded as the principal thing, the owner becomes the sole owner of the composite thing, but he must pay the value of the other things to their respective owners.

Section1317. If a person uses materials belonging to another person to make a new thing, the latter person becomes the owner of such thing, irrespective of the question whether the materials can or cannot assume their former condition, but he must pay for the work.

However, if the value of the work greatly exceeds the value of the materials used, the worker shall become the owner of the thing which is the result of his work, but he must pay the value of the materials.

Section1318. A person may acquire the ownership of an ownerless movable by occupation, unless the occupation is forbidden by law or is in violation of another person's right to occupation of such movable.

Section1319. A movable becomes ownerless if the owner gives up its possession with the intention of renouncing its ownership.

Section1320. Subject to special laws and regulations relating thereto, wild animals are ownerless so long as they have their freedom. Wild animals in zoological gardens and fishes in pounds or other enclosed private waters are not ownerless.

A captured wild animal becomes ownerless if it regains its freedom and the owners does not pursue it without delay or gives up the pursuit.

A tamed animal becomes ownerless if it gives up the habit of returning.

Section1321. Subject to special laws and regulations relating thereto, a person who catches a wild animal on waste lands or in public waters, or, without opposition of the owner, on private lands or in private waters, becomes its owner.

Section1322. If a wild animal which is wounded and pursued by one person is caught by another person or falls dead on another person's land, the first person becomes its owner.

Section 1323. A person who finds lost property is bound:

- (1) to deliver it to the loser, the owner or any other person entitled to receive it, or
- (2) to inform without delay to the loser, the owner or any other person entitled to receive it, or
- (3) to deliver it within three days to the police or other competent official and inform them of all circumstances within his knowledge which may be material for the person who is entitled to receive it.

However, the procedure provided in sub-section 3 must be followed if the loser, owner or other person entitled to receive the property is unknown or does not take delivery of it.

In any case the property found must be kept with reasonable care until delivery.

Section1324. A finder of lost property may claim from the person entitled to receive it a reward of ten per cent of the value of the property up to thirty thousand baht, and five per cent on the additional value. However, if he delivers the property to the police or other competent official, two and a half per cent of the value of the property shall, in addition to the reward, be paid as a fee to the Government service concerned, but, in no case, shall such fee exceed one thousand baht.

The finder is not entitled to any reward if he does not comply with the provisions of the foregoing section.

Section1325. If the finder of lost property has complied with the provisions of Section 1323 and the person entitled to receive it has not claimed it within one year from the day of find, the ownership vested in the finder.

However, if the unclaimed property is an antique object, the ownership vested in the State, but the finder is entitled to receive a reward of ten per cent of its value.

Section1326. The finding of property thrown into the sea or water-ways or washed ashore is governed by the laws and regulations relations thereto.

Section1327. Subject to the provisions of the criminal law, the ownership of anything which has been used for committing, or has been acquired through, or is otherwise connected with, an offence, and placed under the care of a Government Department, is vested in the State if it has not been claimed by the owner within one year from the day of its being so placed or, in case of a criminal action having been entered in Court, from the day of final judgment. However, if the owner is unknown, the period shall be extended to five years.

If the property is perishable, on delay involves risks or expenses out of proportion to its value, the Government Department may, before the expiration of the periods, cause the property to be sold by public auction, provided that before the sale proper measures are taken for recording all such particulars as may enable the person entitled to receive the property to identify it and prove his rights thereto. After the sale, the net proceeds shall be substituted for the property.

Section1328. Where a movable of value which has been hidden or buried is found under such circumstances that no person can claim to be its owner, the ownership is vested in the State. The finder is bound to deliver it to the police or other competent official, in which case he is entitled to receive a reward of one-third of its value.

Section1329. The right of a person who has acquired property fro the value an in good faith is not affected even if the act under which his transferor acquired the property was voidable and has been subsequently avoided.

Section1330. The right of a person who has in good faith purchased property at a sale by public auction under an order of the Court or of the Official Receiver in bankruptcy is not affected even if it is subsequently proved that the property did not belong to the defendant,judgment debtor or bankrupt.

Section1331. The right of a person who has acquired money in good faith is not affected even if it is subsequently proved that it did not belong to the person from whom he acquired it.

Section1332. When a person has in good faith purchased property at a sale by public auction or in open market or from a trader dealing in such things, he shall not be bound to return it to the true owner unless the latter reimburses the purchase price.

Section1333. Ownership may be acquired by prescription under the rules provided in Title III of this Book.

Section1334. Waste land and land surrendered, abandoned or otherwise reverted to the State according to the land law may be acquired according to the said law.

## CHAPTER II

## EXTENT AND EXERCISE OF OWNERSHIP

Section1335. Subject to the provisions of this Code or other laws, the ownership of land extends above and below the surface.

Section1336. Within the limits of law, the owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent unlawful interference with it.

Section1337. If a person in the exercise of his right causes to the owner of an immovable property greater injury or inconvenience than should naturally and reasonably be expected or anticipated, having regard to the nature and situation of such property, the owner is entitled, without prejudice to any claim for compensation, to have such injury or inconvenience abated.

Section1338. Restrictions imposed by law on the rights of an owner of immovable property need not be registered.

Such restrictions imposed by law on the rights of an owner of immovable property need not be registered.

Restrictions imposed in the public interest can neither be removed nor modified.

Section1339. The owner of a piece of land is bound to take the water that flows naturally on to it from higher land.

Water that flows naturally on to lower land and is necessary to such land may be retained by the owner of the higher land only to such extent as is indispensable to his land.

Section1340. The owner of a piece of land is bound to take water coming to it from the higher land in consequence of the artificial drainage of the higher land, if before the drainage the water flowed naturally on to his land.

If any damage is suffered by reason of such artificial drainage, the owners of the lower lands may, without prejudice to any claim for compensation, require the owner of the higher land, at the latter's expense, to carry the drainage right through the lower lands to a public waterway or drain.

Section1341. The owner of an immovable property must not construct roofs or other structures which cause rain water to fall upon the adjoining property.

Section1342. No well, pond, cesspool or receptacle for manure or refuse may be dug within two meters of the boundary line.

No ditch or excavation for laying underground water-pipes or similar installations may be made nearer to the boundary line than one half of the depth of such ditch or excavation provided always that it may be made at a distance of one meter or more.

In any case when the works mentioned in the foregoing paragraphs are carried out near the boundary line, due care must be taken to prevent earth or sand from falling in, or water or filth from percolating through.

Section1343. Land may not be excavated or overloaded in such manner as to endanger the stay of soil of an adjoining piece of land unless adequate measures are provided for preventing and injury.

Section1344. Fences walls, hedges or ditches, which serve as a boundary, are presumed to belong to the owners of the adjoining properties in common.

Section1345. When a hedge, or ditch which is not used as a drain, belongs to the owners of two adjoining pieces of land in common, each of the owners is entitled to cut down the hedge or fill up the ditch to the boundary line provided he builds a wall or erects a fence along the boundary line.

Section1346. A tree which stands upon a boundary line is presumed to belong to the owners of the adjoining pieces of land in common. Its fruits belong to such owners in equal shares as well as the timber itself if the tree is felled.

Either owner may require the removal of the tree, the cost of removal being borne by them equally. However, the neighbor who requires the removal shall bear the cost alone if the other waives his right to the tree. Removal may not be required if the tree serves as a boundary mark and cannot be replaced by any appropriate boundary mark.

Section1347. The owner of a piece of land may cut off and keep roots of a tree or bush which have penetrated from the adjoining piece of land. He may also cut off and keep overhanging branches after giving the possessor of the adjoining piece of land reasonable notice to remove them, such notice not having been complied with.

Section1348. Fruits falling naturally upon adjoining land are presumed to be fruits of such land.

Section1349. If a piece of land is so surrounded by other pieces of land that it has no access to the public ways, the owner may pass over the surrounding land to reach a public way.

The same applies, if passage can only be had over a pond, marsh, or sea, or if there is a steep slope with a considerable difference of level between the land and the public way.

The place and the manner of the passage must be chosen as to meet the needs of the person entitled to passage and at the same time to cause as little damage as possible to the surrounding land. The person entitled to passage may, if necessary, construct a road for passage.

The person entitled to passage must pay compensation for any damage suffered by the land owner on account of the passage being established. Such compensation, except for damages arising from the construction of a road, may be made by annual payments

Section1350. Where land has been so partitioned or partially transferred that a plot is left without access to a public way, the owner of such plot may claim right of way under the forgoing section only over the land which has been so partitioned or partially transferred. In such case no compensation need to be paid

Section1351. The owner of a piece of land may, after reasonable notice, make use of adjoining land so far as necessary for the purpose of erection, or repairing, a fence, wall or building on or near his boundary line, but he may not enter the dwelling house or a neighbor without the latter's consent. If damage is caused, the neighbor may claim compensation.

Section1352. The owner of a piece of land is bound, subject to reasonable compensation being paid him, to allow the laying through his land of water-pipes, drainage pipes, electric wires or similar installations for use of the adjoining land if, without making use of his land they could not be laid or could be laid only at an excessive cost; but he may require that his interest be taken into consideration.

In exceptional cases where the installations are to be above ground, he may require that a reasonable proportion of his land, over which such installations are to be laid, shall be bought from him at a price which will cover the value of the land and compensation for any damage arising from sale.

Where circumstances are changed, he may require that the installations be removed to such different part of his land as may be suitable to his interests.

The cost of removal must be borne by the owner of the adjoining land. However, if the special circumstances of the case so require, the other land owner may be held liable for a reasonable proportion of the cost.

Section1353. A person may lead his cattle into or through another person's unenclosed land for grazing and watering; he may fetch water from a well or pound within such land; provided always that it is not a plantation and is not prepared for cultivation, sown or covered with a crop. The owner may however forbid such action.

Section1354. A person may, if permitted by local custom, enter a wood, forest or pasture land owned by another person to collect fuel or gather wild fruits, vegetables, mushrooms and the like, provided that the owner does not prohibit it

Section1355. The owner of a piece of land along or through which a water-way passes is not entitled to draw more water than necessary for his reasonable needs to the prejudice of any other piece of land on the water-way.

## CHAPTER III

### CO-OWNERSHIP

Section1356. If a property belongs to several persons in common the provisions of this chapter apply unless otherwise provided by law.

Section1357. Co-owners are presumed to have equal shares.

Section1358. Co-owners are presumed to have the right to manage the property in common.

Matters of ordinary management are decided by the majority of the co-owners. However, each co-owner may do an act of ordinary management unless the majority has decided otherwise; but, in any case he may do acts of preservation.

All important matters of management must be decided by a majority of co-owners who must also represent at least half of the value of the property.

A change of object may be decided upon only by the consent of all the co-owners.

Section1359. Each co-owner may exercise, as against third persons, any right arising from ownership in respect of the whole property, subject however, in case of a claim for the recovery of the property, to the conditions specified in Section 302 of this Code.

Section1360. Each co-owner is entitled to use the property in so far as such use is not incompatible with the rights of the other co-owners.

Section1361. Each co-owner may dispose of, mortgage, or create a charge on, his share.

The property itself may be disposed of, pledged, mortgaged or made subject to a charge only with the consent of all the co-owners.

However, if a co-owner has disposed of, pledged, mortgaged or created a charge on, the property without the consent of all the other co-owners, and he subsequently becomes the sole owner of it, such act shall become valid.

Section1362. Each co-owner is under the obligation to the other co-owners to bear in proportion to his share the costs of management, taxation and expenses for the preservation of the property as well as for its common use.

Section1363. Each co-owner is entitled to demand partition of the property, unless he is debarred from doing so by a juristic act or in consequence of the permanent character of the purpose of the co-ownership.

The right to demand partition may not be excluded by a juristic act for a period exceeding ten years at a time.

A co-owner may not demand partition at an unreasonable moment.

Section1364. Partition is effected by actually dividing the property, or by selling it and dividing the proceeds of sale, between the co-owners.

If the co-owners cannot agree as to the manner of effecting partition, the Court may, on the application of any of them, order the actual division of the property, and any inequality there may be in the shares allotted may be rectified by compensation in money. If such division is not possible or is likely to cause serious loss, the Court may order the sale of the property by private auction among the co-owners or by public auction.

Section1365. If the co-owners are jointly liable to a third person for an obligation in respect of the common property, or for another obligation incurred for the purpose of fulfilling such obligation, each may, at the time of partition, require that performance be made out of the common property or secured therefrom.

If a co-owner is liable to another co-owner for an obligation arising out of co-ownership or for another obligation incurred for the purpose of fulfilling such obligation, the latter may, at the time of partition, require that performance be made out of the share of the common property allotted to his debtor or secured therefrom.

The above rights may be exercised against a transferee of a co-owner's share or a successor to the same.

If sale of the common property is necessary, the provisions of the foregoing section shall apply.

Section1366. Each co-owner has, in proportion to his share, the same liabilities as a seller in respect of the property which the other co-owners have received under the partition.

### TITLE III

#### POSSESSION

Section1367. A person acquires possessory right by holding a property with the intention of holding it for himself

Section1368. A person may acquire possessory right through another person holding for him.

Section1369. A person who holds a property is presumed to hold it for himself.

Section1370. A possessor is presumed to possess in good faith, peacefully and openly.

Section1371. If it is proved that a person possessed the same property at two different times, it is presumed that his possession continued during the interval.

Section1372. It is presumed that a possessor has, in law, the right which he exercises over the property possessed.

Section1373. Where property is an immovable entered in the land registered, the person whose name is on the register is presumed to have possessory right over it.

Section1374. Where a possessor is disturbed in his possession by unlawful interference, he is entitled to have the disturbance removed. If further disturbance is to be apprehended, the possessor may apply for an injunction.



An action for removal of disturbance must be entered within one year from the time of the disturbance.

Section 1375. Where a possessor is unlawfully deprived of possession, he is entitled to have it returned, unless the other party has over the property a better right which would entitle him to claim it back from the possessor.

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

Section 1376. Where property is to be returned to the person entitled to recover it, the provisions of Section 412 to 418 of this Code concerning Undue Enrichment shall apply *mutatis mutandis*.

Section 1377. Possession comes to an end if the possessor abandons the intention to possess or no longer holds the property.

Possession does not come to an end if the possessor is prevented from holding the property by some cause which is temporary in its nature.

Section 1378. Transfer of possession is effected by delivery of the property possessed.

Section 1379. Where property is already held by the transferee or his representative, the transfer of possession may be effected by a declaration of intention.

Section 1380. Transfer of possession is effected when the transferor, while continuing to hold the property, declares an intention to hold it thenceforward on behalf of the transferee.

If the property is held by his representative, the transfer of possession may be effected by the transferor directing such representative thenceforward to hold the property on behalf of the transferee.

Section 1381. Where a person holds property as representative of the possessor, he may change the nature of his holding only by a notice to the possessor that he no longer intends to hold the property for such possessor or by becoming in good faith, through the act of a third person, possessor under a new title.

Section 1382. Where a person has, for an uninterrupted period of ten years in case of an immovable, or five years in case of a movable, peacefully and openly possessed a property belonging to another, with the intention to be its owner, he acquires the ownership of it.

Section 1383. The ownership of property obtained through an offence may be acquired by the offender or a transferee in bad faith by prescription only after the expiration of the period provided for prescription of the offence or of the period fixed by the foregoing section whichever is longer.

Section 1384. Possession shall not be deemed interrupted if the possessor involuntarily loses the holding of the property, and recovers it within one year from the date of the loss or by means of an action instituted with that time.

Section 1385. Where possession is transferred, the transferee may add the period of the transferor's possession to that of his own; in which case any defect in the possession of the transferor may be set up against the transferee.

Section 1386. The provisions of this Code concerning Prescription shall apply *mutatis mutandis* to acquisitive prescription to this Title.

#### TITLE IV

#### SERVITUDES

Section1387. An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.

Section1388. The owner of the dominant property is not entitled to make any change, either on the servient or on the dominant property, which increases the burden of the servient property.

Section1389. Changes in the requirements of the owner of the dominant property do not entitle him to impose an additional burden on the servient property.

Section1390. The owner of the servient property must refrain from any act which will tend to diminish the utility of the servitude or to make it less convenient.

Section1391. The owner of the dominant property is entitled, at his own expense, to do all that is necessary to preserve and make use of the servitude. He must, in doing so, cause as little damage as possible to the servient property.

He must at his own expense keep the work done in a state of good maintenance and repair. However, if the owner of the servient property benefits by the work, he must bear a share of the expenses in proportion to the benefit which he receives.

Section1392. Where servitude affects one part only of the servient property, the owner of that property may, by showing that the charge would be for his benefit and by undertaking to bear the cost of it, require that the servitude be removed to another part of his property, provided this would not be less convenient to the owner of the dominant property.

Section1393. Unless otherwise provided in the act creating it, a servitude follows the dominant property when the latter is disposed of or made subject to other rights.

A servitude cannot be disposed of or made subject to other rights apart from the dominant property.

Section1394. In case of a division of servient property, the servitude continues to be a burden on each part. However, if the servitude is not, and from nature of the case could not be, exercised over any particular part, the owner of such part may demand to be relieved from it.

Section1395. In case of a division of dominant property, the servitude continues to exist for the benefit of each part. However, if the servitude is not, and from the nature of the case could not be, exercised for the benefit of any particular part, the owner of the servient property may demand to be relieved from servitude with respect to such part.

Section1396. Servitudes acquired or exercised by one of the co-owners of the dominant property is deemed to have been acquired or exercised by all co-owners.

Section1397. Servitude is extinguished by the total destruction of the servient or dominant property.

Section1398. If servient and dominant properties are vested in one and the same owner, such owner may have the registration of servitude cancelled; until such cancellation the servitude continues to exist as regards to third persons.

Section1399. Servitude is extinguished by non-usage for ten years.

Section1400. Servitude is extinguished if it has ceased to benefit the dominant property; but it revives if the condition of things becomes such that the servitude can be enjoyed again, provided that the period of prescription specified in the foregoing section has not elapsed.

Where the servitude is still of some benefit to the dominant property, but the benefit is of little importance as compared with the burden on the servient property, the owner of the servient property may, by payment of compensation, obtain a total or partial relief from the servitude.

Section1401. Servitude may be acquired by prescription, the provisions concerning acquisitive prescription as described in Title III of this book shall apply mutatis mutandis.

## TITLE V

### HABITATION (arsai)

Section1402. A person who has been granted a right of habitation (arsai) in a building is entitled to occupy such building as a dwelling place without paying rent.

Section1403. A right of habitation may be created either for a period of time or for the life of the grantee.

If no time has been fixed, such right may be terminated at any time by giving reasonable notice to the grantee.

If it is granted for a period of time, the period may not exceed thirty years; if a longer period is stipulated, it shall be reduced to thirty years. The grant may be renewed for a period not exceeding thirty years from the time of renewal.

Section1404. The right of habitation is not transferable even by way of inheritance.

Section1405. Unless the right of habitation is expressly limited to be for the benefit of the grantee personally, the members of his family and his household may dwell with him.

Section1406. Unless expressly forbidden by the grantor, the grantee may take such natural fruits or products of the land as are necessary for the needs of his household.

Section1407. The grantor is not bound to maintain the property in a good state of repair.

The grantee cannot claim reimbursement of expenses made by him for improvements to the property.

Section1408. When the right of habitation comes to an end the grantee must return the property to the grantor.

Section1409. The provisions of this Code concerning Duties and Liabilities of the Hirer, as specified in Sections 552, 555, 558, 562 and 563 shall apply mutatis mutandis.

## TITLE VI

### SUPERFICIES

Section1410. The owner of a piece of land may create a right of superficies in favor of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.

Section1411. Unless otherwise provided in the act creating it, the right of superficies is transferable and transmissible by way of inheritance.

Section1412. A right of superficies may be created either for a period of time or for life of the owner of the land or the superfiiciary.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply mutatis mutandis

Section1413. If no period of time has been fixed, the right of superficies may be terminated at any time by any partner giving reasonable notice to the other. But when rent is to be paid, either one year's previous notice must be given or rent for one year paid.

Section1414. If the superficiary fails to comply with essential conditions specified in the act creating superficies or, when rent is to be paid, he fails to pay it for two consecutive years, his right of superficies may be terminated.

Section1415. The right of superficies is not extinguished by destruction of the buildings, structures or plantations even if caused by force majeure.

Section1416. When the right of superficies is extinguished, the superficiary may take away his buildings, structures or plantations, provided he restores the land to its former condition.

If instead of permitting the removal of the buildings, structures or plantations, the owner of the land notifies his intention to buy them at a market value, the superficiary may not refuse the offer except on reasonable ground.

## TITLE VII

### USUFRUCT

Section1417. An immovable property may be subjected to a usufruct by virtue of which the usufructuary is entitled to the possession, use and enjoyment of the property.

He has the right of management of the property.

The usufruct of a forest, mine or quarry entitles the usufructuary to the exploitation of the forest, mine or quarry.

Section1418. A usufruct may be created either for a period of time or for the life of the usufructuary. If no time has been fixed, it is presumed that the usufruct is for the life of the usufructuary.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply mutatis mutandis.

In any cases the usufruct comes to an end on the death of the usufructuary.

Section1419. If property is destroyed without compensation being paid, the owner is not bound to restore it; but, if he does so to any extent, the usufruct revives to that extent.

If any compensation is paid, the owner or the usufructuary must restore the property so far as it is impossible to do so, having regard to the amount of the compensation received, and the usufruct revives to that extent; but, if restoration is impossible, the usufruct come to an end and the compensation must be divided between the owner and the usufructuary in proportion to the damages suffered by them respectively.

The same rules apply mutatis mutandis in case of expropriation as well as in case of partial destruction of the property or of partial impossibility to restore the property.

Section1420. When usufruct comes to an end, the usufructuary must return the property to the owner.

The usufructuary is liable for the destruction or depreciation in value of the property, unless he proves that the damage was not caused by his fault.

He must replace anything which he has wrongfully consumed.

He is not bound to give compensation for depreciation in value caused by reasonable use.

Section1421. The usufructuary must, in the exercise of his rights, take as much care of the property as a person of ordinary prudence would take of his own property.

Section1422. Unless otherwise provided in the act creating the usufruct, the usufructuary may transfer the exercise of his right to the third person. In such case the owner of the property may sue the transferee directly.

Section1423. The owner may object to any unlawful or unreasonable use of the property.

If the owner proves that his rights are in peril, he may demand security from the usufructuary, except in the case of donor who has reserved to himself the usufruct of the property given.

If the usufructuary fails to give security within a reasonable time fixed for the purpose, or if, in spite of the owner's objection he continues to make use of the property unlawfully or unreasonably, the Court may appoint a Receiver to manage the property in his stead. Upon security being given the Court may release the Receiver so appointed.

Section1424. The usufructuary is bound to keep the substance of the property unaltered, and is responsible for ordinary maintenance and petty repairs.

If important repairs or measures are necessary for the preservation of the property, the usufructuary must forthwith inform the owner thereof and permit them to be carried out. In case of default by the owner, the usufructuary may have the work carried out at the owner's expense.

Section1425. All extraordinary expense must be borne by the owner, but in order to meet these or expenses coming under the foregoing section he may realize part of the property unless the usufructuary is willing to advance the necessary funds without charging interest.

Section1426. The usufructuary shall, for the duration of the usufruct, bear expenses for the management of the property, pay taxes and duties, and be responsible for interests payable on debts charged upon it.

Section1427. If required by the owner, the usufructuary is bound to ensure the property against loss for the benefit of the owner; and if the property is already insured he is bound to renew such insurance when due. He must pay the premiums of the insurance for the duration of his usufruct.

Section1428. No action by the owner against the usufructuary or his transferee in connection with the usufruct or vice versa may be entered later than one year after the usufruct comes to an end. But in an action by the owner who could not have known of the end of the usufruct, the prescription of one year shall run from the time when he knew or ought to have known of it.

## TITLE VIII

### CHARGE ON IMMOVABLE PROPERTY

Section1429. An immovable property may be subject to a charge entitling the beneficiary to a periodical performance out of such property or to a specified use and enjoyment thereof.

Section1430. A charge on immovable property may be created either for a period of time or for the life of the beneficiary.

If no time has been fixed, it is presumed that the charge is for the life of the beneficiary.

If it is created for a period of time, the provisions of Section 1403 paragraph 3 shall apply mutatis mutandis.

Section1431. Unless otherwise provided in the act creating it, a charge on immovable property is not transferable even by way of inheritance.

Section 1432. If the beneficiary fails to comply with any essential condition specified in the act creating the charge, his right may be terminated.

Section 1433. If the owner of the property does not perform his obligations under the charge, the beneficiary may, in addition to the remedies for non-performance, apply to the Court to appoint a Receiver to manage the property and perform the obligations for the owner, or order the property to be sold by auction and the beneficiary be paid out of the owner together with the value of the charge.

The Court may, upon security being given by the owner, refuse to make an order for the appointment of a receiver or for an auction, or release a Receiver already appointed.

Section 1434. Sections 1388 to 1395 and 1397 to 1400 shall apply mutatis mutandis to the charge on immovable property.

## TITLE I

### MARRIAGE

#### CHAPTER I

##### BETROTHAL

Section 1435. A betrothal can be effected only when the man and the woman have completed their seventeenth year of age.

The betrothal contrary to the provision of paragraph one is void.

Section 1436. If a minor will conclude a betrothal, the consent of the following persons is required:

- (1) his or her parents, in case both of his or her father and mother are still alive;
- (2) his or her parent, in case his or her father or mother died, or is in condition of state of being unable to give consent, or is under the circumstances that make the minor unable to ask for such consent;
- (3) his or her adopter, in case the minor is an adopted child
- (4) his or her guardian, in case there is no person giving consent under (1), (2) and (3), or such person is deprived of parental power.

A betrothal concluded by the minor without the said consent is voidable.

Section 1437. Betrothal is not valid until the man gives or transfers the property which is Khongman to the woman as evidence that the woman after the betrothal has taken place.

The Khongman shall become the property of the woman after the betrothal has taken place.

Sinsod is property given on the part of the man to the parents, adopter or guardian of the woman, as the case may be, in return of the woman agreeing to marry. If the marriage does not take place causing mainly from the woman or on account of any circumstances that make the woman responsible therefore and make the marriage unsuitable for the man or make the man unable to marry that woman, the man may claim the return of the Sinsod.

The provisions of Section 412 to Section 418 of this Code on undue enrichment shall apply to the return of the Khongman or Sinsod under this Chapter, mutatis mutandis.

Section 1438. Betrothal does not give rise to an action for compulsory performance of the marriage. An agreement to pay a penalty in case of breach of the betrothal agreement is void.

Section 1439. After the betrothal has taken place if either party commits a breach of the betrothal agreement, such party shall be liable to make compensation. In case the woman commits a breach of the betrothal agreement, the Khongman shall also be returned to the man.

Section 1440. Compensation may be claimed as follows:

- (1) for injury caused to the body or reputation of the man or woman;
- (2) for appropriate expenses or debt incurred in good faith by the betrothed, his or her parents or a person acting in the capacity of his or her parents in preparation for the marriage;
- (3) for damage suffered by the man or woman through having taken appropriate measures affecting his or her property or other affairs relating to his or her occupation or earning in expectation of the marriage.

In case where the woman is entitled to the compensation, the Court may decide that the Khongman which has become her property is the whole or a part of compensation she will receive, or the Court may order for payment of the compensation without regard to Khongman that has become property of the woman.

Section 1441. Where one of the betrothal dies before the marriage, there shall be no claim for compensation. As for the Khongman or Sinsod, it need not be returned by the woman or on the part of the woman, irrespective if the death of either party.

Section 1442. In case where there is an essential event happening to the betrothed woman that makes the marriage to the woman unsuitable, the man is entitled to renounce the betrothal agreement and the woman shall return the Khongman to the man.

Section 1443. In case where there is an essential event happening to the betrothed man that makes marriage to the man unsuitable, the woman is entitled to renounce the betrothal agreement and the Khongman need not to be returned to the man.

Section 1444. If the ground that makes the one betrothed renounce the betrothal agreement is the gross misconduct of the other taken place after the conclusion of betrothal, the betrothed who had committed the gross misconduct shall be liable to make compensation to the other who has exercised his or her right to renounce the betrothal agreement as if the former had committed a breach of the betrothal agreement.

Section 1445. A man who is betrothed to a woman may, after the betrothal agreement having been renounced under the Section 1442, claim compensation from any man who has sexual intercourse with the woman and has known or should have known of her betrothal.

Section 1446. A man who is betrothed may, without requiring him to renounce the betrothal agreement, claim compensation from any man who has had sexual intercourse or attempted to have sexual intercourse with the woman against her will, and the fact that the woman had been betrothed has been known or ought to have known to him.

Section 1447. The Court shall determine the compensation claimed under this Chapter according to the circumstances.

The claim under this Chapter, except to one in Section 1440 (2), cannot be transferred or inherited unless such claim has been acknowledged in writing or the action for compensation has been entered by the injured person.

Section 1447/1. The prescription for the claim for compensation under Section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the claim for compensation under Section 1444 shall be six months from the day when the commission of gross misconduct which is the cause of renunciation of the betrothal agreement is known or should have known to the other betrothed, but no later than five years from the date of the said commission.

The prescription for the claim for compensation under Section 1445 and Section 1446 shall be six months from the day when the betrothed man knows or should have known the commission of any other man which is the cause of the claim and the person bound to make the compensation is known, but not later than five years from the date of such commission.

Section 1447/2. The prescription for the claim for return of the Khongman under section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the return of the Khongman under Section 1442 shall be six months from the date of denunciation of the betrothal agreement.

## CHAPTER II

### CONDITIONS OF MARRIAGE

Section 1448. A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age.

Section 1449. A marriage cannot take place if either the man or the woman is an insane person or adjudged incompetent.

Section 1450. A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relation without regard to its legitimacy.

Section 1451. An adopter cannot marry the adopted.

Section 1452. A marriage cannot take place if the man or woman is already the spouse of another person.

Section 1453. In case of the woman whose husband died or whose marriage has become terminated, the marriage can only take place if not less than three hundred and ten days have elapsed since the termination of her previous marriage; unless

- (1) a child has been born during such period;
- (2) the divorced couple remarry;
- (3) there is a certificate issued by a qualified doctor who is a lawful physical practitioner in medicine showing that the woman is not pregnant;
- (4) there is an order of the Court allowing the woman to marry.

Section 1454. In case of marriage of a minor, the provisions of Section 1436 shall apply mutatis mutandis.

Section 1455. Giving consent to the marriage may be made:

- (1) by affixing signature of the person giving consent in the Register at the time of registration of the marriage;
- (2) by a consent document stating the names of the parties to the marriage and signed by the person giving consent;
- (3) by verbal declaration before at least two witnesses in case of necessity.

The consent having been given cannot be revoked.

Section 1456. In case where there is no person having the power to give consent under Section 1454, or if the person refuses to give consent or is in the position of being unable to give consent, or the minor cannot, in such circumstances, ask for the consent, the minor may file an application with the Court for giving consent to the marriage.



Section 1457. Marriage under this Code shall be effected only on registration being made.

Section 1458. A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar.

Section 1459. A marriage in foreign country between Thai people or between a Thai people and a foreigner may be effected according to the form prescribed by Thai law or by the law of the country where it takes place.

If the spouses desire to have the marriage registered according to Thai law, the registration shall be effected by a Thai Diplomatic or Consular Officer.

Section 1460. In case where there exists special circumstances that make the marriage registration by the Registrar unable because either or both of the man and woman were in imminent danger of death or in the state of armed conflict or war, if a declaration of intention to marry has been made by the man and woman before a person of sui juris living there, who would have noted down as an evidence such intention, and if the registration of marriage between the man and woman was effected thereafter not later than ninety days as from the date of first possible opportunity to apply for registration of marriage with production of the evidence of the intention in order to have the date and place of declaration of intention to marry and the special circumstances recorded by the Registrar in the Marriage Register, the day on which declaration of intention to marry has been made to the said person shall be deemed as the date of registration of marriage.

The provisions of this Section shall not apply to the marriage that is void if it should take place on the date of declaration of intention.

### CHAPTER III

#### RELATIONSHIP OF HUSBAND AND WIFE

Section 1461. Husband and wife shall cohabit as husband and wife.

Husband and wife shall maintain and support each other according to his or her ability and condition in life.

Section 1462. Where the physical or mental health or happiness of either spouse is greatly imperiled by continuance of cohabitation, the spouse so imperiled may apply to the Court for authorization to live apart while the danger persists; and in such case, the Court may order such amount of maintenance to be furnished by one of the spouses to the other as may be proper according to the circumstances.

Section 1463. If one of the spouses is adjudged incompetent or quasi-incompetent, the other becomes guardian or curator by operation of law. But on application of any interested person or of Public Prosecutor, the Court may on substantial grounds, appoint another person as guardian or curator.

Section 1464. If one of the spouse becomes insane, irrespective of whether he or she has been adjudged incompetent or not, and the other fails to give proper maintenance to the insane spouse under Section 1461 paragraph two, does or fails to do any thing to the extent that it plunges the insaw spouse into the position which is likely endangering the latter's body or mind, or causing any undue loss to the latter's property, the persons as specified in Section 28 or the guardian may enter an action against the other claiming maintenance for the insane spouse, or apply for any order of the Court to protect the insane spouse.

If, in case of entering the action for maintenance under paragraph one, no order has yet been given to effect the insane spouse to become incapacitated person, an application shall be made 10 the Court in the same case for an order effecting such insane spouse to be an incapacitated person and to appoint the applicant himself or herself as the guardian. If such order effecting the

incapacitated person on the insane spouse has been given, an application for removal of the old guardian and appointment of a new one may be made.

In applying for any order of the Court for protecting the insane spouse without claiming maintenance, the applicant may not request the Court to order effecting the insane spouse to be an incapacitated person or to change the guardian. If the measures for protection as requested, in the opinion of the Court, requires an appointment or change of the guardian, the Court shall firstly give an order effecting the carrying out of the similar activities as provided in paragraph two, and then give a protection order as it is deemed suitable.

Section 1464/1 During the Court trial under Section 1464, the Court may, upon request, determine any temporary measures concerning the maintenance or protection of the insane spouse as it is deemed suitable. If it is a case of emergency, the provisions on the request in case of emergency under the Civil Procedure Code shall apply.

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## CHAPTER IV

### PROPERTY OF HUSBAND AND WIFE

Section 1465. Where the husband and wife have not, previous to their marriage, concluded a special agreement concerning their properties, the relations between them as regards to their properties shall be governed by the provisions of this Chapter.

Any clause in the anti-nuptial agreement (example) contrary to public order or good morals, or provided that the relations between them as regards such properties are to be governed by foreign law shall be void.

Section 1466. The ante-nuptial agreement is void if not entered in the Marriage Register at the time of marriage registration terms of the ante-nuptial; or if not made in writing and signed by both spouses and by at least two witnesses and entered in the Marriage Register at the time of marriage registration stating that the ante-nuptial is thereto annexed.

Section 1467. After marriage the ante-nuptial agreement cannot be altered except by authorization of the Court.

When there is final order of the Court to effect the alteration or cancellation of the ante-nuptial agreement, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Section 1468. Clauses in the ante-pre-nuptial agreement shall have no effect as regards the rights of third persons acting in good faith irrespective of whether they be altered or cancelled by the order of the Court.

Section 1469. Any agreement concluded between husband and wife during marriage may be avoided by either of them at any time during marriage or within one year from the day of dissolution of marriage; provided that the right of third persons acting in good faith are not affected thereby.

Section 1470. Properties of husband and wife except in so far as they are set aside as Sin Suan Tua, are Sin Somros.

Section 1471. Sin Suan Tua consists of:

- (1) property belonging to either spouse before marriage
- (2) property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse
- (3) property acquired by either spouse during marriage through a will or gift

(4) Khongman.

Section 1472. As regards to Sin Suan Tua, if it has been exchanged to other property, other property has been bought or money has been acquired from selling it, such other property or money acquired shall be Sin Suan Tua.

Where the Sin Suan Tua has been totally or partly destroyed but replaced by other property or the money, such other property shall be Sin Suan Tua.

Section 1473. Each spouse is manager of his or her Sin Suan Tua.

Section 1474. Sin Somros consists of:

- (1) property acquired during marriage;
- (2) property acquired by either spouse during marriage through a will of gift made in writing if it is declared by such will or document of gift to be Sin Somros;
- (3) fruits of Sin Suan Tua.

In case of doubt as to whether a property in Sin Somros or not shall be presumed to be Sin Somros.

Section 1475. Where any Sin Somros is property of the kind mentioned in Section 456 of this Code or has documentary title, either husband or wife may apply for having his or her name entered in the documents as co-owners.

Section 1476. In managing the Sin Somros in the following cases, the husband and wife have to be joint manager, or one spouse has to obtain consent from the other:

- (1) Selling, exchanging, sale with the right of redemption, letting out property on hire-purchase, mortgaging, releasing mortgage to mortgagor or transferring the right of mortgage on immovable property or on mortgageable movable property.
- (2) Creating or distinguishing the whole or a part of the servitude, right of inhabitation, right of superficies, usufruct or charge on immovable property.
- (3) Letting immovable property for more than three years.
- (4) Lending money
- (5) Making a gift unless it is a gift for charitable, social or moral purposes and is suitable to the family condition.
- (6) Making a compromise.
- (7) Submitting a dispute to arbitration.
- (8) Putting up the property as guarantee or security with a competent official or the Court.

The management of the Sin Somros in any case other than those provided in paragraph one can be made only by one spouse without having to obtain consent from the other.

Section 1476/1. The husband and wife can manage the Sin Somros, differently, in whole or in part, from provisions of Section 1476, provided that the ante-nuptial agreement under Section 1465 and Section 1466 has been made. In such case, the management of the Sin Somros shall be made in accordance with the ante-nuptial agreement.

In case the specifications of the management of the Sin Somros in the ante-nuptial agreement are only part in difference to the provisions of Section 1476, the management of the Sin Somros other than those specified in the ante-nuptial contract shall be made in accordance with Section 1476.

Section 1477. Either spouse is entitled to litigate, defend, take legal proceedings concerning maintenance of the Sin Somros or for the benefit of the Sin Somros. Debts incurred by the said litigation, defense and legal proceedings shall be regarded as the obligation to be performed jointly by the spouses.

Section 1478. Where one spouse has to give consent or to affix a signature together with the other in the management of the property, but unreasonably refuses to give such consent or to affix such signature, or is not in a position to give such consent, the latter may apply to the Court for an order granting the necessary permission.

Section 1479. Where an act by either spouse requires the consent of the other spouse, and if such act is required by law to be made in writing or registered by the competent official, such consent must be given in writing.

Section 1480. In the management of the Sin Somros which has to be made jointly or has to obtain the consent from the other spouse under Section 1476, if either spouse has entered into any juristic act alone or without consent of the other, the latter may apply in Court for revoking such juristic act, unless it has been ratified by the other spouse, or the third person was at the time of entering into such juristic act, acting in good faith and make the counter-payment.

The litigation for revocation of the juristic act by the Court under paragraph one cannot be made later than one year from the day when such cause as being the ground for the revocation is known, or later than ten years since the juristic act was done.

Section 1481. Neither spouse is entitled to dispose of the Sin Somros by will in favour of the other persons to an extent exceeding his or her own portion thereof.

Section 1482. In case either spouse is the sole manager of the Sin Somros, the other spouse is nevertheless entitled to manage household affairs or provide for the necessaries of the family, and the expenses therefore would bind the Sin Somros and Sin Suan Tua of both parties.

If such management of household affairs or provision for the necessaries of the family by the husband or wife results in the undue loss, the other spouse may apply to the Court to forbid or limit his or her power.

Section 1483. In case either spouse is the sole manager of the Sin Somros, if the manager is going to commit or is committing any act in the management of the Sin Somros which would appear to result in undue loss, the other spouse may apply to the Court for an order forbidding commission of such act.

Section 1484. If either spouse who is the manager of Sin Somros:

- (1) causes undue loss to it;
- (2) fails to support the other spouse;
- (3) becomes insolvent or incurs debts to an amount exceeding one half of the Sin Somros;
- (4) hinders the management of Sin Somros by the other spouse without reasonable ground;
- (5) is found to have circumstances that will ruin the Sin Somros;

the other spouse may apply to the Court for an order authorizing him or her to be the sole manager or dividing the Sin Somros.

In case there is an application is made under paragraph one, the Court may determine temporary protective measures in the management of the Sin Somros. If that is the case of emergency, the provisions on the request in case of emergency under the Civil Procedure Code shall apply.

Section 1484/1. In case where has been an order of the Court forbidding or limiting the power of either spouse to manage the Sin Somros, if the cause which was the ground for the Court order or the circumstances have later changed, either spouse may apply to the Court revocation or change of the order forbidding or limiting the power to manage the Sin Somros. The Court in this effect may give any order which is deemed suitable.

Section 1485. The husband or wife may apply to the Court for authorizing him or her to be the manager of any particular Sin Somros or participate in the management, if such management or participation will bring about more benefit.

Section 1486. When the Court has pronounced a final judgment or given an order under Section 1482 paragraph two, Section 1483, Section 1484, Section 1484/1 or Section 1485 in favour of the applicant, or Section 1491, Section 1492/2 or Section 1598/17, or the husband and wife has been relieved of becoming bankrupt, the Court shall notify the marriage Registrar of the matter in order to have it entered in the Marriage Registrar.

Section 1487. No spouse can seize attach any property of the other during the marriage, except the seizure or attachment made in the case which has entered for the purpose of exercising his or her duty or for maintaining rights between husband and wife as specially provided in this Code or as specially provided by this Code allowing one spouse to sue the other, or for allowance due for maintenance and cost under the judgment of the Court.

Section 1488. Where either spouse is personally liable to perform an obligation incurred before or during marriage, such performance shall be first made out of his or her Sin Suan Tua; if the obligation is not performed in full, it shall be satisfied out of his or her portion of the Sin Somros.

Section 1489. Where both spouses are common debtors, the performance shall be made out of the Sin Somros and the Sin Suan Tua of both spouses.

Section 1490. Debts that both spouses are jointly liable to perform, shall include the following debts incurred by either spouse during marriage:

- (1) debts incurred in connection with management of household affairs and providing for the necessaries of the family, or maintenance, medical expenses of the household and for proper education of the children;
- (2) debts incurred in connection with the Sin Somros;
- (3) debts incurred in connection with a business carried on by the spouses in common;
- (4) debts incurred by either spouse only for his or her own benefit but ratified by the other.

Section 1491. If either spouse is adjudged bankrupt, the Sin Somros is divided by operation of law as from the date of adjudication.

Section 1492. After the Sin Somros has been divided under Section 1484 paragraph two, Section 1491 or Section 1598/17 paragraph two, the portion so divided becomes Sin Suan Tua of each spouse. Any property obtained after the division by either spouse shall be Sin Suan Tua of that spouse and not be regarded as Sin Somros. And the property acquired thereafter by the spouse through a will or gift made in writing under Section 1474 (2) shall become Sin Suan Tua of the husband and wife equally.

Fruits of the Sin Suan Tua accrued after the division of the Sin Somros shall be Sin Suan Tua.

Section 1492/1. In case the division of the Sin Somros is made by the order of the Court, the revocation of the division shall be made upon the request of either spouse and the Court has given the order to that effect. If either spouse raises an objection to such request, the Court cannot give an order for the revocation of the division of the Sin Somros unless the cause for division of the Sin Somros has ceased to exist.

After the division of the Sin Somros under paragraph one having been revoked, or suspended due to the husband or wife having been relieved from being bankrupt, the property which is the Sin Suan Tua on the date of the order of the Court, or on the date of his or her relieving from being bankrupt shall remain the same as Sin Suan Tua.

Section 1493. In case where the Sin Somros has been disposed of, both spouses are liable to pay for the household expenses in proportion to the amount of their respective Sin Suan Tua.

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## CHAPTER V

### VOID OF MARRIAGE

Section 1494. The marriage will be void only as provided in this Chapter.

Section 1495. The marriage which is made against Section 1449, Section 1450, Section 1452 and Section 1458 shall be void.

Section 1496. It is only a judgment of the Court that effects the void of the marriage which is made against Section 1449, Section 1450 and Section 1458.

The spouses, parents or descendants of the spouse may apply for a judgment of the Court effecting the void of the marriage. If there is none of the said persons, any interested person may request the Public Prosecutor to apply to the Court for such judgment.

Section 1497. Any interested person may allege or apply for a judgment of the Court effecting that the marriage made against Section 1452 is void .

Section 1497/1. In case there is a final judgment of the Court effecting the void of any marriage, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

Section 1498. The void of marriage will not create property relation between husband and wife.

In case of marriage has been adjudged void, the property possessed or acquired by either party before or after the marriage as well as the fruits thereof remain as that party's property. As for the property jointly earned, they shall divided equally unless the Court deems it proper and order otherwise by taking into consideration the obligation in the family and earnings of both parties as well as their station in life, including all other circumstances.

Section 1499. The marriage adjudged void as being against Section 1449, Section 1450 or Section 1458 shall not prejudice the right acquired through such marriage before pronouncing the final judgment effecting the void of the marriage by the party who has married in good faith.

The marriage adjudged void as being against Section 1452 shall not prejudice the right acquired through such marriage before the cause that the maker the marriage void is known to the man or woman. But the said marriage shall not make one spouse become statutory heir of the other and have the right of inheritance to the other spouse.

In case of the marriage adjudged void as being against Section 1449, Section 1450, Section 1458 or Section 1452, if one party only acted in good faith, such party may claim compensation. However, if such marriage makes the party in good faith become destitute deriving insufficient income out of his or her property or business which used to be carried on before pronouncing the final judgment to effect the void of the marriage, or before the void of his or her marriage becoming known, as the case may be, that party can also claim living allowance, and the provisions of Section 1526 paragraph one and Section 1528 shall apply to the claim for living allowances in this case, mutatis mutandis.

The prescription for claiming compensation or living allowances under paragraph three shall be two years from the date of pronouncing the final judgment to effect the void of the marriage in case of the marriage made against Section 1449, Section 1450 or Section 1448, or from the day when the void of his or her marriage becoming known in the case of the marriage made against Section 1452.

Section 1499/1. In case of the marriage adjudged void, the agreement between the spouses as to which party to exercise the parental power over any child, or either party or both of them to be responsible for the amount of contribution of the maintenance of the child shall be made in writing. If the agreement cannot be reached, the Court shall make decision on the matter. In making such decision, if the are grounds for depriving that spouse of parental power under Section 1582, the Court may give an order depriving that spouse of the same and appoint a third person as a guardian by taking into consideration the happiness and interest of the child, and the provisions of Section 1521 shall apply, mutatis mutandis.

Section 1500. The marriage adjudged is void shall not prejudice the rights acquired by third person acting in good faith before entering the void of the marriage into the Marriage Register under Section 1497/1.

## CHAPTER VI

### TERMINATION OF MARRIAGE

Section 1501. Marriage is terminated by death, divorce or being cancelled by the Court.

Section 1502. A voidable marriage terminates upon cancellation decided by judgment of the Court.

Section 1503. An application to the Court for cancellation of marriage on the ground of its avoidable shall be made only in the case where the spouses have not complied with Section 1448, Section 1505, Section 1506, Section 1507, and Section 1509.

Section 1504. An interested person other than the parents or guardian who have given their consent to the marriage is entitled to apply for cancellation of the marriage on the ground of its voidability.

If the court has not cancelled the marriage until both man and woman have completed the age required under Section 1448 or if the woman has become pregnant before such completion, the marriage shall be deemed to be valid from the time it was made.

Section 1505. A marriage which is made on account of mistake as to the identity of the other spouse shall be deemed to be voidable.

The right to apply for cancellation of the marriage on account of mistake as to the identity of the spouse shall be terminated after the lapse of ninety days from the date of marriage.

Section 1506. A marriage is voidable if it is made by the spouses on account of fraud to such an extent that without it the marriage would not have been made.

The provisions of paragraph one shall not apply to the case not apply to the case where the other spouse has not known the fraud committed by a third person.

The right to apply for cancellation of the marriage on account of fraud shall be terminated after the lapse of ninety days from the day on which the spouse has known or should have known of the fraud, or after the lapse of one year from the date marriage.

Section 1507. A marriage is voidable if it is made by the spouses on account of duress to such an extent that without it the marriage would not have been made.

The right to apply for cancellation of the marriage on account of duress shall be terminated after the lapse of one year from the day on which the spouse is free from duress.

Section 1508. Where the marriage is voidable on account of mistake as to the identity of the spouse, fraud or duress, only the spouse who mistook the identity of the other, or was induced by fraud or duress to contract the marriage may apply for the cancellation of such marriage.

In case where the person entitled to apply for the cancellation of the marriage has been adjudged incompetent, the person who may apply to the Court for an order effecting an insane person to be an incapacitated person under Section 29, may also apply for the cancellation of such marriage. Where the person entitled to apply for the cancellation of the marriage is an insane person not yet adjudged incompetent, the said person may apply for the cancellation of such marriage but must apply concurrently to the Court for an order effecting him to be an incapacitated person. If the Court gives an order revoking the application for an order effecting him to be an incapacitated person, the Court shall also order revoking the application made by the said person for the cancellation of the marriage.

The order of the Court revoking the application made by the person for cancellation of the marriage under paragraph two does not effect the right of the spouse to apply for the cancellation of the marriage; provided that the spouse exercise his or her right within the remaining period of time. If the remaining period of time is less than six months as from the day on which the order of the Court revoking the application made by the said person for cancellation of the marriage is given, or if there remains no such period, the period of time shall correspondingly be extended to the completion of six months as from the day on which the order of the Court revoking the application made by the said person for the cancellation of the marriage is given.

Section 1509. The marriage made without consent of the persons mentioned in Section 1454 is voidable.

Section 1510. Where the marriage is voidable on account of having been made without consent of the persons mentioned in Section 1454, only the person who can give the consent under Section 1454 may apply for the cancellation of the marriage.

The right to apply for the cancellation of the marriage under this Section is extinguished when the spouse has completed the age of twentieth year or when the woman has become pregnant.

The action for the cancellation of the marriage under this Section is barred by prescription after one year from the day where the marriage is known.

Section 1511. The marriage which is cancelled by judgment of the Court shall be deemed to have terminated on the day when the judgment becomes final; provided, however, that it may not be set up to the prejudice of the rights of third persons acting in good faith unless the cancellation of the marriage has been registered.

Section 1512. The provisions concerning the result of divorce by judgment of the Court shall apply to the result of cancellation of the marriage *mutatis mutandis* [Ed. Latin, the necessary changes having been made].

Section 1513. If it appears that the spouse sued on cancellation of the marriage has known of the ground of the avoidability, such spouse is required to make compensation for the damage to the body, reputation or property of the other arising from such marriage, and the provisions of Section 1525 shall apply *mutatis mutandis*.

If the other spouse becomes destitute due to the cancellation of the marriage under paragraph one and derives insufficient income out of his or her property of business which used to be carried on during the marriage, the spouse against whom the action has been brought is also required to be liable to living allowances as provided in section 1526.

Section 1514. Divorce may be effected only by mutual consent or by judgment of the Court.

Divorce effected by mutual consent must be made in writing and certified by the signatures of at least two witnesses.

Section 1515. Where marriage has been registered as provided by this Code, divorce by mutual consent is valid only if the registration thereof is effected by both the husband and wife.

Section 1516. Grounds of action for divorce are as follows:

- (1) the husband has given maintenance to or honored such other woman as his wife, or the wife has committed adultery, the other spouse may enter a claim for divorce;
- (2) one spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other:
  - (a) to be seriously ashamed;
  - (b) to be insulted or hated or account of continuance of being husband or wife of the spouse having committed the misconduct; or
  - (c) to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration;



the latter may enter a claim for divorce;

(3) one spouse has caused serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants, the latter may enter a claim for divorce;

(4) one spouse has deserted the other for more than one year, the latter may enter a claim for divorce;

(4/1) one spouse had been sentenced by a final judgment of the Court and has been imprisoned for more than one year in the offence committed without any participation, consent or in the knowledge of the other, and the cohabitation as husband and wife will cause the other party sustain excessive injury or trouble, the latter may enter a claim for divorce;

(4/2) The husband and wife voluntarily live separately because of being unable to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court, either spouse may enter a claim for divorce;

(5) one spouse has been adjudged to have disappeared, or as left his or her domicile or residence for more than three years and being uncertain whether he or she is living or dead;

(6)

one spouse has failed to give proper maintenance and support to the other, or committed acts seriously adverse to the relationship of husband and wife to such an extent that the other has been in excessive trouble where the condition, position and cohabitation as husband and wife are taking into consideration, the latter may enter a claim for divorce;

(7) one spouse has been an insane person for more than three years continuously and such insanity is hardly curable so that the continuance of marriage cannot be expected, the other may enter a claim for divorce;

(8) one spouse has broken a bond of good behavior executed by him or her, the other spouse may enter a claim for divorce;

(9) one spouse is suffering from a communicable and dangerous disease which is incurable and may cause injury to the other, the latter may file a claim for divorce;

(10) one spouse has a physical disadvantage so as to be permanently unable to cohabit as husband and wife, the other may enter a claim for divorce.

Section 1517. No action for divorce may be instituted by the husband or wife, as the case may be if such spouse has consented to or connived at the acts under Section 1516 (1) and (2) upon which the actio for divorce is based.

If the ground of action for divorce under Section 1516 (10) has resulted from the act of the other spouse, the action for divorce based upon such ground may not be instituted by such other spouse.

Where the action for divorce based upon the ground under section 1516 (8) has been instituted, the Court may not pronounce judgment to effect the divorce if the behavior of the husband or wife that causes the bond to have been executed is a minor cause or of no importance in relation to peaceful cohabitation as husband and wife.

Section 1518. The right to institute an action for divorce would be terminated if the spouse entitled thereto has committed any act showing his or her forgiveness to the act done by the other that has caused the right to institute the action for divorce.

Section 1519. In case where one spouse is an insane person and if there gives rise to the ground of action for divorce irrespective of whether it arises before or after the insanity, the person entitled to apply to the Court for an order effecting the insane person to be an incapacitated person under Section 28\* shall have the power to enter an action against the other spouse for divorce and liquidation of the property. In such a case if no order of the Court effecting the insane spouse to be an incapacitated person has yet been given, the said person shall apply to the Court in the same case for an order effecting the insane spouse to be an incapacitated person.

The said person may, if deemed suitable, also apply to the Court for giving the order under Section 1526 and Section 1530.

In case where the spouse alleged to be an insane person has not yet been adjudged incompetent, and if the Court deems that such spouse should not be judged incompetent, the case shall then be

dismissed. If the spouse is deemed suitable to be adjudged incompetent but an order to effect the divorce should not yet be given as yet, the Court shall adjudge the spouse to be an incapacitated person and may not give order concerning the guardian or appointing other person to be guardian under Section 1463 while the application for divorce will be dismissed, and the Court may in this connection give an order determining living allowances. In case where the spouse is deemed to be insane and should be adjudged incompetent by the Court and the application for divorce should also be granted, the Court shall issue an order in the judgment effecting such spouse to be an incapacitated person, appointing a guardian and allowing the divorce.

In case there the Court deems that the ground upon which the claim for divorce is based is not proper to the condition of the incapacitated spouse who is going to divorce the other spouse, if it is not proper under such circumstances that divorce should be allowed, the Court may not pronounce the judgment to effect the divorce.

Section 1520. In case of divorce by mutual consent, the spouses shall make an agreement in writing for the exercise of parental power over each of the children. In the absence of such agreement or an agreement thereon cannot be reached, the matter shall be decided by the Court.

In case of divorce by judgment of the Court, the Court trying the divorce case shall also order that the parental power over each of the children belongs to any party. If, in such trial, it is deemed proper to deprive that spouse of the parental power under Section 1582, the Court may give an order depriving that spouse of the same and appointing a third person as a guardian, by taking into consideration the happiness and interest of the child.

Section 1521. If it appears that the person exercising parental power of the guardian under Section 1520 behaves himself or herself improperly or there is a change of circumstances after the appointment, the Court has the power to give an order appointing a new guardian by taking into consideration the happiness and interest of the child.

Section 1522. In case of divorce by mutual consent, an arrangement shall be made and contained in the agreement of divorce as to who, both of the spouses or either spouse, will contribute to the maintenance of the children and how much is the contribution.

In case of divorce by judgment of the Court or in case the agreement of divorce contains no provisions concerning the maintenance of the children, the Court shall determine it.

Section 1523. In case of divorce by judgment of the Court on the ground as provided in Section 1516 (1), the husband or wife is entitled to compensation from the husband or wife and other woman or adulterer, as the case may be.

The husband is entitled to claim compensation from any person who has wrongfully taken liberties with his wife in an adulterous manner, and the wife is entitled to claim compensation from other woman who has openly shown her adulterous relations with the former's husband. However, the husband or wife is not entitled to claim compensation if he or she has consented to or connived at the act done by other party under Section 1516 (1) or allowed other person to act as provided in paragraph two.

Section 1524. If the ground of action for divorce under Section 1516 (3), (4) or (6) has arisen through an act of the party at fault with the intention to make the other party so intolerable that action for divorce has to be entered, the other party is entitled to compensation from the party at fault.

Section 1525. The compensation under Section 1523 and Section 1524 shall be decided by the Court according to the circumstances, and the Court may give an order for a single payment thereof or payment in instalments as may be deemed suitable by the Court.

In case where the person who has to make the Compensation is a spouse of the other party, the share of the property received by the former from the liquidation of the Sin Somros on account of divorce shall also be taken into consideration.

Section 1526. In a case of divorce, if the ground for divorce has derived from the guilt of only one party, and the divorce will make the other become destitute deriving insufficient income out of his or her property or business which used to be carried on during the marriage, the latter is entitled to apply for the living allowances to be paid by the party at fault. The Court may decide whether the living allowances be granted or not by taking the ability of the grantor and the condition in life of the receiver into consideration, and the provisions of Section 1598/39, Section 1598/40 and Section 1598/41 shall apply *mutatis mutandis*.

The right to claim the living allowances is extinguished if it is not raised in the plaint or counter-claim in the action for divorce.

Section 1527. If a divorce is effected on the ground of insanity under Section 1516 (7) or on the ground of suffering from a communicable and dangerous disease under Section 1516 (9), the other spouse shall furnish living allowances to the spouse who is insane or is suffering from the disease, according to Section 1526, *mutatis mutandis*.

Section 1528. If the party receiving living allowances remarries, the right to receive living allowances is extinguished.

Section 1529. Rights of action based upon any of the grounds provided in Section 1516 (1), (2), (3) or (6), or Section 1523 are extinguished after one year when the fact which can be alleged by the claimant has been known or should have been known to him or her.

Grounds upon which a claim for divorce can no longer be based may still be proved in support of another claim for divorce based upon other grounds.

Section 1530. Where an action for divorce is pending, the Court may, on application of either party, make any provisional order which it thinks proper such as those concerning the *Sin Somros*, the lodging, the maintenance of the spouses and the custody and maintenance of children.

Section 1531. In case where a marriage has been registered according to law, divorce by mutual consent takes effect from the time of registration.

Divorce by judgment of the Court takes effect on and from the time when the judgment becomes final; however, such judgment may not be set up to the prejudice to the rights of third persons acting in good faith unless the divorce has been registered.

Section 1532. After divorce, the property of the husband and wife shall be subject to liquidation.

But as between the spouses,

(a) in case of divorce by mutual consent, the liquidation shall apply to the property of the husband and wife as it was on the date of registration of divorce;

(b) in case of divorce by judgment, the liquidation shall apply to the property of the husband and wife as it was on the day when the action for divorce was entered in Court.

Section 1533. Upon divorce, the *Sin Somros* shall be divided equally between man and woman.

Section 1534. Where either spouse has made disposal of the *Sin Somros* for his or her exclusive benefit, or has made disposal thereof with an intention to cause injury to the other, or has made disposal thereof without the consent of the other in the case where such disposal is required by law to have consent of the other, or has wilfully destroyed it, it shall, for the purpose of division of the *Sin Somros* under Section 1533, be regarded as if such property had still remained. If the share of the *Sin Somros* that the other will receive is not complete to what he or she should have received, the party at fault is required to make up for the arrears from his or her share of the *Sin Somros* or his or her *Sin Suan Tua*.

Section 1535. Upon termination of the marriage, the man and woman shall be liable for common debts equally.

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## TITLE II

### PARENT AND CHILD

#### CHAPTER I

##### PARENTAGE

Section 1536. A child born of a woman during wedlock or within three hundred and ten days after the termination of the marriage is presumed to be the legitimate child of the husband or the man who used to be the husband, as the case may be.

The provisions of paragraph one shall apply to a child born of a woman before the marriage has been pronounced void by the final judgment of the Court, or within three hundred and ten days as from the date of such final judgment.

Section 1537. In case where the woman had made the new marriage and gave birth to a child within three hundred and ten days as from the day of termination of the marriage, the child shall be presumed to be the legitimate child of the new husband, and no presumption under Section 1536 saying that the child is the legitimate child of the former husband shall apply; provided that there is a judgment pronouncing that the child is not the legitimate child of the new husband.

Section 1538. In case where the man or woman had made the marriage against Section 1452, a child born during such marriage shall be presumed to be the legitimate child of the husband who has last marriage entered into the Marriage Register.

In case where the woman had made the marriage against Section 1452, the presumption in Section 1536 shall apply; provided that there is a final judgment pronouncing that the child is not legitimate child of the husband who has the last marriage entered into the Marriage Register.

The provisions of paragraph one shall apply to the child born within three hundred and ten days from the date of the final judgment pronouncing the void of the marriage made against Section 1452.

Section 1539. In case where the child is presumed to be the legitimate child of the husband or the man who used to be the husband under Section 1536, Section 1537 or Section 1537 or Section 1537 or Section 1538, the husband or the man who used to be the husband may repudiate the child by entering an action in Court against the child and the mother jointly, and providing that he did not cohabit with the mother of the child during the period of conception, that is to say, the period extending from the one hundred and eightieth day to the three hundred and ten day inclusive, prior to the birth of the child, or that he could not have been the father of the child on other grounds of impossibility.

The action may be brought against only the child if at the time of entering the action the mother of the child is not alive. Where the child is not alive irrespective of whether the mother of the child is alive or not, the Court may be requested to declare that the child is not his legitimate child. In case where the mother of the child or the heir of the child is still alive, the Court shall send a copy of the request to the said person and may, if it thinks proper, send also a copy of the request to the Public Prosecutor for consideration of proceeding the case on behalf of the child.

Section 1540. (Repealed)

Section 1541. An action for repudiation of a child cannot be entered by the husband or the man used to be the husband if it appears that the latter causes to have the birth of the child entered in the Birth Register as his legitimate child or arranges or agrees to have it entered in the Birth Register.

Section 1542. An action for repudiation of a child shall be entered by the man who is or used to be the husband within one year after the birth of the child. In any case no such action can be entered later than ten years after the birth of the child.

In case where there is a judgment pronouncing that the child is not the legitimate child of the new husband under Section 1537 or of the husband in the last marriage under Section 1538, if the husband of the man who used to be the husband and is presumed by Section 1536 to be the father of the child, he shall enter the action within one year since the final judgment became known to him.

Section 1543. In case where the man being or used to be the husband who has entered an action for repudiation of the child, died before the case becoming final, a person who has the right of inheritance together with the child or a person whose right of inheritance would be deprived on account of the birth of the child, may file a motion to substitute himself or may be summoned to substitute for the deceased.

Section 1544. An action for repudiation of a child can be entered by a person who has the right of inheritance together with the child or by a person whose right of inheritance would be deprived on account of the birth of the child in the following cases:

- (1) the man who is or used to be the husband died before the expiration of the period within which the action could have been entered by him;
- (2) the child was born after the death of the man who is or used to be the husband. The action for repudiation of the child under (1) must be entered within six months since the death of the man being or having ever been the husband becoming known to that person. In any case no such action can be entered later than ten years after the birth of the child.

The provisions of Section 1539 shall apply to the entering of an action for repudiation of the child, *mutatis mutandis*.

Section 1545. A child may request the Public Prosecutor to enter an action under Section 1536 for repudiation to be legitimate child of the husband of his or her mother if it becomes known to the child that he or she is not an inherited child of the husband of the mother.

In entering the action under paragraph one, if it becomes known to the child before he or she becoming *sui juris* that he or she is not the legitimate child of the husband of his or her mother, no action can be entered by the Public Prosecutor after one year as from the date of his or her becoming *sui juris*. If it becomes known to the child after his or her becoming *sui juris*, no action can be entered by the Public Prosecutor later than one year since the day when the facts come to his or her knowledge.

Section 1546. A child born of a woman who is not married to a man is deemed to be the legitimate child of such woman.

Section 1547. A child born of the parents who are not married to each other is legitimate by the subsequent marriage of the parents, or by the registration made on application by the father, or by a judgment of the Court.

Section 1548. When legitimation is applied for by the father, the child and the mother must give consent to the applicant.

In case where the child and the mother do not appear before the Registrar for giving the consent, the Registrar shall notify the child and the mother of the father's application for registration. If the child or the mother raises no objection or does not give the consent within sixty days after the acceptance of the notification by the child or mother, it is presumed that the child or the mother does not give consent. The period of time shall be extended to one hundred and eighty days in case where the child or the mother has been outside Thailand.

In case where the child or the mother raises an objection that the applicant is not the father, or does not give the consent, or is unable to give the consent, the registration for legitimation must be effected by a judgment of the Court.

After the Court had pronounced a judgment effecting the registration of the legitimation and the judgment has been produced to the registrar for registration, the Registrar shall effect the registration.

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## TITLE I

### GENERAL PROVISIONS

#### CHAPTER I

##### DEVOLUTION OF AN ESTATE

Section 1599. When a person dies, his estate devolves on the heirs.

An heir may lose his right to the succession only under the provisions of this Code or other laws.

Section 1600. Subject to the provisions of this Code, the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

Section 1601. An heir shall not be liable in excess of the property devolving on him.

Section 1602. When a person is deemed to have died under the provisions of Section 62\* of this Code shall, the estate devolves on the heirs.

If it is proved that such person is living or that he died at a time different from that specified in the adjudication of disappearance, the provisions of Section 63\* of this Code shall apply as regards his heirs.

Section 1603. An estate devolves on the heirs by statutory right or by will.

Heirs who are so entitled by law are called 'statutory heirs'.

Heirs who are entitled by will are called 'legatees'.

[\*Amended by section 15 Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535]

#### CHAPTER II

##### HEIRSHIP

Section 1604. A natural person can be an heir only when he has, at the time of the de cujus death, personality or is capable of rights under Section 15 of this Code.

For the purpose of this section, a child shall be deemed to have been en ventre sa mere at the time of such death if he is born or alive within three hundred and ten days after such time.

Section 1605. An heir who, fraudulently or with the knowledge that he prejudices any other heirs, diverts or conceal property up to or in excess of his share in the succession, shall be absolutely excluded from the succession; if he diverts or conceals less than his share in the succession, he shall be excluded from the succession up to the extent of the part so diverted or concealed.

This section does not apply to a legatee to whom a specific property has been bequeathed, in so far as his right to receive such property is concerned.

Section 1606. The following are excluded from succession as being unworthy:

(1) the person who is convicted by a final judgment of having wrongfully and intentionally caused the death or attempted to cause the death of the de cujus or of a person having prior right to the succession;

(2) the person who, having prosecuted the de cujus for having committed an offence punishable with death, has himself been convicted by a final judgment for bringing a false charge or for fabricating false evidence.

(3) the person who, having knowledge that the de cujus was murdered, did not give information thereof for the purpose of bringing the offender to punishment; but this does not apply if he has not completed sixteen years of age, or if he is unsound mind so as to be unable to distinguish between right and wrong, or if the murderer is his spouse or any of his direct ascendants or descendants;

(4) the person who, by fraud or duress, has caused the de cujus to make, revoke or change partly or wholly a will concerning the estate or has prevented him from so doing;

(5) the person who, has partly or wholly forged, destroyed or concealed a will.

The de cujus may remove the exclusion due to unworthiness by a pardon in writing.

Section 1607. The effects of exclusion from the succession are personal. The descendants of the excluded heir succeed as if such heir were dead, but as regards the property so devolved, the excluded heir has no right of management and enjoyment as specified in Book V title II Chapter III of this Code. In such case Section 1548 shall apply *mutatis mutandis*.

### CHAPTER III

#### DISINHERITANCE

Section 1608. A de cujus may disinherit any of his statutory heirs only by an express declaration of intention,

(1) by will

(2) by writing deposited with the competent official.

The identity of the disinherited heir must be clearly stated.

However, when a person has distributed all his estate by will, all his statutory heirs who are not beneficiaries under the will are deemed to be disinherited.

Section 1609. A declaration of disinheritance may be revoked.

If the disinheritance has been made by will, the revocation may be made only by will; but if the disinheritance has been made in writing deposited with the competent official, such revocation may be made either from prescribed in Section 1608 (1) or (2).

### CHAPTER IV

#### RENUNCIATION OF AN ESTATE AND MISCELLANEOUS PROVISIONS

Section 1610. When an estate devolves on a minor, or a person of unsound mind, or on a person incapable of managing his own affairs within the meaning of Section 32\* of this Code, and such person has not already had a legal representative or custodian or curator, the court shall appoint a guardian, custodian or curator as the case may be, on application of any interested person or of the Public Prosecutor.

[\* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

1611. An heir who is a minor, a person of unsound mind, or a person incapable of managing his own affairs within the meaning of 32\* this Code, cannot, except with the consent of his parents, guardian, custodian or curator as the case may be and with the approval of the Court, do the following acts:

(1) renounce and inheritance or refuse legacy

(2) accept an inheritance or legacy encumbered with a charge or condition.

[\* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

Section 1612. Renunciation of an inheritance or refusal of a legacy shall be made by an express declaration of intention in writing deposited with the competent official, or by a contract of compromise.

Section 1613. Renunciation of an inheritance or refusal of a legacy cannot be merely for a part or made subject to a condition or time clause.

Renunciation of an inheritance or refusal of a legacy cannot be revoked.

Section 1614. In an heir in any way renounces an inheritance or refuses a legacy with the knowledge that in so doing he prejudices his creditor, the creditor is entitled to claim cancellation of such renunciation or refusal; but this does not apply if the person enriched by such act did not know, at the time of the renunciation or refusal, of the facts which would make it prejudicial to the creditor; provided, however, that the case of renunciation or refusal made gratuitously, the knowledge on the part of the heir alone is sufficient.

After cancellation of the renunciation or refusal, the creditor may apply to the Court for authorization to accept the inheritance or legacy in the stead and by the right to such heir.

In such case, after payment to the creditor of such heir, the remainder, if any, of his share in the estate shall accrue to his descendants or to the other heirs of the de cujus as the case may be.

Section 1615. The renunciation of an inheritance or refusal of a legacy by an heir relates back, as regards its effect, to the time of the death of the de cujus.

When renunciation is made by any statutory heir, his descendants, provided they are not persons in whose name a valid renunciation has been made on behalf by their parents, guardians or custodians as the case may be, shall succeed under their own rights and shall be entitled to the portion equal to the share which would have devolved on the renouncer.

Section 1616. If the descendants of the renouncer have acquired inheritance as provided in Section 1615, as regards the property so inherited by his descendants, the renouncer has no right of management and enjoyment as specified in Book V Title II Chapter III of this Code, and Section 1548 shall apply mutatis mutandis.

Section 1617. If any person refuses a legacy, neither such person nor his descendants are entitled to receive the legacy so refused.

Section 1618. If a renunciation is made by a statutory heir who has no descendant to inherit or if a refusal is made by a legatee, the part of the estate so renounced or refused shall be distributed to the other heirs of the de cujus.

Section 1619. A person cannot renounce or otherwise dispose of the rights which he may contingently have to the succession of a living person.

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## TITLE II

### STATUTORY RIGHT OF INHERITANCE

#### CHAPTER I

##### GENERAL PROVISIONS

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1621. Unless otherwise provided by the testator in his will, although a statutory heir may have received any property under the will, such heir is still entitled to avail himself of his statutory right of inheritance up to the extent of his statutory share from the estate which has not been disposed of by the will.

Section 1622. A Buddhist monk cannot claim inheritance as a statutory heir, unless he leaves the monkhood and enforces his claim within the period of prescription specified in Section 1754.

However, a Buddhist monk can be a legatee.

Section 1623. Any property acquired by a Buddhist monk during his monkhood shall become, upon his death, property of the monastery which is his domicile, unless he has disposed of it during his life or by will.

Section 1624. Property belonging to a person before he entered the Buddhist monkhood shall not become property of the monastery, and shall devolve on his statutory heirs, or may be disposed of him by any way whatsoever according to the law.

Section 1625. If the deceased was married, the liquidation of property and the distribution of the estate between the deceased and the surviving spouse shall be as follows:

(1) as regards the share in the property of husband and wife, the provisions of this Code concerning divorce by mutual consent as supplemented by Sections 1637 and 1638 and especially Section 1513 to 1517 of this Code shall apply; however, such liquidation shall take effect as from the date of dissolution of the marriage by death;

(2) as regards the share in the estate of the deceased, the provisions of this Book other than Sections 1637 and 1638 shall apply.

Section 1626. After Section 1625 (1) has been complied with, the division of the estate between the statutory heirs shall be as follows:

(1) the estate will be divided between the several classes and degrees of heirs as provided in Chapter II of this Title;

(2) the proportion accruing to each class and degree shall be divided between the heirs of such class and degree, as provided in Chapter III of this Title.

Section 1627. An illegitimate child who has been legitimated by his father and an adopted child are deemed to be descendants in the same way as legitimate children within the meaning of this Code.

Section 1628. Spouses who are living apart under desertion or separation do not lose the statutory right of inheritance to one another as long as divorce between them has not taken place according to the law.

## CHAPTER II

### DIVISION INTO PORTIONS BETWEEN SEVERAL CLASSES AND DEGREES OF STATUTORY HEIRS

Section 1629. There are only six classes of statutory heir; and subject to the provisions of Section 1630 paragraph 2, each class is entitled to inherit in the following order:

- 1) descendants;
- 2) parents;
- 3) brothers and sisters of full blood;
- 4) brothers and sisters of half blood;
- 5) grandparents;
- 6) uncles and aunts.

The surviving spouse is also a statutory heir, subject to the special provisions of Section 1635.

Section 1630. So long as there is any heir surviving or represented in a class as specified in Section 1629 as the case may be, the heir of the lower class has no right at all to the estate of the deceased.

However, the foregoing paragraph does not apply in the particular case where there is any descendant surviving or represented as the case may be, and also the parents or one of them are still surviving; in such case each parent is entitled to the same share as an heir in the degree of children.

Section 1631. As between descendants of different degrees, only the children of the de cuius who are entitled to inherit. The descendants of lower degree may receive the inheritance only by the right of representation.

## CHAPTER III

### DIVISION INTO SHARES BETWEEN THE STATUTORY HEIRS IN EACH CLASS AND DEGREE

Section 1632. Subject to the provisions of Section 1629 last paragraph, the distribution of inheritance to the statutory heirs in the several classes of relatives shall be in accordance with the provisions in Part I of this Chapter.

Section 1633. The statutory heirs of the same class in any of the classes as specified in Section 1629 are entitled to equal shares. If there is only one statutory heir in such class, he is entitled to the whole portion.

Section 1634. As between the descendants entitled by way of representation to the division per stirpes as provided in Chapter IV of Title II, the divisions shall be as follows:

- (1) If there are descendants of different degrees, only the children of the deceased who are the nearest in degree are entitled to receive the inheritance. The descendants of lower degree may receive the inheritance only by virtue of the right of representation;
- (2) descendants in the same degree are entitled to equal parts
- (3) if in one degree there is only one descendant such descendant is entitled to the whole share.

## PART II

## Spouses

Section 1635. The surviving spouse is entitled to the inheritance of the deceased in the class and according to the division as hereunder provided:

(1) if there is an heir according to Section 1629 (1) surviving or having representatives as the case may be, such surviving spouse is entitled to the same share as an heir in the degree of children;

(2) if there is an heir according to Section 1629 (3) and such heir is surviving or has representatives, or if in default of an heir according to Section 1629 (1), there is an heir according to Section 1629 (2) as the case may be, such surviving spouse is entitled to one half of the inheritance;

(3) if there is an heir according to Section 1629 (4) or (6) and such heir is surviving or has representatives, or if there is an heir according to Section 1629 (5) as the case may be, such surviving spouse is entitled to two-thirds of the inheritance;

(4) if there is no heir as specified in Section 1629, such surviving spouse is entitled to the whole inheritance.

Section 1636. If the de cuius has left several wives surviving who acquired their legal status before the enforcement of the Civil and Commercial Code Book V, all those wives are jointly entitled to inherit in the class and according to the division as provided in Section 1635. However, as between themselves each secondary wife is entitled to inherit one half of the share which the principal wife is entitled.

Section 1637. If any surviving spouse is the beneficiary of an insurance on life, such surviving spouse is entitled to receive the whole sum agreed with the insurer. But he or she shall be bound to compensate either the Sin Derm or the Sin Somros of the other spouse, as the case may be, by restoring such sums paid as premiums as may be proved to have been in excess of the amount of money which could be paid as premiums by the deceased having regard to the latter's income or usual station in life.

The amount of premiums to be restored under the forgoing provisions shall in no case be more than the sum paid by the insurer.

Section 1638. Where both spouses have invested money in a contract whereby an annuity is payable to both of them during their joint lives and afterwards to the survivor for life, the latter shall be bound to compensate either the Sin Derm or the Sin Somros of the other spouse as the case may be, in so much as such Sin Derm or Sin Somros has been used for such investment. Such compensation to the Sin Derm or Sin Somros shall be equal in the amount to the extra sum required by the grantor of the annuity in order to continue to pay the annuity to the surviving spouse.

## CHAPTER IV

### REPRESENTATION FOR THE PURPOSE OF RECEIVING INHERITANCE

Section 1639. If any person who would have been an heir according to Section 1629 (1), (3), (4) or (6) is dead or has been excluded before death of the de cuius, his descendants, if any, shall represent him for the purpose of receiving inheritance. If any of his descendants is dead or has been excluded in the same manner, the descendants of such descendants shall represent him for the purpose of receiving inheritance and the representation shall take place in this way as regards the share of each person consecutively to the end of the stirpes.

Section 1640. Where a person is deemed to have died according to the provisions of Section 65 of this Code, there may be representation for the purpose of receiving inheritance.

Section 1641. If any person who would have been an heir according to Section 1629 (2) or (5) is dead or has been excluded before the death of the de cuius, the whole share shall devolve to the other surviving heirs, if any, of the same class and no representation shall take place.

Section 1642. Representation for the purpose of receiving inheritance shall take place only among statutory heirs.

Section 1643. The right of representation for the purpose of receiving inheritance belongs only to the direct descendants, the ascendants having no such right.

Section 1644. A descendant may represent for the purpose of receiving inheritance only if he has complete right to the inheritance.

Section 1645. Renunciation of inheritance of a person does not preclude the renouncer from representing such person in inheriting from another person.

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### TITLE III

#### WILLS

##### CHAPTER 1

###### GENERAL PROVISIONS

Section 1646. Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or other matters which shall take effect according to the law after his death.

Section 1647. The declaration of intention in contemplation of death shall be the latest one in imperative term provided by will.

Section 1648. A will must be made according to the forms prescribed in Chapter II of this Title.

Section 1649. The administrator of an estate appointed by the deceased shall have the power and duty to arrange for the funeral of the deceased unless another person has been specially appointed by the deceased for that purpose.

If there is no administrator, or no person appointed by the deceased to arrange for the funeral, or no person entrusted by the heirs to arrange for the funeral, the person who has received the greatest amount of property by will or by statutory right shall have the power and duty to arrange for the funeral unless the Court on application of any interested person, thinks fit to appoint another person for that purpose.

Section 1650. Expenses creating an obligation in favour of a person arranging for the funeral may be claimed according to the preferential right as specified in Section 253 (2) of this Code.

If the funeral is delayed for any reason whatsoever, any person empowered under the foregoing section shall reserve a reasonable amount of money out of the assets of the estate for this purpose. Where the amount to be reserved cannot be agreed upon, or where an objection is raised, any interested person may apply to the Court.

In any case, the expenses or the money for the arrangement of the funeral may be reserved only up to the amount suitable to the social station in life of the deceased, and provided that the rights of the creditors of the deceased are not prejudiced thereby.

Section 1651. Subject to the provisions of Title IV:

(1) where a person is entitled, under a testamentary disposition, to the whole of the de cuius' estate or to a fraction or a residuary part thereof which is not specifically separated from the mass of the estate, such person is said to be a legatee under a general title and has the same rights and liabilities as a statutory heir;

(2) where a person is entitled, under a testamentary disposition, only to a specific property identified in particular or specifically separated from the mass of the estate, such person is said to be a legatee under a particular title and has only rights and liabilities pertaining to such property.

In case of doubt, a legatee is presumed to be a legatee under a particular title.

Section 1652. A ward cannot make a legacy in favor of his guardian or in favor of the spouse, ascendant or descendant or brother or sister of his guardian until rendering of the account of the guardianship provided by Section 1577 and following of this Code is completed.

Section 1653. The writer of the will or a witness thereof cannot be a legatee under such will.

The foregoing paragraph shall also apply to the spouse of such writer or witness.

The competent official recording the statement made by witnesses under Section 1663 is deemed to be a writer within the meaning of this section.

Section 1654. The capacity of the testator must be considered only as at the time when the will is made.

The capacity of the legatee must be considered only as at the time when the testator dies.

## CHAPTER II

### FORMS OF WILLS

Section 1655. A will may be made only in any one of the forms prescribed in this Chapter.

Section 1656. A will may be made in the following form, that is to say, it must be made in writing, dated at the time of making of will and signed by the testator before at least two witnesses present at the same time who shall then and there sign their names certifying the signature of the testator.

No erasure, addition or other alternation in such will is valid unless made in the same form as prescribed by this section.

Section 1657. A will may be made by an holograph document, that is to say the testator must write with his own hand the whole text of the document, the date and his signature.

No erasure, addition or other alteration in such will is valid unless made by the testator's own hand and signed by him.

The provision of Section 9 of this Code shall not apply to a will made under this section.

Section 1658. A will may be made by a public document, that is to say:

(1) the testator must declare to the Kromakarn Amphoe\* before at least two other persons as witness present at the same time what dispositions he wishes to be included in this will;

(2) the Kromakarn Amphoe must note down such declaration of the testator and read it to the latter and to the witnesses;

(3) the testator and the witnesses must sign their names after having ascertained that the statement noted down by the Kromakarn Amphoe corresponds with the declaration made by the testator;

(4) the statement noted down by the Kromakarn Amphoe shall be dated and signed by such official who shall certify under his hand and seal that the will has been made in compliance with the foregoing Subsections 1 to 3.

No erasure, addition or other alternation in such will is valid unless signed by the testator, the witness and the Kromakarn Amphoe.

[\* According to Section 40 of the Act on the Administrative Organization of the State, B.E. 2495, all powers and duties relating to the official service are determined by law to belong to Kromakarn Amphoe are vested in Nai Amphoe.]

Section 1659. A will made by a public document may, upon request, be made outside the Amphoe Office.

Section 1660. A will may be made by a secret document, that is to say:

- (1) the testator must sign his name on the document;
- (2) he must close up the documents and sign his name on the document;
- (3) he must produce the closed document before the Kromakarn Amphoe and at least two other persons as witnesses and declare to all of them that it contains his testamentary dispositions; and if the testator has not written with his own hand the whole text of the document he must state the name and domicile of the writer;
- (4) after the Kromakarn Amphoe has noted down upon the cover of the document the declaration of the testator and the date of the production and has affixed his seal thereupon, the Kromakarn Amphoe, the testator and the witness must sign their names thereon.

No erasure, addition or other alternation in such will is valid unless signed by the testator.

Section 1661. If a person, who is deaf-mute or unable to speak, desires to make his will by a secret document, he must instead of making the declaration required in Section 1660 (3) write with his own hand, in the presence of the Kromakarn Amphoe and of the witnesses, on the cover of the document, a statement that the enclosed document is his will and add the name and the domicile of the writer of the document, if any.

Instead of noting down the declaration of the testator on the cover, the Kromakarn Amphoe shall certify thereon that the testator has complied with the requirements of the foregoing paragraph.

Section 1662. A will made by a public document or by a secret document shall not be divulged by the Kromakarn Amphoe to any other person during the lifetime of the testator, and the Kromakarn Amphoe is bound to hand over such will to the testator whenever the latter shall require him to do so.

If the will has been made by a public document the Kromakarn Amphoe shall, before handing over such will, make a copy thereof under his signature and seal. Such copy may not be divulged to any other person during the life of testator.

Section 1663. When under exceptional circumstances such as imminent danger of death, or during an epidemic or war, a person is prevented from making his will in any other if the prescribed forms, he may be make an oral will.

For this purpose, he must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.

Such witnesses must without delay appear for the Kromakarn Amphoe and state before him the dispositions which the testator has declared to them orally, as well as the date, place and exceptional circumstances under which the will was made.

The Kromakarn Amphoe shall note down the statement of the witnesses and such two witnesses shall sign the statement or, failing that, may make an equivalent to signature only by affixing a finger-print certified by the signatures of two witnesses.

Section 1664. A will made under the forgoing section loses its validity one month after the time when the testator has again been placed in a position to make a will in any other of the prescribed forms.

Section 1665. When the signature of the testator is required under Section 1656, 1658, 1660, the only equivalent to signature is the affixing of a finger-print certified by the signatures of two witnesses at the same time.

Section 1666. The provisions of Section 9 paragraphs 2\* of this Code shall not apply to witnesses whose signatures are required under Section 1656, 1658, 1660.

[Amended by Section 15 of Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535.]

Section 1667. In the event of a Thai subject making his will in a foreign territory, such will may be made either according to the form prescribed by the law of the country where it is made or according to the form prescribed by Thai law.

When the will is made according to the form prescribed by Thai law, the powers and duties of the Kromakarn Amphoe under Section 1658, 1660, 1661, 1662, 1663 shall be exercised by:

- (1) the Thai Diplomatic or Consular Officer acting within the scope of his authority, or
- (2) any authority competent under foreign law for making authentic record of a statement.

Section 1668. Unless otherwise provided by law, the testator need not disclose to the witness the contents of his will.

Section 1669. During the time when the country is engaged in arms conflict or is in the state of war, a person serving in armed forces or acting in connection therewith may make a will according to the form prescribed in Section 1658, Section 1660 or Section 1663; and in such case the military officer or official of commissioned rank shall have the same powers and duties as those of the Kromakarn Amphoe.

The provisions of the foregoing paragraph shall apply mutatis mutandis to the person serving in armed forces or acting in connection therewith, who, while performing the duties for his country, makes a will in a foreign country which is engaged in armed conflict or is in the state of war; and in such cases the military officer or official commissioned rank shall have the same powers and duties as those of the Thai Diplomatic or Consular Officer.

If the testator under the two foregoing paragraphs is sick or wounded and is admitted to a hospital, the physician of that hospital shall also have the same powers and duties as those of the Kromakarn Amphoe, Thai Diplomatic or Consular Officer, as the case may be.

Section 1670. The following persons cannot witness at the making of a will;

- (1) persons not sui juris
- (2) persons of unsound mind or persons adjudged quasi-incompetent;
- (3) persons who are deaf or dumb or blind

Section 1671. Where a person other than the testator is the writer of a will, such persons must sign his name thereon and add the statement that he is the writer.

If such person is also a witness, a statement that he is a witness must be written down after his signature in the same manner as is done by any other witness.

Section 1672. The Minister of Interior, Defense and Foreign Affairs shall have the powers and duties, in so far as they are respectively concerned, to issue Ministerial Regulations for carrying out the provisions of this Book and for fixing the rates and fees in connection therewith.

CHAPTER III

## EFFECTS AND INTERPRETATION OF WILLS

Section 1673. Rights and duties under a will take effect from the death of the testator, unless a condition or time clause has been provided by the testator for its taking effect thereafter.

Section 1674. If a testamentary disposition is subject to a condition and the condition has been fulfilled before the death of the testator; if the condition is precedent, such disposition takes effect at the death of the testator; if the condition is subsequent, the disposition has no effect.

If the condition precedent is fulfilled after the death of the testator, the testamentary disposition takes effect at the death of the testator but ceases to have effect when the condition is fulfilled.

However, if the testator has declared in the will that, in the case provided by the two foregoing paragraphs the effect of the fulfillment of the condition shall relate back to the time of his death, such declaration of intention shall prevail.

Section 1675. Where a legacy is subject to a condition precedent, the beneficiary under such testamentary disposition may apply to the Court for the appointment of an administrator of the property bequeathed up to the time when the condition will be fulfilled or when such fulfillment will become impossible.

If the Court thinks fit, such applicant himself may be appointed administrator of the property, and a proper security may be required from him.

Section 1676. A will may be made charging a person to create a foundation or directly determining the appropriation of property for any purpose in accordance with the provisions of Section 110\* of this Code.

Section 1677. Where there is a will creating a foundation under the foregoing section it shall be the duty of the heir or administrator, as the case may be, to apply to the Government for authorization to constitute it as a juristic person according to Section 114\* of this Code unless it is otherwise provided by will.

If the authorization by the Government has not been applied for by the aforesaid person, the application may be made by any interested person, or by the Public Prosecutor.

[Amended by Section 15 of the Act Promulgation the Revised Provisions of Book I of the Civil Code B.E. 2535.]

Section 1678. When a foundation created by will has been constituted as a juristic person, the properties appropriated to its purpose by the testator are deemed to vest in such juristic person from the time when the will takes effect unless it is otherwise provided by will.

Section 1679. Where the foundation cannot be organized in accordance with its object, the properties shall devolve as may have been provided by the will.

In the absence of such provision, the Court shall, on application by the heir, the administrator, the Public Prosecutor or any interested person, appropriate the properties to such other juristic persons whose purpose appears to be the nearest possible to the intention of the testator.

If such appropriate cannot be made or if the foundation cannot come into existence on account of its being contrary to law or against public order or good morals, such testamentary disposition becomes ineffective.

Section 1680. The creditors of the testators are entitled to claim cancellation of any testamentary disposition creating a foundation, only in so far as they are prejudiced thereby.

Section 1681. If the property forming the subject of the legacy has been lost, destroyed or damaged, and in consequence of such circumstances a substitute or a claim for compensation for



such property has been acquired, the legatee may claim delivery of the substitute received or may himself claim the compensation as the case may be.

Section 1682. Where a legacy is made by way of a release or a transfer or a claim, such legacy shall be affective only up to the amount still outstanding at the time of the death of the testator, unless otherwise provided by the will.

Any document evidencing the claim released or transferred shall be delivered to the legatee; and the provisions of Sections 303 to 313 and 340 of this Code shall apply *mutatis mutandis*; provided that if any act or proceedings were to have been carried out by the testator under those sections, the person who has to execute the legacy, or the legatee, may carry them out in his place.

Section 1683. A legacy made by the testator to any of his creditors is presumed not to be made in payment of the debt due to such creditor.

Section 1684. Where a clause in a will can be interpreted in several senses, the sense which best assures the observance of the intention of the testator shall be preferred.

Section 1685. Where the testator has made a legacy by describing the legatee in such a manner that he can be identified and there are several persons answering to the description of the legatee so made by the testator, in case of doubt all such persons are deemed to be entitled to equal shares.

#### CHAPTER IV

##### WILLS WITH APPOINTMENT OF CONTROLLER OF PROPERTY

Section 1686. Trust created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever.

Section 1687. If the testator desires to dispose of his property in favour of a minor or of a person adjudged incompetent or quasi-incompetent or of a person admitted into a hospital for unsoundness of mind but wishes to entrust the custody and management thereof to a person other than the parents, guardian, custodian or curator, he must appoint a controller of property by will.

Such appointment of a controller of property cannot be made for a longer period than the minority or the adjudication of incompetency or quasi-incompetency or the duration of the admittance into hospital as the case may be.

Section 1688. No appointment of the controller of property in regard to an immovable property or any real right appertaining thereto is complete unless it has been registered by the competent official.

The same provision applies as regards ships of five tons and over, floating houses and beasts of burden.(1)

[(1) The second paragraph of Section 1688 has been amended by Section 15 of the Civil and Commercial Code Amendment Act (no.14), B.E. 2548.]

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1690. A controller of property may be appointed by:

- (1) the testator himself
- (2) a person nominated for the purpose in the will

Section 1691. Unless otherwise provided in the will by the testator, a controller of property may appoint by will another person to act in his stead.

Section 1692. Unless otherwise provided in the will by the testator, the controller of property shall have, as regards the property entrusted to him, the same rights and duties as the guardian within the meaning of Book V of this Code.

## CHAPTER V

### REVOCATION AND LAPSE OF A WILL OR CLAUSE IN A WILL

Section 1693. A testator may at any time revoke his will wholly or partly.

Section 1694. If a former will is to be revoked wholly or partly by a latter will, the revocation is valid only when the latter will is made in any of the forms prescribed by law.

Section 1695. Where a will is embodied in one document only, the testator can revoke it wholly or partly by intentional destruction or cancellation.

Where the will is embodied in several duplicates, such revocation shall not be complete unless it is effected in all the duplicates.

Section 1696. A testamentary disposition is revoked if the testator has intentionally made a valid transfer of the property which is the subject of the will.

The same rule applies if the testator has intentionally destroyed such property.

Section 1697. Unless the testator has otherwise made a declaration of intention in his will, if it appears that a former and a latter will conflict, the former is deemed to have been revoked by the latter only as to the parts in which their provisions conflict.

Section 1698. A testamentary disposition lapses:

(1) if the legatee dies before the testator;

(2) if the testamentary disposition is to take effect on a condition being fulfilled and the legatee dies before its fulfillment, or it becomes certain that the condition cannot be fulfilled;

(3) the legatee refuses legacy

(4) if the whole property bequeathed is, without the intention of the testator, lost or destroyed during his lifetime and the testator has not acquired a substitute or a claim for compensation for the loss of such property.

Section 1699. If a will or a clause in a will as regards any property has no effect for any reason whatsoever, such property devolves on the statutory heirs or the State as the case may be.

## CHAPTER VI

### NULLITY OF A WILL OR OF CLAUSE IN A WILL

Section 1700. Subject to the provisions of this Chapter, a person may, by an act producing effect during lifetime or after death, dispose of any property under a stipulation that such property shall be inalienable by the beneficiary under such disposition, provided that the stipulator appoints some person, other than the beneficiary under such disposition, who shall become absolutely entitled to such property in case of violation of the inalienability clause.

The person appointed must be capable of rights at the same time when the act disposing of such property takes effect.

If there is no such appointment, the inalienability clause shall be deemed non-existent.

Section 1701. The inalienability clause stipulated under the foregoing section may be either for a period of time or for the life of the beneficiary.

If no period has been fixed, the period of inalienability shall be deemed to last for the life of the beneficiary if the beneficiary is a natural person, or thirty years if the beneficiary is a juristic person.

If the period of inalienability is specified, such period cannot exceed thirty years; if a longer period is specified, it shall be reduced to thirty years.

Section 1702. Any inalienability clause concerning movable property whose ownership is not subject to registration shall be deemed non-existent.

No inalienability clause concerning immovable property or any real right appertaining thereto is complete unless it is made in writing and registered by the competent official.

(\*1) The provisions of the foregoing paragraph applies as regards ships of five tons and over, floating houses and beast of burden.

[\* The third paragraph of Section 1702 has been by Section 16 of Civil and Commercial Code Amendment Act, (no.14), B.E. 2548.]

Section 1703. A will made by a person who has not completed his fifteenth year of age is void.

Section 1704. A will made by a person adjudged incompetent is void.

A will made by a person, who is alleged to be of unsound mind but not adjudged incompetent, may be annulled only if it is proved that at the time of making the will the testator was actually of unsound mind.

Section 1705. A will or clause in a will is void if it is contrary to the provisions of Section 1652, 1653, 1656, 1657, 1658, 1660, 1661, or 1663.

Section 1706. A testamentary disposition is void:

(1) if it appoints a legatee upon the condition that the latter shall dispose also by will of his own property in favour of the testator or of a third person;

(2) if it refers to a person whose identity cannot be ascertained; however a legacy under a particular title may be made in favour of a person to be chosen by a certain person out of several other persons or out of any group of persons specified by the testator;

(3) if the property bequeathed is so insufficiently described that it cannot be ascertained or if the amount of a legacy is left to the discretion of a certain person.

Section 1707. If a testamentary disposition appoints a legatee upon the condition that the latter shall dispose of the property bequeathed in favour of a third person, such condition shall be deemed non-existent.

Section 1708. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of duress; but if the testator continues to live for more than one year after he has ceased to be under the influence of the duress, such application cannot be made.

Section 1709. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of mistake or fraud only when the mistake or fraud is such that without it the will would not have been made.

The foregoing paragraph shall apply even if the fraud has been committed by a person who is not a beneficiary under the will.

However, a will made under the influence of mistake or fraud is operative if the testator fails to revoke it within one year after discovering the mistake or fraud.

Section 1710. No action for cancellation of a testamentary disposition can be entered later than:

(1) three months after the death of the testator if the ground for cancellation was known to the plaintiff during the lifetime of the testator, or

(2) three months after the plaintiff has acquired knowledge of such ground in any other case.

However, if such testamentary disposition affecting the interest of the plaintiff is unknown to him, even though the ground for cancellation was known to him, the period of three months shall run from the moment when such disposition is known or ought to have been known to the plaintiff.

In any case, such action cannot be entered later than ten years after the death of the testator.